

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)
)
JUSTICE DUNPHY)
)
FRIDAY, THE 11TH
DAY OF JUNE, 2021

IN THE MATTER OF THE LIQUIDATION AND WINDING UP OF
ONTARIO ELECTRONIC STEWARDSHIP

APPLICATION UNDER SS. 243, 244 and 246 OF THE *CORPORATIONS ACT*, R.S.O. 1990,
C. C.38

DELOITTE RESTRUCTURING INC.

Applicant

**ORDER
(Wind Up and Appointment of a Liquidator)**

THIS APPLICATION made by the Applicant for an Order pursuant to sections 243(b), (d) and 246 of the *Corporations Act*, R.S.O. 1990, c. C. 38, as modified by Ontario Regulation 357/17 (the “*Corporations Act*”) appointing Deloitte Restructuring Inc. as Court-appointed liquidator (in such capacity, the “**Liquidator**”) without security, of all of the assets, undertakings and properties of Ontario Electronic Stewardship (“**OES**” or the “**Corporation**”) was heard this day by judicial videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the affidavit of Richard Williams sworn May 31, 2021 (the “**Williams Affidavit**”) and the Exhibits thereto and the consent of Deloitte Restructuring Inc. to act as the Liquidator, and on hearing the submissions of counsel for the Applicant, counsel for Resource Productivity & Recovery Authority, no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of Katherine Yurkovich sworn June 2, 2021 and on reading the consent of Deloitte Restructuring Inc. to act as the Liquidator,

WINDING UP AND APPOINTMENT

1. **THIS COURT ORDERS** that pursuant to section 243 of the *Corporations Act*, the Corporation be wound up in accordance with the terms of this Order.

2. **THIS COURT ORDERS** that pursuant to sections 243 and 246 of the *Corporations Act*, Deloitte Restructuring Inc. is hereby appointed Liquidator, without security, of all of the assets, undertakings and properties of the Corporation including all proceeds thereof or any sum or balance due from any contributory to which the Corporation is entitled (the “**Property**”) for the purpose of winding up the Corporation’s business and affairs and distributing its Property. The winding up shall be completed in accordance with the terms of the Corporation’s plan to wind up the Corporation attached as Exhibit F to the Williams Affidavit (the “**Wind Up Plan**”), or pursuant to directions received from the Minister of the Environment, Conservation and Parks, and as approved by the Resource Productivity and Recovery Authority (“**RPRA**”), or as otherwise ordered by the Court.

LIQUIDATOR’S POWERS

3. **THIS COURT ORDERS** that the Liquidator, in exercising its powers and performing its functions, including, without limitation, all such powers under the *Corporations Act*, shall act as the agent of the Corporation and shall be empowered to exercise all powers and authorities in lieu, and in stead, of the officers and directors of the Corporation, including the Corporation’s power and authority to make or amend rules pursuant to the *Waste Diversion Transition Act*, 2016, S.O. 2016, c.12, Sched 2 (the “**WDTA**”), and in exercising and performing any such powers pursuant to this order, or any further order of this Court made in this proceeding, only the Corporation shall be liable for any act performed or thing done by the Liquidator pursuant to the powers conferred upon it by this order or any other order of this Court made in this proceeding and the Liquidator shall have no personal liability therefore.

4. **THIS COURT ORDERS** that the Liquidator shall review all of the Property and shall make inquiries as to any security, rights, claims or other interests asserted in, to or against any of the Property.

5. **THIS COURT ORDERS** that Liquidator may, in the course of its determination as to the assets, liabilities and claims against the Property, apply to this Court for directions as to any process or processes for the determination of the claims and entitlements of all persons who may have rights as creditors, claimants to interests in the Property, or against the Corporation or any of its Property and, subject to such claims process, may request any other directions concerning any further steps to realize upon the Property and to complete the liquidation of the Corporation.

6. **THIS COURT ORDERS** that the Liquidator is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Liquidator is hereby expressly empowered and authorized to do any of the following where the Liquidator considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Liquidator's powers and duties, including without limitation those conferred by this Order;
- (d) to receive and collect all monies and accounts now owed or hereafter owing to the Corporation and to exercise all remedies of the Corporation in collecting such monies, including, without limitation, to enforce any security held by the Corporation;

- (e) to settle, extend or compromise any indebtedness owing to the Corporation;
- (f) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Liquidator's name or in the name and on behalf of the Corporation, for any purpose pursuant to this Order;
- (g) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Corporation, the Property or the Liquidator, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (h) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Liquidator in its discretion may deem appropriate;
- (i) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$100,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, shall not be required.

- (j) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (k) to report to, meet with and discuss with such affected Persons (as defined below) as the Liquidator deems appropriate on all matters relating to the Property and the wind up, and to share information, subject to such terms as to confidentiality as the Liquidator deems advisable;
- (l) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (m) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Liquidator, in the name of the Corporation;
- (n) to exercise any shareholder, partnership, joint venture or other rights which the Corporation may have;
- (o) to apply the Property of the Corporation in satisfaction of all its debts, obligations and liabilities;
- (p) to facilitate the transfer to RPRA of all commercial data and information in the possession of the Corporation in accordance with the terms of the Corporation's Wind Up Plan; and
- (q) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Liquidator takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Corporation, and without interference from any other Person. For avoidance of doubt, nothing in this Order will detract from, or diminish, the obligation of the Liquidator, in the

name of the Corporation, to continue to pay any and all amounts that the Corporation is required to pay under the *WDTA*.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE LIQUIDATOR

7. **THIS COURT ORDERS** that the Corporation, all of its current and former directors, officers, employees, agents, accountants, legal counsel and members, and all other persons acting on its instructions or behalf, and all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Liquidator of the existence of any Property in such Person’s possession or control, shall grant immediate and continued access to the Property to the Liquidator, and shall deliver all such Property to the Liquidator upon the Liquidator’s request.

8. **THIS COURT ORDERS** that all Persons shall forthwith advise the Liquidator of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Corporation, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person’s possession or control, and shall provide to the Liquidator or permit the Liquidator to make, retain and take away copies thereof and grant to the Liquidator unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 8 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Liquidator due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

9. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Liquidator for the purpose of allowing the Liquidator to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying

the information as the Liquidator in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Liquidator. Further, for the purposes of this paragraph, all Persons shall provide the Liquidator with all such assistance in gaining immediate access to the information in the Records as the Liquidator may in its discretion require including providing the Liquidator with instructions on the use of any computer or other system and providing the Liquidator with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE LIQUIDATOR

10. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Liquidator except with the written consent of the Liquidator or with leave of this Court.

NO PROCEEDINGS AGAINST THE CORPORATION OR THE PROPERTY

11. **THIS COURT ORDERS** that, no Proceeding against or in respect of the Corporation or the Property shall be commenced or continued except with the written consent of the Liquidator or with leave of this Court and any and all Proceedings currently under way against or in respect of the Corporation or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

12. **THIS COURT ORDERS** that all rights and remedies against the Corporation, the Liquidator, or affecting the Property, are hereby stayed and suspended except with the written consent of the Liquidator or leave of this Court, and further provided that nothing in this paragraph shall (i) empower the Liquidator or the Corporation to carry on any business which the Corporation is not lawfully entitled to carry on, (ii) exempt the Liquidator or the Corporation from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE LIQUIDATOR

13. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Corporation, without written consent of the Liquidator or leave of this Court.

CONTINUATION OF SERVICES

14. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Corporation or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Corporation are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Liquidator, and that the Liquidator shall be entitled to the continued use of the Corporation's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Liquidator in accordance with normal payment practices of the Corporation or such other practices as may be agreed upon by the supplier or service provider and the Liquidator, or as may be ordered by this Court.

LIQUIDATOR TO HOLD FUNDS

15. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Liquidator from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property, the pursuit of any claim of OES, and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Liquidator (the "**Liquidation Accounts**") and the monies standing to the credit of such Liquidation Accounts from time to time, net of any disbursements provided for herein, shall be held by the Liquidator to be paid in accordance with the terms of this Order or any further Order of this Court.

PIPEDA

16. **THIS COURT ORDERS** that, to facilitate the transfer of personal information held by the Corporation to RPRA as required under sub-section 14(12) of the *WDTA*, pursuant to clauses 7(3)(c) and 7(3)(i) of the *Canada Personal Information Protection and Electronic Documents Act*, the Liquidator shall disclose personal information of identifiable individuals to RPRA and its advisors, but only to the extent desirable or required to carry out the Corporation's Wind Up Plan, as prepared or amended in accordance with the requirements of section 14 of the *WDTA*, the terms of the Wind Up Plan, or pursuant to directions received from the Minister of Environment, Conservation and Parks, and as approved by RPRA. RPRA shall be entitled to continue to use the personal information provided to it in implementing its mandate under the *Resource Recovery and Circular Economy Act, 2016*, S.O. 206, c. 12, Sched 1.

TRANSFER OF DATA TO RPRA

17. **THIS COURT ORDERS** that, subject to the provisions of paragraph 15 above, the Liquidator shall be authorized and directed to transfer all electronic data of OES to RPRA.

LIMITATION ON THE LIQUIDATOR'S LIABILITY

18. **THIS COURT ORDERS** that the Liquidator, as well as any and all consultants properly engaged as contemplated under this Order, shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

LIQUIDATOR'S ACCOUNTS

19. **THIS COURT ORDERS** that the costs, charges and expenses of the winding up, including the remuneration of the Liquidator and its counsel, are payable out of the Property of the Corporation in priority to all other claims. In connection therewith, the Liquidator and counsel to the Liquidator shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Liquidator and counsel to the Liquidator shall be entitled to and are hereby granted a charge (the "**Liquidator's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings,

and that the Liquidator's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person.

20. **THIS COURT ORDERS** that the Liquidator and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Liquidator and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

21. **THIS COURT ORDERS** that prior to the passing of its accounts, the Liquidator shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Liquidator or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

SERVICE AND NOTICE

22. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <https://www.insolvencies.deloitte.ca/en-ca/Pages/OntarioElectronicStewardship.aspx?searchpage=Search-Insolvencies.aspx>.

23. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Liquidator is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Corporation's creditors or other interested parties at their respective addresses as last shown on the records of the Corporation and that any such service or distribution by

courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

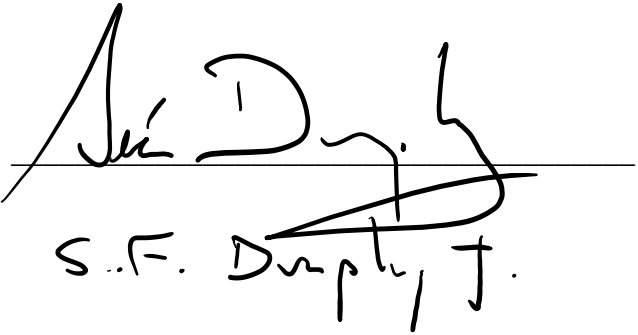
24. **THIS COURT ORDERS** that the Liquidator may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

25. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Liquidator and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Liquidator, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Liquidator and its agents in carrying out the terms of this Order.

26. **THIS COURT ORDERS** that the Liquidator be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Liquidator is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

27. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than ten (10) days' notice to the Liquidator and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

28. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order and is enforceable without any need for entry and filing.



A handwritten signature in black ink, appearing to read "S.F. Duply, J.", is written over a horizontal line. The signature is stylized and cursive.

IN THE MATTER OF THE LIQUIDATION AND WINDING UP OF ONTARIO
ELECTRONIC STEWARDSHIP
APPLICATION UNDER SS. 243, 244 and 246 OF THE *CORPORATIONS ACT*,
R.S.O. 1990, C. C.38
DELOITTE RESTRUCTURING INC.

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**ORDER
(Wind Up and Appointment of a Liquidator)**

GOWLING WLG (CANADA) LLP

1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5

Virginie Gauthier (LSO#: 41097D)

Tel: 416-844-5391

Email: virginie.gauthier@gowlingwlg.com

Kate Yurkovich (LSO#: 80396R)

Tel: 416-862-4342

Email: kate.yurkovich@gowlingwlg.com

Lawyers for the Applicant, Deloitte Restructuring Inc.