

LABOUR RELATIONS ACT, 1995

**RESPONSE TO APPLICATION UNDER SECTION 69
AND/OR SUBSECTION 1(4) OF THE ACT
(SALE OF BUSINESS AND/OR RELATED EMPLOYER)**

BEFORE THE ONTARIO LABOUR RELATIONS BOARD

Between:

**UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION,
LOCAL 175**

Applicant,

- and -

**ROSE OF SHARON (ONTARIO) COMMUNITY cob as ROSE OF SHARON
KOREAN LONG-TERM CARE HOME**

-and-

DELOITTE RESTRUCTURING INC.

-and-

DELOITTE AND TOUCHE INC.

Responding Parties.

THE RESPONDING PARTY Deloitte Restructuring Inc. (formerly Deloitte & Touche Inc.) states in response to the application:

1. (a) Correct name of the responding party/intervenor:

Deloitte & Touche Inc., in its capacity as Court-appointed receiver and manager of the assets, undertaking and property of Rose of Sharon (Ontario) Retirement Community.

- (b) Address, telephone number, facsimile number and e-mail address of the responding party/ intervenor:

Deloitte Restructuring Inc. (formerly Deloitte & Touche Inc.)

Form A-25

**c/o GOWLING WLG (CANADA) LLP
Suite 1600, 100 King St W
Toronto ON M5X 1G5**

**Attn: E. Patrick Shea, LSM, CS
Tel: (416) 369-7399
Fax: (416) 862-7661
E-mail: patrick.shea@gowlingwlg.com**

- (c) Name, address, telephone number, facsimile number and e-mail address of a contact person for the responding party/intervenor:

See attached Schedule A

- (d) E-mail address of representative and assistant (if any):

Counsel: patrick.shea@gowlingwlg.com Assistant: N/A

2. (a) Name, address, telephone number, facsimile number and e-mail address of any other person, trade union, employer or employers' organization that may be affected by the application and who has not already been identified by another party:

N/A

- (b) The person, trade union, employer or employers' organization named in paragraph 2(a) is affected by the application for the following reason(s):

N/A

[You must deliver to the person(s) named in paragraph 2(a): a copy of the application, a copy of the Notice to Responding Party and/or Affected Party of Application under Section 69 and/or Subsection 1(4) of the Act, a completed copy of your response, and a blank response form. You must also complete the attached Certificate of Delivery.]

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3. The following statements in the application are agreed to:

See attached Schedule A

4. The following statements in the application are not agreed to:

See attached Schedule A

5. In support of its response, the responding party/intervenor relies on the following material facts:

See attached Schedule A

(Include **all** of the material facts on which you rely including the circumstances, what happened, where and when it happened, and the names of any persons said to have acted improperly. Please note that you will not be allowed to present evidence or make any representations about any material fact that was not set out in the response and filed promptly in the way required by the Board's Rules of Procedure, except with the permission of the Board.)

6. In respect of the order(s) requested by the applicant, the responding party/intervenor states:

See attached Schedule A

(Describe your position with respect to the order(s) requested by the applicant.)

7. **[Complete this section only if you are intervening in this case.]**

The intervenor claims to be affected by the application for the following reasons:

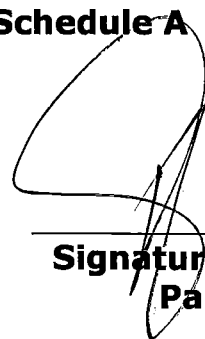
N/A

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8. Other relevant statements:

See attached Schedule A

DATED 13 March 2017.

A handwritten signature in black ink, consisting of a large loop followed by a vertical stroke and a diagonal stroke.

**Signature for the Responding
Party/Intervenor**

TAB A

SCHEDULE A

I. Background

1. Rose of Sharon (Ontario) Retirement Community ("**Rose of Sharon**") owns a long-term care facility located at 17 Maple Avenue in Toronto.
2. Pursuant to an Order dated 27 September 2011 (the "**Appointment Order**"), Deloitte & Touche Inc. (the "**Receiver**") was appointed as receiver and manager of all of the assets, undertaking and property of Rose of Sharon (the "**Property**") pursuant to the *Courts of Justice Act* (Ontario) (the "**CJA**") and the *Bankruptcy and Insolvency Act* (the "**BIA**").
3. The Appointment Order provides for a stay that prevents proceedings from being commenced or continued as against the Receiver, the Property or Rose of Sharon.
4. Pursuant to a Consent Order made on 21 February 2017, United Food and Commercial Workers International Union, Local 175 (the "**Union**") the stay imposed by the Appointment Order was lifted to permit the Union to initiate "an application for a related and/or successor employer against the Receiver at the [Ontario Labour Relations Board]" and the Union was authorized to "commence an application before the OLRB against the Receiver for a sale of business and/or related employer under sections 1(4) and 69 of the *Labour Relations Act, 1995*."

II. Parties

A. Rose of Sharon (Ontario) Retirement Community

5. Pursuant to the Appointment Order, all proceedings against Rose of Sharon are stayed. No leave has been sought to pursue this Application as against Rose of Sharon.
6. Contrary to the assertion in body of the Application, Gowling Lafleur (sic) Henderson LLP (now Gowling WLG (Canada) LLP) ("**Gowling**") – does not act (and has never acted) for Rose of Sharon. Gowling is, as provided for by the Appointment Order, counsel to the Receiver.
7. On 1 July 2013, the Receiver changed its legal name from "Deloitte & Touche Inc." to "Deloitte Restructuring Inc." There is only one "Deloitte" entity involved in this Application.

B. Receiver

8. The Receiver was appointed as receiver and manager of the Property and has, at all times, carried out its mandate in accordance with the orders and directions of the Ontario Superior Court of Justice and the applicable legislation.
9. Pursuant to the Appointment Order, the Receiver was authorized to, *inter alia*, take possession and control of the Property and to manage, operate and carry on the business of Rose of Sharon.
10. Pursuant to an Order dated 23 December 2011 (the "**Management Order**") – a copy of which is attached as **Exhibit 1**) – the Ontario Superior Court approved the actions and activities of the Receiver – including its taking possession of the Property – and approved a management agreements entered into by the Receiver with respect to the management of a long term care facility owned by

Rose of Sharon including in the Property. The Management Order was made on notice to the Union.

11. The Union did not appeal, and has not sought to set aside, amend or vary, any of the Orders made by the Ontario Superior Court of Justice.

III. Successor and/or Related Employer

12. The Receiver denies the assertions that the actions taken by the Receiver have been prejudicial to or adversely impact by the Union or the Rose of Sharon's employees.

13. Rose of Sharon has not become bankrupt and the Receiver is not acting as trustee of the Property.

14. There are no "associated or related activities or business" being carried out by Rose of Sharon and the Receiver and no "common control or direction" as between Rose of Sharon and the Receiver. The Receiver is acting solely in its capacity as the court-appointed receiver and manager of the Property.

15. The Receiver is about to engage a process that will result in a purchaser for the Property for the benefit of, *inter alia*, the employees under the direction and supervision of the Ontario Superior Court of Justice.

16. The Receiver has carried out and fulfilled its obligations as a court-appointed receiver and manager of the Property and complied with its statutory obligations and the orders and directions of the Ontario Superior Court of Justice.

17. The Receiver denies that, as a matter of law, it has become a related and/or successor employer by reason of having carried out and fulfilled its obligations as the court-appointed receiver and manager of the Property, and complied with its statutory obligations and the orders and directions of the Ontario Superior Court of Justice.

18. There has been no "disposition" of the Property and Receiver has not become the owner, lessee or transferee of the Property. There has been no voluntary disposition or conveyance of the Property. The Receiver's role *vis-a-vis* the Property derives from the Appointment Order and the authority of the Ontario Superior Court granted by the BIA and the CJA.

19. The Receiver has a (court-directed and interim) possessory interest only and holds the Property as an Officer of the Court pending the sale of the Property to an ultimate purchaser or, in the event the Receiver is discharged prior to a sale of the Property, the return of the Property to Rose of Sharon.

20. Where a receiver and manager is appointed by the Court, it is the Court, acting through the receiver, that takes effective control of the property over which the receiver is appointed.

21. The Receiver notes that the case relied upon in para 25 of the Application as founding the basis for the determination that the Receiver is a successor employer as a result of the application of s. 69 of the LRA involved an Application before the OLRB against **the purchaser of a business and not a receiver** and that purchaser **agreed that it was a successor employer**. The case has no relevance to

the Application against the Receiver¹. The statement in para 25 of the Application that the OLRB was commenting with respect to the application of s. 69 of the LRA appears, with respect, to be incorrect.

22. The Receiver relies on ss. 14.06(1.1) and (1.2) of the BIA and the provisions of the Appointment Order and the Management Order.

¹ See *United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 787 v Logue Mechanical Services Inc.*, 2016 CanLII 44016 (ON LRB)

TAB 1



Court File No. CV-11-9399-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE

JUSTICE WILTON-SIEGEL

FRIDAY, THE 23RD DAY

OF DECEMBER, 2011

BETWEEN:

PEOPLES TRUST COMPANY

Applicant

- and -

ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY

Respondent

**APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985, c. B-3, as amended and under Section 101 of the
Courts of Justice Act, R.S.O. 1990, c. C.43**

APPROVAL ORDER

THIS MOTION, made by Deloitte & Touche Inc., in its capacity as receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties (the "**Property**") of Rose of Sharon (Ontario) Retirement Community (the "**Debtor**") for an order approving the First Report to the Court of the Receiver dated December 12, 2011 (the "**First Report**") and the activities described therein; approving the direction to Korean (Toronto) Credit Union ("**KCU**") to pay to the Receiver all amounts standing to the credit of the Debtor in bank accounts held by the Debtor with KCU; approving a management agreement made as of September 27, 2011 between the Receiver and Assured Care Consulting Inc. ("**ACC**"); approving a property

management agreement made as of October 24, 2011 between the Receiver and Sterling Silver Development Corporation, through its division Sterling Karamar Property Management ("**Sterling**") for the provision of management services by Sterling for the Property; amending the Appointment Order (as defined in the Notice of Motion); approving the fees and disbursements of the Receiver for the period ending November 15, 2011; the fees and disbursements of Gowling Lafleur Henderson LLP, as counsel to the Receiver, for the period ending October 31, 2011 and the fees and disbursements of Blaney McMurtry LLP, as independent counsel to the Receiver, for the period ending October 31, 2011, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the materials filed on the motion, and on hearing the submissions of counsel:

1. **THIS COURT ORDERS AND DECLARES** that the time for service of the Notice of Motion and Motion Record in respect of this motion be and is hereby abridged and that the motion is properly returnable today and further that the requirement for service of the Notice of Motion and Motion Record herein upon any other parties is hereby dispensed with and that the service of the Notice of Motion and Motion Record herein is hereby validated in all respects and deemed sufficient for all purposes.
2. **THIS COURT ORDERS** that the First Report dated December 9, 2011 and the activities of the Receiver described therein be and are hereby approved.
3. **THIS COURT ORDERS** that the management agreement made as of September 27, 2011 between the Receiver and ACC, providing for ACC's role as manager of the 60 bed long-term care facility located at the Property (the "**Nursing Home**"), be and the same is hereby approved.

4. **THIS COURT ORDERS** that the property management agreement made as of October 24, 2011 between the Receiver and Sterling for the provision of management services by Sterling for the Property, excluding all aspects of the Nursing Home, be and the same is hereby approved.

5. **THIS COURT ORDERS** that the fees and disbursements of the Receiver as summarized in paragraph 122 of the First Report and the Affidavit of Hartley M. Bricks, sworn December 7, 2011, be and are hereby approved.

6. **THIS COURT ORDERS** that the fees and disbursements of the Receiver's solicitors, Gowling Lafleur Henderson LLP, as summarized in paragraph 123 of the First Report and the Affidavit of Harry R. VanderLugt, sworn December 12, 2011, be and are hereby approved.

7. **THIS COURT ORDERS** that the fees and disbursements of the Receiver's independent counsel, Blaney McMurtry LLP, as summarized in paragraph 124 of the First Report and the Affidavit of Eric Golden, sworn December 7th, 2011, be and are hereby approved.

G. Ben - LMS.

REGISTERED AT / INSERTE À TORONTO
BOOK NO.
LE / DANS LE REGISTRE NO.:

DEC 23 2011

NB

NOTARY

Court File No.: CV-11-9399-00CL	
PEOPLES TRUST COMPANY Applicant	ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY Respondent
ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) (PROCEEDING COMMENCED AT TORONTO)	
APPROVAL ORDER	
Gowling Lafleur Henderson LLP Barristers and Solicitors 1 First Canadian Place 100 King Street West, Suite 1600 TORONTO, Ontario M5X 1G5 Clifton Prophet LSUC No.: 34345K Telephone: (416) 862-3509 Facsimile: (416) 863-3509 Solicitors for Deloitte & Touche Inc., in its capacity as receiver and manager of Rose of Sharon (Ontario) Retirement Community	

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CERTIFICATE OF DELIVERY

1. I certify that a completed copy of the response was delivered to [X] the applicant, [] the responding party or parties, and/or [] any affected party named in paragraph 2 of the application or in a response filed by another party, as follows:

CALEY WRAY

Labour/Employment Lawyers
1600-65 Queen St W
Toronto On M5H 2M5

2. **[Complete this section only if you named an affected party in paragraph 2 of your response that was not named in paragraph 2 of the application or a response filed by another party.]**

I certify that the following documents were delivered to the affected party named in paragraph 2 of this response, as follows:

- a copy of the application;
- a copy of the Notice to Responding Party and/or Affected Party of Application Under Section 69 and/or Subsection 1(4) of the Act (Form C-9);
- a completed copy of the response; and
- a blank copy of a Response to Application Under Section 69 and/or Subsection 1(4) of the Act (Form A-25).

Name of Organization and name
and title of person to whom
documents were delivered

Address or facsimile number to
which documents were delivered

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[Complete either section 3 or section 4 or section 5 below.]

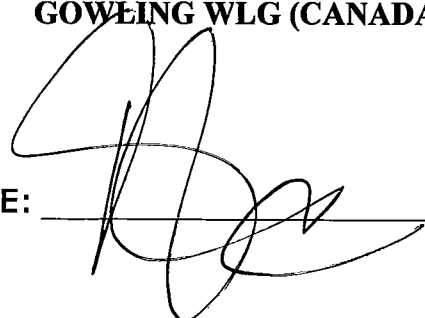
3. The documents were delivered by [] facsimile transmission or []
hand delivery on _____ at _____ a.m./p.m.
(Date)

4. The documents were sent by [X] regular mail on **14 March 2017**
(Date)
at **10:00** a.m./p.m.

5. The documents were given to _____
(Name of Courier)
on _____, and I was advised that they would be
(Date)
delivered not later than _____ at _____ a.m./p.m.
(Date)

NAME: **GOWLING WLG (CANADA) LLP**

TITLE: _____ Partner

SIGNATURE: _____


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IMPORTANT NOTES

FRENCH OR ENGLISH

Si vous communiquez avec la Commission, vous avez le droit de recevoir des services en français et en anglais. Vous pouvez consulter les règles de la Commission, les formulaires et les bulletins d'information sur le site Web de la Commission au www.olrb.gov.on.ca ou composer le 416-326-7500 ou (sans frais) le 1 877 339-3335 pour de plus amples renseignements. Veuillez prendre note que la Commission n'offre pas de services d'interprétation dans les langues autres que le français et l'anglais.

You have the right to communicate with, and receive available services from, the Board in either English or French. You can access the Board's Rules, Forms and Information Bulletins from its website at www.olrb.gov.on.ca or by calling 416-326-7500. Please note that the Board does not provide translation services in languages other than English or French.

CHANGE OF ADDRESS

Please notify the Board immediately of any change in your address, phone or fax numbers, or your e-mail address. If you fail to notify the Board of any changes, correspondence sent to your last known address may be deemed to be reasonable notice to you and the application may proceed in your absence.

EMAIL

If you have provided an e-mail address with your contact information, the Board will in all likelihood communicate with you by e-mail from a generic outgoing address. Please be advised that the Board is not yet equipped to receive communications from you by e-mail.

OLRB RULES OF PROCEDURE

The Board's Rules of Procedure describe how an application, response or intervention must be filed, what information must be provided and the time limits that apply. You can obtain a copy of the Rules from the Board's office at 505 University Avenue, 2nd Floor, Toronto, Ontario, M5G 2P1 (Tel: 416-326-7500) or from the Board's website.

ACCESSIBILITY and ACCOMMODATION

In accordance with the *Accessibility for Ontarians with Disabilities Act, 2005*, the Board makes every effort to ensure that its services are provided in a manner that respects the dignity and independence of persons with disabilities. Please tell the Board if you require any accommodation to meet your individual needs.

FREEDOM OF INFORMATION and PROTECTION OF PRIVACY

Personal information is collected on this form under the authority of the Board's governing legislation to assist in the processing of this application. In

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addition, information received in written or oral submissions may be used and disclosed for the proper administration of the Board's legislation and processes. The *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 F.31 governs the collection, use and disclosure of this information.

Any information that you provide to the Board that is relevant to this application must in the normal course be provided to the other parties to the proceeding.

HEARINGS and DECISIONS

Board hearings are open to the public unless the panel decides that matters involving public security may be disclosed or if it believes that disclosure of financial or personal matters would be damaging to any of the parties. Hearings are not recorded and no transcripts are produced.

The Board issues written decisions, which may include the name and personal information about persons appearing before it. Decisions are available to the public from a variety of sources including the Ontario Workplace Tribunals Library, and over the internet at www.canlii.org, a free legal information data base. Some summaries and decisions may be found on the Board's website under *Highlights* and Recent Decisions of Interest.

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