

# COUNSEL SLIP

COURT FILE

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TITLE OF  
PROCEEDING

ORIONIS CORPORATION v. ONTARIO GRAPHITE, LTD. et al

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**JUDICIAL NOTES:**

This is a motion by Deloitte Restructuring Inc. in its capacity as Court-appointed Monitor in respect of the CCAA proceedings of Ontario Graphite Ltd. ("OGL") for an Approval and Vesting Order and related relief. The transaction for which approval is sought is pursuant to a Share Purchase Agreement whereby the purchaser will require a 100% interest in a new class of OGL shares via a "reverse vesting order" transaction.

The principal economic stakeholders are the Ontario Ministry of Northern Development, Mines, Natural Resources and Forestry (the “Ministry”) and Orionis Corporation, a secured creditor, and the DIP lender.

The principles for the Court to consider on a motion for the approval of the sale of assets are set out at section 36(3) of the CCAA. These factors largely trace the test in *Royal Bank v. Soundair Corp.*, [1991] O.J. No. 1137 (C.A.), at para. 16: (i) whether the court officer has made a sufficient effort to get the best price and has not acted improperly; (ii) the interests of all parties; (iii) the efficacy and integrity of the process by which offers are obtained; and (iv) whether there has been any unfairness in the working out of the process.

In *Re Harte Gold Corp.*, 2022 ONSC 653, Penny J. set out the analytical framework to be applied to a reverse vesting order transaction.

The proposed transaction is the culmination of a long process undertaken by the Monitor to address the significant financial challenges facing OGL and to identify and implement a transaction to maximize value for the benefit of both OGL, its creditors and broader stakeholders. The Monitor is of the view that the proposed transaction is the best available option for OGL’s creditors in the circumstances. In support of its recommendation, the Monitor reports that (i) OGL’s assets were initially marketed under a court-approved SISP, and OGL does not possess available liquidity to undertake a further sales process; (ii) Orionis, OGL’s primary secure letter, is supportive of the proposed transaction; (iii) the proposed transaction provides a significantly better outcome for the creditors of OGL that would be realized in the bankruptcy; and (v) the purchase consideration to be paid by the purchaser is reasonable and fair.

I am satisfied that the Monitor has made sufficient effort to get the best price and has not acted improvidently. I accept the Monitor’s submissions at paragraphs 14-20 of the Monitor’s factum.

In this case, should the proposed transaction close, there will be significant funds paid to OGL’s principal secured creditors. The payment of such amount would be unlikely should OGL be forced into bankruptcy because, in all circumstances, the assets of OGL can only be sold for liquidation value and would be subject to priority charges of the Ministry for its costs. The Monitor’s opinion is that the proposed transaction provides a significantly better outcome for creditors of OGL than would be realized if OGL were to become bankrupt.

The Monitor has explained why the proposed RVO structure is beneficial, and the reasons are summarized at para. 24 of the Monitor’s factum. I accept the Monitor’s advice that no stakeholder will be worse off as a result of using the RVO structure for the proposed transaction. The stakeholders with a principal economic interest in the proposed transaction are supportive and have not raised any material objections. I am satisfied that the proposed RVO structure is beneficial and should be approved, having regard to the principles in *Re Harte Gold*.

I am satisfied that the sales process was efficacious and fair. In this regard, I accept the Monitor’s submissions at paragraphs 25-26 of its factum.

I am satisfied that it is just and convenient to approve the proposed transaction and grant the requested AVO. In this regard, I accept the submissions at para. 28-30 of the Monitor’s factum.

The Monitor is requesting a limited sealing order until after the proposed transaction closes. I am satisfied that the requested sealing order should be granted. In this regard, I accept the submissions at paragraphs 31-36 of the Monitor’s factum.

The Monitor requests an extension of the stay until June 30, 2022. Counsel for the Ministry is concerned that the proposed transaction may not close on the proposed closing date, April 7, 2022. The Monitor has agreed to provide information to the Ministry in a letter about closing of the proposed transaction and any delay in closing that may occur. If there is a need for a 9:30 attendance before me to address any issues with respect to closing,

an appointment may be made. I am satisfied that an extension to June 30, 2022 is reasonable in the circumstances.

Orders to issue in forms of orders signed by me today.