

Court No. B-220201
Estate No. 11-254400
Bankruptcy Division 03
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF
FORT ST. JAMES OPERATIONS SERVICES LIMITED PARTNERSHIP

NOTICE OF HEARING

May 27, 2022

By Courier and Email

TO THE DEBTORS: **Fort St. James Operations Services Limited Partnership**
2600-595 Burrard St, 3 Bentall Centre, PO Box 49314
Vancouver, British Columbia, Canada, V7X 1L3

Attention: Stephane Jouzier
stephane.jouzier@veolia.com

AND TO: **Deloitte Restructuring Inc.**
939 Granville Street
Vancouver, British Columbia, V6Z 1L3

AND TO: **Office of the Superintendent of Bankruptcy**
300 Georgia Street W, Suite 2000
Vancouver, British Columbia, V6B 6E1

Re: Notice of the Time and Place of the Hearing of a Petition for Bankruptcy Order with respect to Fort St. James Operations Services Limited Partnership

TAKE NOTICE that a petition for a bankruptcy order and a consolidation order to be made in respect of the property of Fort St. James Operations Services Limited Partnership will be heard before the judge in chambers at the courthouse at 800 Smithe Street, Vancouver, British Columbia by Microsoft Teams on June 7, 2022 at 9:45 am or so soon thereafter as the petition can be heard.

TAKE FURTHER NOTICE that if notice of cause against the petition is not filed in Court and a copy thereof served on the solicitor for the applicant creditor at least two days before the hearing and if Fort St. James Operations Services Limited Partnership does not appear at the hearing, the Court may make a bankruptcy order on such proof of the statements in the petition as the Court shall think sufficient.

1. Date of hearing

The parties have agreed as to the date of the hearing of the petition.

The parties have been unable to agree as to the date of the hearing but notice of the hearing will be given to the petition respondents in accordance with Rule 16-1(8)(b) of the Supreme Court Civil Rules.

The petition is unopposed, by consent or without notice.

2. Duration of hearing

It has been agreed by the parties that the hearing will take

The parties have been unable to agree as to how long the hearing will take and

- (a) the time estimate of the petitioner(s) is 15 minutes, and
- (b) the petition respondents have not given a time estimate.

3 Jurisdiction

This matter is within the jurisdiction of a master.

This matter is not within the jurisdiction of a master.

Date: 27/05/2022


Signature of lawyer for petitioner
Paige Marvel

Stikeman Elliott LLP
Barristers and Solicitors
1700 – 666 Burrard Street
Vancouver, BC V6C 2X8
Phone: 604-631-1300
Fax: 604-681-1825

B-220201
Court No.
Estate No. 11-25440
Bankruptcy Division -03
Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF
FORT. ST JAMES OPERATIONS SERVICES LIMITED PARTNERSHIP

PETITION FOR BANKRUPTCY ORDER

THIS IS THE PETITION OF:

Veolia ES Canada Inc.
1705 – 3rd Avenue
Montreal, Quebec, Canada
H1B 5M9

ON NOTICE TO:

Fort St. James Operations Services Limited Partnership
2600-595 Burrard St, 3 Bentall Centre, PO Box 49314
Vancouver, British Columbia, Canada, V7X 1L3

Prince George Operations Services Inc.
2000, Etchemin Street
Lévis, Québec, Canada, G6W 7X6

Deloitte Restructuring Inc.
939 Granville Street
Vancouver, British Columbia, V6Z 1L3

Office of the Superintendent of Bankruptcy
300 Georgia Street W, Suite 2000
Vancouver, British Columbia, V6B 6E1

TAKE NOTICE that Veolia ES Canada Inc. (the "**Petitioner**") will apply to this Court for the relief set out in this Petition.

The Petitioner hereby seeks the issuance of the orders respectively in the form of the draft orders attached hereto at Schedule "A" and Schedule "B", essentially to have Fort St. James Operations Services Limited Partnership (the "**LP**") adjudged bankrupt and to have the respective estates of the LP and Prince George Operations Services Inc. (the "**GP**", and collectively with the LP, herein referred to as the "**Debtors**"), administered procedurally and substantively on a consolidated basis by the Proposed Trustee (as defined below).

The Petitioner will rely on Rule 2-1(2)(b), 22-5(8) and 1-3(1) of the *Supreme Court Civil Rules* (the "**Rules of Court**") and Sections 42, 43 and 183 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**") as well as Rule 3 of the *Bankruptcy and Insolvency General Rules*, C.R.C., c. 368, (the "**BIA Rules**").

At the hearing on this Petition will be read the Affidavit #1 of Brian J. Clarke which is served herewith.

The facts and the legal basis upon which this Petition is made are as follows:

A. FACTS

1. The Debtors, despite the GP having a registered head office in the Province of Quebec, have, and/or had, during the year immediately preceding the date of the initial bankruptcy event, their principal assets and business operations in the Province of British Columbia, within the jurisdiction of this Court.
2. The GP was incorporated and exclusively acted for the sole purpose of being the general partner of the LP in the context of the Project, and in such capacity, is liable for all of the debts of the LP, and both Debtors are insolvent as a result of the amounts they owe to the same creditors, and therefore should be administered on a procedurally and substantively consolidated basis.
3. The Debtors are indebted to the Petitioner in the sum of CAD\$21,470,418.25, calculated as of April 30, 2022, plus interest thereafter and costs, the whole of which is unsecured. Therefore, the Petitioner holds an unsecured claim of greater than \$1,000.
4. The Debtors have committed an act of bankruptcy within the six months preceding the filing of this Petition, as the Debtors have would down their operations and ceased to meet their liabilities as they become due, including the indebtedness owing to the Petitioner and the other creditors.
5. The Debtors are both insolvent and the Petitioner believes that it is advantageous to all stakeholders that the Debtors should be both be assigned into bankruptcy by the Petitioner so as to be administered on a procedurally and substantively consolidated basis.

6. The administration of both of the estates of the Debtors (i.e. the Property), on a procedurally and substantively consolidated basis is advantageous because:
 - (a) it avoids the duplication in the administration of the estates and eliminates the need for Deloitte Restructuring Inc. (“**Deloitte**” or the “**Proposed Trustee**”), in its capacity as Proposed Trustee, to spend significant time and resources to determine claims for the different legal entities and the flow of funds between them;
 - (b) it allows any legitimate claims against the assets of the Debtors to be dealt with equitably and efficiently considering that GP is liable for the entire indebtedness of LP;
 - (c) it allows for a summary process to deal with any superfluous or otherwise meritless claims against the estate of the Debtors in the expeditious manner set out in the BIA, and ensures that such claims do not prejudice a timely recovery by the Debtors’ creditors; and
 - (d) it allows for an efficient and substantial analysis by the Proposed Trustee of any and all intercompany flows of funds.
7. The Petitioner is not aware of any party that would be materially prejudiced by the procedural and substantive consolidation of the estate of the Debtors.
8. Deloitte Restructuring Inc. is qualified to act as Trustee of the Property and has agreed to act as such and is acceptable to the Petitioner.
9. The Debtors do not oppose the relief sought herein.

B. LEGAL BASIS

Assignment of the Debtors into Bankruptcy

10. A debtor commits an act of bankruptcy, *inter alia*, in the event that it ceases to meet his liabilities generally as they become due:

*42 (1) A debtor commits an act of bankruptcy in each of the following cases:
[...]*

(j) if he ceases to meet his liabilities generally as they become due.

➤ BIA at s. 42(1)(j).

11. One or more creditors may file in court an application for a bankruptcy order against a debtor if it is alleged in the application that (a) the debt or debts owing to the applicant creditor or creditors amount to one thousand dollars; and (b) the debtor has committed an act of bankruptcy within the six months preceding the filing of the application.

43. (1) Subject to this section, one or more creditors may file in court an application for a bankruptcy order against a debtor if it is alleged in the application that (a) the debt or debts owing to the applicant creditor or creditors amount to one thousand dollars; and (b) the debtor has committed an act of bankruptcy within the six months preceding the filing of the application.

➤ BIA at s. 43(1).

➤ "Creditor" is defined by section 2 of the BIA as meaning a person having a claim, preferred, secured or unsecured, provable as a claim under the BIA. Sections 121-123 of the BIA define what constitute a provable claim.

Procedural Consolidation

12. This court has authority to procedurally consolidate multiple estates. The BIA and the BIA Rules provide that a court of bankruptcy retains its jurisdiction at law and in equity. Section 183 of the BIA provides:

183. (1) The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:

[...]

(c) in the Provinces of Nova Scotia and British Columbia, the Supreme Court;

- BIA at s. 183.

13. Rule 3 of the BIA Rules provides:

In cases not provided for in the Act or these Rules, the courts shall apply, within their respective jurisdictions, their ordinary procedure to the extent that that procedure is not inconsistent with the Act or these Rules.

- BIA Rules at Rule 3.

14. Rule 22-5(8) of the Rules of Court provides that:

Proceedings may be consolidated at any time by order of the court or may be ordered to be tried at the same time or on the same day.

- Rules of Court at Rule 22-5(8).

15. The factors to be considered are: whether there is a common question of law or fact so that it is desirable to dispose of both at the same time; the avoidance of multiplicity of proceedings; savings of time and expense; inconvenience to parties; whether one action is at a more advanced stage; prejudice to the parties.

- *Shah v. Bakken* (1996), 20 B.C.L.R. (3d) 393.

16. The quick question to be asked is whether an order for actions to be tried together makes sense in the circumstances.

- *Sahal Estate v. Argitos*, 2010 BCSC 916.

17. The court ought to interpret the Rules of Court to secure the just, speedy and inexpensive determination of every proceeding on its merits.

- Rules of Court at Rule 1-3(1).

Substantive Consolidation

18. In determining the authority for substantive consolidation, the courts have held that there is no specific authority in the BIA to grant an order for substantive consolidation. It is common ground, however, that the court has the authority to do so under its equitable jurisdiction under section 183 of the BIA.
 - *Ashley Marlow Group Private Portfolio Management Inc.* (2006), 22 C.B.R. (5th) 126 (Ont. S.C.J.) at para. 71.

19. The factors to be considered by a court are:
 - (a) has there been substantial intermingling of property/activities without regard to the corporate identity?
 - (b) the extent to which substantive consolidation would promote expediency and cost efficiency; and
 - (c) the degree of material prejudice that would result from, and the parties affected by consolidation.
 - *Associated Freezers of Canada Inc.* (1995), 36 C.B.R. (3d) 227 (Ont. Gen. Div.).
 - *Ashley v. Marlow Group Private Property Portfolio Management Inc.* (2006), 22 C.B.R. (5th) 126 (Ont. S.C.J.).
 - *ReJP Capital Corp.* (1995), 31 C.B.R. (3d) 101 (Ont. Gen. Div.).
 - *Re Attractions Hippiques* (Montreal), s.e.c., 2009 QCCS 5494.

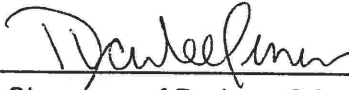
20. In this case, the estates to be substantively consolidated involve those of a limited partnership and its general partner. By law, in the event of insolvency of a limited partnership, the general partner is liable for the debts of the limited partnership.
 - *The Partnership Act*, (Manitoba) C.C.S.M. c. P30.
 - *Kucor Construction & Developments & Associates v. Canada Life Assurance Co.* (1998), 167 D.L.R. (4th) 272.

21. Courts have determined, in similar circumstances, that substantive consolidation between the estate of the limited partner and the general partner was warranted.

➤ *Ornge Global GP Inc. (Re)*, 2013 ONSC 4518.

The Petitioner estimates that the hearing for this Petition should take 10 minutes.

Dated: May 24, 2022



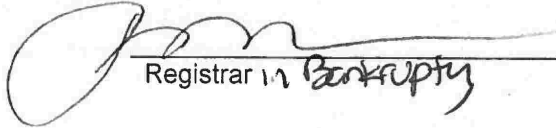
Signature of Darlene Crimeni

- Petitioner
- Lawyer for Petitioner

Darlene Crimeni
Stikeman Elliott LLP
Barristers and Solicitors
1700 – 666 Burrard Street
Vancouver, BC, V6C 2X8

Phone: 604-631-1300
Fax: 604-681-1825

Issued at the City of Vancouver, in the Province of British Columbia, this 25th day of May, 2022.


Registrar in Bankruptcy

Lawyer for Petitioner:

Darlene Crimeni
Stikeman Elliott LLP
Barristers and Solicitors
1700 – 666 Burrard Street
Vancouver, BC, V6C 2X8
Phone: 604-631-1300
Fax: 604-681-1825

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The claiming party, Veolia ES Canada Inc., claims the right to serve this pleading on the Prince George Operations Services Inc. outside British Columbia on the grounds that:

1. Pursuant to s.10(e) of the *Court Jurisdiction and Proceedings Transfer Act*, the proceedings is brought to enforce, assert, declare or determine proprietary or possessory rights or a security interest in property in British Columbia that is immovable or movable property,
2. pursuant to s.10(e) of the *Court Jurisdiction and Proceedings Transfer Act*, the proceeding concerns contractual obligations and the contractual obligations were to be performed in British Columbia; and
3. pursuant to s.10(h) of the *Court Jurisdiction and Proceedings Transfer Act*, the proceeding concerns a business carried on in British Columbia.

Schedule "A"

Court No.
Estate No.
Bankruptcy Division
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF
FORT. ST JAMES OPERATIONS SERVICES LIMITED PARTNERSHIP

BANKRUPTCY ORDER

BEFORE) THE HONOURABLE) ●, THE ●
) JUSTICE ●) DAY OF JUNE, ●
))
))

ON THE APPLICATION of Veolia ES Canada Inc. (the "**Applicant**"), a creditor of Fort St. James Operations Services Limited Partnership (the "**Debtor**") coming on for hearing by Teams at 800 Smithe Street, Vancouver, B.C. V6Z 2E1, on this day, and upon hearing Joseph Reynaud, counsel for the Applicant, and no one else appearing although duly served, and upon reading the materials filed;

AND it appearing to the Court that the following acts of bankruptcy have been committed: the Debtor has ceased to meet its liabilities generally as they become due including payment of the indebtedness owing to the Applicant, contrary to s. 42(1)(j) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "**BIA**")

THE COURT ORDER THAT:

1. The Debtor be adjudged bankrupt by virtue of a bankruptcy order hereby made on this date.
2. Deloitte Restructuring Inc. be appointed as licensed insolvency trustee of the estate of the bankrupt (in such capacity, the "**Trustee**").
3. The Trustee give security in cash or by bond or suretyship without delay, in accordance with Subsection 16(1) of the BIA.
4. The Court further orders that the costs of the Applicant be paid out of the estate of the bankrupt on taxation of the estate.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT.

Signature of Lawyer for the Applicant,
Veolia ES Canada Inc.

Stikeman Elliott LLP (Darlene Crimeni)

By the Court:

Registrar

Schedule "A"

Schedule "B"

Court No.
Estate No.
Bankruptcy Division
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF
FORT. ST JAMES OPERATIONS SERVICES LIMITED PARTNERSHIP

ORDER MADE AFTER APPLICATION

BEFORE) THE HONOURABLE) ●, THE ●
) JUSTICE ●) DAY OF JUNE, ●
)
)
)

ON THE APPLICATION of Veolia ES Canada Inc. (the "**Applicant**"), a creditor and related entity of Fort St. James Operations Services Limited Partnership (the "**LP**"), and Prince George Operations Services Inc. (the "**GP**" and collectively with the LP, herein referred to as the "**Debtors**") coming on for hearing by Teams at 800 Smithe Street, Vancouver, B.C. V6Z 2E1, on this day, and upon hearing Joseph Reynaud, counsel for the Applicant, and no one else appearing although duly served, and upon reading the materials filed;

THIS COURT ORDERS that:

- 1 The time for service of the Notice of Application and supporting materials is hereby abridged and the Notice of Application is properly returnable today and service thereof upon any person other than those listed thereon be and is hereby dispensed with.
- 2 Following the respective assignment into bankruptcy of the LP and the GP, the estate of the LP (the "**LP Estate**") and of the estate of the GP (the "**GP Estate**", and collectively with the LP Estate, the "**Estates**"), shall be procedurally and substantively consolidated and that Deloitte Restructuring Inc. (the "**Trustee**"), in its capacity as licensed insolvency trustee-in-bankruptcy of the LP Estate and the GP Estate, shall be authorized and directed to administer the Estates on a consolidated basis for all purposes in carrying out its administrative duties and other responsibilities as trustee under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, including, without limitation, as follows:
 - (a) calling and conducting any meeting of creditors or inspectors of the Estates pursuant to one combined advertisement of one meeting;

- (b) issuing consolidated reports in respect to the Estates;
 - (c) preparing, filing, advertising and distributing any and all filings and/or notices relating to the administration of the Estates on a consolidated basis;
 - (d) establishing a single bank account for the Estates;
 - (e) establishing a single consolidated pool of assets containing all assets of the Estates; and
 - (f) administering all claims and making all distributions in respect of allowed claims from the consolidated pool.
- 3 Inspectors shall be appointed in relation to the consolidated Estates.
- 4 The bankruptcy action of the GP bearing number [●] shall be assigned to be the proceedings of the bankrupt Estates.
- 5 The substantive consolidation of the Estates shall not:
- (a) affect the separate legal status and corporate structures of the LP or the GP;
 - (b) cause the LP or the GP to be liable for any claim for which it otherwise is not liable by law; or
 - (c) affect the Trustee's right to seek to disallow any claim, including on the basis that such a claim is a duplicative claim.
- 6 A copy of this order shall be filed for each of the LP Estate and the GP Estate, but any other document required to be filed in this proceeding shall hereafter only be required to be filed in this action.
- 7 The approval of this Order, other than by counsel for the Applicant is hereby dispensed with.

THIS COURT REQUESTS the aid and recognition of other Canadian and foreign courts, tribunals, regulatory and administrative bodies to act in aid of and to be complimentary to this court in carrying out the terms of this claims process order where requested. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested:

- (a) to make such orders and to provide such assistance to the Trustee as an officer of this court as may be necessary or desirable to give effect to this order; and

- (b) to grant representative status to the Trustee if required in any foreign proceeding and to assist the Trustee and its respective agents in carrying out the terms of this order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT.

Signature of Lawyer for the Applicant,
Veolia ES Canada Inc.

Stikeman Elliott LLP (Darlene Crimeni)

By the Court:

Registrar

Court File No.

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE BANKRUPTCY OF
FORT. ST JAMES OPERATIONS SERVICES LIMITED PARTNERSHIP**

PETITION

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
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Vancouver, British Columbia V6C 2X8
Canada

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dcrimeni@stikeman.com

Lawyers for the Applicant Veolia ES Canada Inc.