

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

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

APPLICATION UNDER SS. 243, 244 AND 246 OF THE *CORPORATIONS ACT*,
RSO 1990, C C38

DELOITTE RESTRUCTURING INC.

Applicant

**FACTUM
(Distribution Order)**

January 17, 2025

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TO: THE SERVICE LIST

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I. OVERVIEW

1. This Factum is filed in support of a motion by Deloitte Restructuring Inc. (“**Deloitte**”), in its capacity as Court-appointed liquidator of Ontario Electronic Stewardship (“**OES**”) (in such capacity, the “**Liquidator**”) for an Order (the “**Distribution Order**”), substantially in the form attached as Tab 3 to the Liquidator’s motion record filed in these proceedings (the “**Winding-Up Proceedings**”) dated January 17, 2025 (the “**Motion Record**”), among other things:

- (a) Approving the second report of the Liquidator dated January 17, 2025¹ (the “**Second Report**”) and the activities described therein;

¹ [Second Report of the Liquidator dated January 17, 2025](#), and the appendices thereto [the “**Second Report**”], attached as Tab 2 to the [Applicant’s Motion Record dated January 17, 2025](#) [the “**Motion Record**”]

- (b) Authorizing, in accordance with the Plan (as defined below) the distribution of the Surplus Funds (as defined below) to RPRA (as defined below) (the “**Interim Distribution**”) minus a holdback of \$1,000,000 for estimated future professional fees of the Liquidator, the Liquidator’s counsel and auditors, income tax liability resulting from interest earned on the portion of the Surplus Funds held in term deposits, if any, and any unanticipated costs that may be incurred by the Liquidator in completing the Winding-Up Proceedings (the “**Holdback**”); and
- (c) Authorizing the distribution by the Liquidator of any unused portion of the Holdback to RPRA in accordance with the Plan (as defined below) and upon completion of all matters ancillary to the Winding-Up Proceedings (the “**Final Distribution**”).

II. FACTS

2. The facts with respect to this Application are only briefly recited herein, and are set out in more detail in the Second Report. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Second Report.

BACKGROUND

3. OES is an “Industry Funding Organization” previously responsible for managing the waste diversion program for waste electrical and electronic equipment in Ontario (the “**Program**”).²

² [Affidavit of Richard Williams sworn May 31, 2021](#), attached as Tab 3 of the Applicant’s Application Record dated June 1, 2021 [the “**Williams Affidavit**”], [para 3](#)

4. The *Waste Diversion Transition Act, 2016*³ (the “**Transition Act**”) is the main statute governing OES’ operations and wind-up.⁴

5. On February 8, 2018, the Minister of the Environment and Climate Change (now known as the Minister of the Environment, Conservation and Parks (the “**Minister**”)) directed OES to develop a plan to wind up the Program pursuant to the Transition Act. OES submitted its wind-up plan (the “**Plan**”) to the Resource Productivity and Recovery Authority (“**RPR**A”) on July 25, 2019. The Plan was conditionally approved by RPR A on August 20, 2019.⁵

6. The Transition Act provides that the wind-up plan developed by OES be prepared in accordance with the provisions of the *Corporations Act*⁶ (the “**Corporations Act**”) that are prescribed to apply to it.⁷ O Reg 357/17: Industry Funding Organizations – Rules that Apply on Winding Up⁸ (the “**Transition Act Regulations**”), enacted pursuant to the Transition Act, modify the winding-up provisions of the *Corporations Act* (as modified, the “**Modified Corporations Act**”) to specifically address the winding-up of industry funding organizations, including OES.

7. As contemplated by the Plan, the OES Board of Directors (the “**Board**”) passed a resolution on February 24, 2021 requiring OES to be wound up voluntarily under the

³ [*Waste Diversion and Transition Act, 2016*](#), SO 2016, c 12, Sched 2 [the “**Transition Act**”]

⁴ [Second Report](#), *supra* note 1, at [para 3](#)

⁵ [Second Report](#), *supra* note 1, at [para 2](#)

A copy of the final Plan is available on the Liquidator’s Website established in these Winding Up Proceedings [[LINK](#)] and is attached to the [Williams Affidavit](#), *supra* note 2, at [Exhibit F](#).

⁶ [*Corporations Act*](#), RSO. 1990, c C38 [the “**Corporations Act**”];

⁷ [Transition Act](#), *supra* note 3, [s 14\(2\)](#)

⁸ [O Reg 357/17: Industry Funding Organizations – Rules that Apply on Winding Up](#) [“**Transition Act Regulations**”]; The relevant provisions of the *Corporations Act*, as modified by the Transition Act Regulations (the “**Modified Corporations Act**”) are attached hereto at **Schedule “A”**.

provisions of the Transition Act and the Modified Corporations Act. The Board appointed Deloitte as liquidator effective April 1, 2021.⁹

8. On June 11, 2021, on application made by Deloitte, in its capacity as privately-appointed liquidator of OES to the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), Mr. Justice Dunphy issued:

- (a) an Order (the “**Appointment Order**”)¹⁰ appointing Deloitte as Court-appointed Liquidator, without security, of all the assets, undertakings and properties of OES including all proceeds thereof or any sum or balance due from any contributory to which OES is entitled (the “**Property**”) for the purpose of winding-up the business and affairs of OES and distributing the Property; and
- (b) an Order (the “**Claims Procedure Order**”)¹¹ approving a procedure for the identification, quantification, and resolution of claims of creditors of OES (the “**Claims Procedure**”).

9. Pursuant to the Appointment Order, the winding-up of OES’ business and affairs, and the distribution of the Property once all proven claims are satisfied, is to be completed in accordance with the terms of the Plan, pursuant to directions received from the Minister and as approved by RPRA, or as otherwise ordered by the Court.¹²

⁹ [Second Report](#), *supra* note 1, at [para 5](#)

¹⁰ [Order for Wind Up and Appointment of a Liquidator issued June 11, 2021](#) [the “**Appointment Order**”]; [Second Report](#), *supra* note 1, [Appendix 1](#)

¹¹ [Claims Procedure Order issued June 11, 2021](#) [the “**Claims Procedure Order**”]; [Second Report](#), *supra* note 1, [Appendix 2](#)

¹² [Appointment Order](#), *supra* note 10, at [para 2](#)

10. The Plan provides, among other things, that any residual funds remaining after the resolution of OES' financial obligations and completion of the wind-up activities (the "Surplus Funds") be transferred to RPRA.¹³ As of the date hereof, the Liquidator holds Surplus Funds totalling approximately \$18.2 million.¹⁴

11. In accordance with the provisions of the Claims Procedure Order, on October 8, 2021 the Liquidator brought a motion to the Court for, and was granted, an order (the "Bar Date Order")¹⁵ fixing a claims bar date of October 21, 2021 (the "Bar Date") with respect to the Claims Procedure.¹⁶

CLAIMS PROCEDURE

12. The Liquidator completed the Claims Procedure as approved by the Claims Procedure Order.¹⁷

13. In carrying out the Claims Procedure, the Liquidator issued payments aggregating \$186,720 representing 100% of the face amount of all Proven Claims.¹⁸

14. Other than the financial obligations that will be satisfied by the Holdback, the Liquidator is not aware of any remaining financial obligations of OES.¹⁹

OTHER ACTIVITIES OF THE LIQUIDATOR SINCE THE FIRST REPORT

15. In addition to the foregoing, since the First Report, the Liquidator has:

¹³ [Williams Affidavit](#), *supra* note 2, at [para 21](#), [Exhibit F: Final Wind Up Plan](#), section [8.1\(D\)](#) and [8.2](#)

¹⁴ [Second Report](#), *supra* note 1, at [paras 8, 33](#)

¹⁵ [Bar Date Order issued October 8, 2021](#) [the "Bar Date Order"]; [Second Report](#), *supra* note 1, [Appendix 3](#)

¹⁶ [Second Report](#), *supra* note 1, at [para 9](#)

¹⁷ [Second Report](#), *supra* note 1, at [para 16](#)

¹⁸ [Second Report](#), *supra* note 1, at [para 20](#)

¹⁹ [Second Report](#), *supra* note 1, at [paras 35-37](#)

- (a) pursued, with the assistance of legal counsel, general sales tax and harmonized sales input tax credits, tax refunds and interest thereon from the Canada Revenue Agency (the “**CRA**”) owing in respect of notional environmental handling fees remitted by OES to the CRA (the “**HST Claim**”).²⁰ The HST Claim resulted in the Liquidator receiving HST refunds in the amounts of \$15.2 million in January 2024 and \$632,000 in June 2024;²¹
- (b) prepared a data management plan (the “**Data Management Plan**”) in accordance with the terms of the Plan to, among other things, ensure the security of OES’ data (the “**OES Data**”) and manage the transfer of OES Data to RPRA (such Data Management Plan was approved by RPRA on September 27, 2021);²²
- (c) prepared a supplementary plan for the retention and destruction of OES Data (the “**Data Retention and Destruction Plan**”);²³
- (d) prepared and filed GST/HST returns on behalf of OES;²⁴
- (e) maintained and reconciled the Liquidator’s trust account, including the settlement of obligations incurred after the issuance of the Appointment Order;²⁵
- (f) corresponded with creditors, RPRA, EPRA and other stakeholders about the liquidation process and the status of the Winding-Up Proceedings;²⁶

²⁰ [Second Report](#), *supra* note 1, at [paras 21-25](#)

²¹ [Second Report](#), *supra* note 1, at [para 25](#)

²² [Second Report](#), *supra* note 1, at [paras 26-27](#)

²³ [Second Report](#), *supra* note 1, at [para 29](#)

²⁴ [Second Report](#), *supra* note 1, at [para 32](#)

²⁵ [Second Report](#), *supra* note 1, at [para 32](#)

- (g) assisted RPRA in the conduct by RPRA of a consultation with stakeholders with respect to the proposed use of Surplus Funds, if and when distributed to RPRA, and responded to information requests from Stewards following such consultation;²⁷
- (h) held a joint information session with RPRA to update the Stewards, among others, on the CRA Claim and prepared a presentation to be delivered to the Stewards at the joint information session;²⁸
- (i) made arrangements to transfer OES Data to RPRA in accordance with the Data Management Plan, and, in accordance with the Data Retention and Destruction Plan, initiated the destruction and retention of remaining OES Data;²⁹ and
- (j) arranged for the preparation of audited financial statements and annual reports for the years ending December 31, 2021 through December 31, 2024;³⁰ and
- (k) prepared, in accordance with the Transition Act, a draft Final Implementation Report (as defined in the Second Report) to be finalized and submitted to RPRA following the issuance of the Distribution Order, if granted, and upon the completion of the Ancillary Matters (as defined in the Second Report).³¹

PART III. ISSUES

²⁶ [Second Report](#), *supra* note 1, at [para 32](#)

²⁷ [Second Report](#), *supra* note 1, at [para 32](#)

²⁸ [Second Report](#), *supra* note 1, at [para 32](#)

²⁹ [Second Report](#), *supra* note 1, at [para 32](#)

³⁰ [Second Report](#), *supra* note 1, at [para 32](#)

³¹ [Second Report](#), *supra* note 1, at [paras 32, 42](#)

16. The issue to be determined by the Court in respect of this Application is whether the Court should approve the Interim Distribution and Final Distribution to RPRA.

PART IV. THE LAW

Distribution of Property pursuant to the Modified Corporations Act

17. Subsection 254(1) of the Modified Corporations Act provides:

Consequences of winding up

254 (1) Upon a winding up,

(a) the liquidator shall apply the property of the corporation in satisfaction of all its liabilities and, after satisfying the liabilities, shall distribute the property in a way that is consistent with the wind-up plan approved under section 14 of the *Waste Diversion Transition Act, 2016* and with the purposes set out in section 35 of that Act;

(b) in distributing the property of the corporation, the wages of all employees, apprentices and other wage earners in the employment of the corporation due at the date of the commencement of the winding up or within one month before, not exceeding three months wages and for vacation pay accrued for not more than twelve months under the *Employment Standards Act* and the regulations thereunder or under a collective agreement made by the corporation, shall be paid in priority to the claims of the ordinary creditors, and such persons are entitled to rank as ordinary creditors for the residue of their claims;³²

[...]

18. Section 35 of the Transition Act, referenced in subsection 254(1)(a) of the Modified Corporations Act, provides:

[...]

Purposes of fund

(2) The fund shall be held in trust by the industry funding organization and shall only be used for the following purposes:

³² [Corporations Act](#), *supra* note 6, s 254; [Transition Act](#), *supra* note 3, ss 14(2), 23; [Transition Act Regulation](#), *supra* note 8, s 2(11)

1. To pay the costs of operating the program.
2. To pay the costs of developing and implementing changes to the program.
3. To pay the costs of developing and implementing a plan to wind up all or part of the program.
4. To pay the costs incurred by the organization or the Authority to wind up all or part of the program.
5. To pay the costs incurred by the organization or the Authority to wind up the organization.
6. To pay the costs incurred by the Authority in exercising its powers and carrying out its duties as they relate to the industry funding organization.
7. To pay the costs incurred by the Crown in administering this Act and the regulations, as the costs relate to the industry funding organization and the Authority's oversight of it, including costs associated with appeals to the Tribunal of the Authority's orders.

[...]

Distribution of remaining property

(5) If an industry funding organization develops a plan under section 14 with respect to a waste diversion program, nothing in this section prohibits the plan from providing for the distribution to the Authority by the industry funding organization, or a liquidator of the industry funding organization, of any property of the industry funding organization related to a designated waste or the program that remains after all liabilities of the industry funding organization in respect of the designated waste or the program have been satisfied.³³

[...]

19. The Liquidator submits that the technical requirements for making both the Interim Distribution and the Final Distribution under the Modified Corporations Act have been met and that it is appropriate to seek approval of the Interim Distribution and Final Distribution at this time.

20. The HST Claim is now complete, and the Liquidator has received the proceeds from

³³ [Transition Act](#), *supra* note 3, [s 35](#)

the HST Claim.³⁴

21. As such, all liabilities of OES, except for those liabilities to be paid out of the Holdback, have been satisfied in accordance with subsection 254(1)(a) of the Modified Corporations Act.³⁵

22. The Liquidator has completed the Claims Procedure and the Bar Date has long passed. All Claims that were disallowed or disputed by the Liquidator have been either settled, as described above, or otherwise not been challenged or contested. The Proven Claims were paid in full.³⁶

23. As noted in the Plan, OES does not have employees,³⁷ and accordingly, subsection 254(1)(b) of the Modified Corporations Act is not applicable in the circumstances.

24. The Plan, approved pursuant to section 14 of the Transition Act,³⁸ provides that “the RPRA Registrar has confirmed that OES may transfer residual funds to RPRA to offset RRCEA Registry-related expenses. Accordingly, OES will transfer the residual funds remaining in OES after wind up activities are completed to RPRA”.³⁹

25. In addition, the Appointment Order provides that the Winding-Up Proceedings must be completed in accordance with the terms of the Plan.⁴⁰

26. Payments made to date by the Liquidator out of the Surplus Funds have been used in

³⁴ [Second Report](#), *supra* note 1, at [para 36](#)

³⁵ [Second Report](#), *supra* note 1, at [paras 34-37](#)

³⁶ [Second Report](#), *supra* note 1, at [para 35](#)

³⁷ [Williams Affidavit](#), *supra* note 2, [Exhibit F: Final Wind Up Plan](#), section [10.1](#); [Second Report](#), *supra* note 1, at [para 37](#)

³⁸ [Williams Affidavit](#), *supra* note 2, [Exhibit F](#)

³⁹ [Williams Affidavit](#), *supra* note 2, at [para 21](#), [Exhibit F: Final Wind Up Plan](#), section [8.1\(D\)](#) and [8.2](#); [Second Report](#), *supra* note 1, at [para 38](#)

⁴⁰ [Appointment Order](#), *supra* note 10, at [para 2](#)

accordance with the purpose set out under subsection 35(2)(5) of the Transition Act,⁴¹ and specifically to pay the costs incurred to wind-up the Program.⁴²

27. The Liquidator has acted in accordance with the powers granted to it under the terms of the Appointment Order and those powers granted to the Liquidator pursuant to section 256(1) of the Modified Corporations Act.⁴³

28. The Interim Distribution represents all Surplus Funds held by the Liquidator, minus the Holdback. It is the view of the Liquidator that it is now appropriate to distribute the Interim Distribution to RPRA.

29. In accordance with section 259 of the Modified Corporations Act, the Liquidator is holding all Surplus Funds in its trust account and in term deposits held at a financial institution.⁴⁴

30. The Liquidator believes the quantum of the proposed Holdback is appropriate and will be applied to amounts owing with respect to currently outstanding and future professional fees of the Liquidator and the Liquidator's counsel and auditors, income tax liability resulting from interest earned on the portion of the Surplus Funds held in term deposits (if any), and any unanticipated costs that may be incurred by the Liquidator in completing the Winding-Up Proceedings.⁴⁵

31. The Liquidator has consulted with RPRA with respect to the proposed Holdback and

⁴¹ [Transition Act](#), *supra* note 3, [s 35](#)

⁴² [Second Report](#), *supra* note 1, at [para 33](#)

⁴³ [Corporations Act](#), *supra* note 6, [s.256](#)

⁴⁴ [Corporations Act](#), *supra* note 6, as modified by the [Transition Act Regulation](#), *supra* note 8, [s 2\(12\)](#), at [s.259](#); [Second Report](#), *supra* note 1, at [para 34](#); See also **Schedule A** for the relevant provision of the Modified Corporations Act.

⁴⁵ [Second Report](#), *supra* note 1, at [para 39](#)

RPRA has no objection to the quantum of the Holdback.⁴⁶

32. The proposed uses of the Holdback are consistent with the purposes outlined under section 35 of the Transition Act,⁴⁷ and, pursuant to section 255 of the Modified Corporations Act, “the costs, charges and expenses of a winding up, including the remuneration of the liquidator, are payable out of the property of the corporation in priority to all other claims.”⁴⁸

33. The Liquidator is also seeking authorization to make the Final Distribution to RPRA of any unused portion of the Holdback, in accordance with the Plan, following a final determination of the amounts required to be paid out of the Holdback.⁴⁹

PART V. CONCLUSION AND RELIEF SOUGHT

34. For the reasons set out above, the Liquidator requests that the Court grant the Distribution Order, substantially in the form included at Tab 3 of the Motion Record.

RESPECTFULLY SUBMITTED this 17th day of January, 2025.



Virginie Gauthier/ Katherine Yurkovich

Lawyers for Deloitte Restructuring Inc.

⁴⁶ [Second Report](#), *supra* note 1, at [para 39](#)

⁴⁷ [Transition Act](#), *supra* note 3, [s 35](#)

⁴⁸ [Corporations Act](#), *supra* note 6, [s. 255](#)

⁴⁹ [Second Report](#), *supra* note 1, at [para 40](#)

SCHEDULE “A”

TEXT OF STATUTES, REGULATIONS & BY-LAWS

Corporations Act, RSO 1990, c C.38, as modified by *O Reg 357/17: Industry Funding Organizations – Rules that Apply on Winding Up* made under the *Waste Diversion Transition Act, 2016, SO 2016, c 12, Sched 2* (the “Modified Corporations Act”)

See attached.

Application of ss. 253 to 265, 268

252 Sections 253 to 265 and 268 apply with the modifications set out in Ontario Regulation 357/17 to corporations being wound up voluntarily or by order of the court. R.S.O. 1990, c. C.38, s. 252.

[...]

Consequences of winding up

254 (1) Upon a winding up,

(a) the liquidator shall apply the property of the corporation in satisfaction of all its liabilities and, after satisfying the liabilities, shall distribute the property in a way that is consistent with the wind up plan approved under section 14 of the Waste Diversion Transition Act, 2016 and with the purposes set out in section 35 of that Act~~proportionately and, subject thereto, shall distribute the property rateably among the shareholders or members according to their rights and interests in the corporation;~~

(b) in distributing the property of the corporation, the wages of all employees, apprentices and other wage earners in the employment of the corporation due at the date of the commencement of the winding up or within one month before, not exceeding three months wages and for vacation pay accrued for not more than twelve months under the *Employment Standards Act* and the regulations thereunder or under a collective agreement made by the corporation, shall be paid in priority to the claims of the ordinary creditors, and such persons are entitled to rank as ordinary creditors for the residue of their claims;

(c) all the powers of the directors cease upon the appointment of a liquidator, except in so far as the liquidator may sanction the continuance of such powers. R.S.O. 1990, c. C.38, s. 254 (1); 1993, c. 27, Sched.

Distribution of property

(2) Section 53 of the *Trustee Act* applies with necessary modifications to liquidators. R.S.O. 1990, c. C.38, s. 254 (2).

Section Amendments with date in force (d/m/y)

1993, c. 27, Sched. - 31/12/1991

Payment of costs and expenses

255 The costs, charges and expenses of a winding up, including the remuneration of the liquidator, are payable out of the property of the corporation in priority to all other claims. R.S.O. 1990, c. C.38, s. 255.

Powers of liquidators

256 (1) The liquidator may,

(a) bring or defend any action, suit or prosecution, or other legal proceedings, civil or criminal, in the name and on behalf of the corporation;

(b) carry on the business of the corporation so far as is necessary for the beneficial winding up of the corporation;

(c) sell in whole or in parcels the real and personal property, effects and things in action of the corporation by public auction or private sale;

(d) do all acts and execute, in the name and on behalf of the corporation, all deeds, receipts and other documents, and for that purpose use the seal of the corporation;

(e) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the corporation;

(f) raise upon the security of the property of the corporation any requisite money;

(g) take out in the liquidator's official name letters of administration to the estate of any deceased contributory and do in the liquidator's official name any other act that is necessary for obtaining payment of any money due from a contributory or from a contributory's estate and which act cannot be done conveniently in the name of the corporation;

(h) do and execute all such other things as are necessary for winding up the affairs of the corporation and distributing its property.

[...]

Deposit in financial institution by liquidator

259 (1) The liquidator shall deposit in a financial institution described in subsection (1.1) all sums of money that the liquidator has belonging to the corporation, including all funds held in trust under section 35 of the Waste Diversion Transition Act, 2016, if such sums belonging to the corporation if such sums amount to \$100 or more. 2007, c. 7, Sched. 7, s. 183 (2).

Financial institutions

(1.1) A financial institution referred to in subsection (1) is,

(a) a bank or authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada);

(b) a corporation registered under the *Loan and Trust Corporations Act*;

(c) a credit union within the meaning of the *Credit Unions and Caisses Populaires Act, 1994*; or

(d) a retail association as defined under the *Cooperative Credit Associations Act* (Canada). 2007, c. 7, Sched. 7, s. 183 (2).

Approval of financial institution by inspectors

~~(2) If inspectors have been appointed, the financial institution shall be one approved by them. 2007, c. 7, Sched. 7, s. 183 (2).~~

Separate deposit account to be kept; withdrawal from account

(3) Such deposit shall not be made in the name of the liquidator individually, but a separate deposit account shall be kept of the money belonging to the corporation in the liquidator's name as liquidator of the corporation and in the name of the inspectors, if any, and such money shall be withdrawn only on the joint cheque of the liquidator and one of the inspectors, if any. R.S.O.

1990, c. C.38, s. 259 (3).

Liquidators to produce bank pass-book

(4) At every meeting of the shareholders or members of the corporation the liquidator shall produce a pass-book or statement of account showing the amount of the deposits, the dates at which they were made, the amounts withdrawn and the dates of withdrawal, and mention of such production shall be made in the minutes of the meeting, and the absence of such mention is admissible in evidence as proof, in the absence of evidence to the contrary, that the pass-book or statement of account was not produced at the meeting. R.S.O. 1990, c. C.38, s. 259 (4).

Idem

(5) The liquidator shall also produce the pass-book or statement of account whenever so ordered by the court upon the application of ~~the the Authority inspectors, if any~~, or of a shareholder or member of the corporation. R.S.O. 1990, c. C.38, s. 259 (5).

Corporations Act, R.S.O. 1990, c C.38

Application of ss. 253 to 265, 268

252 Sections 253 to 265 and 268 apply to corporations being wound up voluntarily or by order of the court. R.S.O. 1990, c. C.38, s. 252.

[...]

Consequences of winding up

254 (1) Upon a winding up,

(a) the liquidator shall apply the property of the corporation in satisfaction of all its liabilities proportionately and, subject thereto, shall distribute the property rateably among the shareholders or members according to their rights and interests in the corporation;

(b) in distributing the property of the corporation, the wages of all employees, apprentices and other wage earners in the employment of the corporation due at the date of the commencement of the winding up or within one month before, not exceeding three months wages and for vacation pay accrued for not more than twelve months under the Employment Standards Act and the regulations thereunder or under a collective agreement made by the corporation, shall be paid in priority to the claims of the ordinary creditors, and such persons are entitled to rank as ordinary creditors for the residue of their claims;

(c) all the powers of the directors cease upon the appointment of a liquidator, except in so far as the liquidator may sanction the continuance of such powers. R.S.O. 1990, c. C.38, s. 254 (1); 1993, c. 27, Sched.

Distribution of property

(2) Section 53 of the *Trustee Act* applies with necessary modifications to liquidators. R.S.O. 1990, c. C.38, s. 254 (2).

Payment of costs and expenses

255 The costs, charges and expenses of a winding up, including the remuneration of the liquidator, are payable out of the property of the corporation in priority to all other claims.

R.S.O. 1990, c. C.38, s. 255.

Powers of liquidators

256 (1) The liquidator may,

(a) bring or defend any action, suit or prosecution, or other legal proceedings, civil or criminal, in the name and on behalf of the corporation;

(b) carry on the business of the corporation so far as is necessary for the beneficial winding up of the corporation;

(c) sell in whole or in parcels the real and personal property, effects and things in action of the corporation by public auction or private sale;

(d) do all acts and execute, in the name and on behalf of the corporation, all deeds, receipts and other documents, and for that purpose use the seal of the corporation;

(e) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the corporation;

(f) raise upon the security of the property of the corporation any requisite money;

(g) take out in the liquidator's official name letters of administration to the estate of any deceased contributory and do in the liquidator's official name any other act that is necessary for obtaining payment of any money due from a contributory or from a contributory's estate and which act cannot be done conveniently in the name of the corporation;

(h) do and execute all such other things as are necessary for winding up the affairs of the

corporation and distributing its property.

[...]

Deposit in financial institution by liquidator

259 (1) The liquidator shall deposit in a financial institution described in subsection (1.1) all sums of money that the liquidator has belonging to the corporation if such sums amount to \$100 or more. 2007, c. 7, Sched. 7, s. 183 (2).

Waste Diversion Transition Act, 2016, S.O. 2016, c. 12, Sched 2

Winding up

14 (1) An industry funding organization that receives a written direction from the Minister under this section to wind up a waste diversion program in full or in respect of a designated waste shall develop a plan in accordance with this section and shall submit it to the Authority for approval. 2016, c. 12, Sched. 2, s. 14 (1).

Direction re winding up industry funding organization

(2) A direction under this section to wind up a waste diversion program in full may also require the industry funding organization to develop a plan for winding itself up in accordance with any provisions of the Corporations Act or the Not-for-Profit Corporations Act, 2010 that are prescribed to apply to it. 2016, c. 12, Sched. 2, s. 14 (2), 77 (1); 2017, c. 20, Sched. 8, s. 143 (1).

Discretionary direction

(3) The Minister may, at any time, direct an industry funding organization to wind up a waste diversion program in full or in respect of a designated waste, subject to subsection (4). 2016, c. 12, Sched. 2, s. 14 (3).

Mandatory direction

(4) The Minister shall direct an industry funding organization to wind up a waste diversion program in full if,

(a) material prescribed as a designated waste to which the program applies is also prescribed under the Resource Recovery and Circular Economy Act, 2016 as material in a designated class within the meaning of that Act; and

(b) a regulation under the Resource Recovery and Circular Economy Act, 2016 imposes one or more of the responsibilities mentioned in Part IV of that Act in respect of the material. 2016, c.

12, Sched. 2, s. 14 (4).

Same, timing

(5) A direction under subsection (4) shall be made within 90 days after a regulation described in clause (4) (b) is filed with the Registrar of Regulations in accordance with Part III (Regulations) of the Legislation Act, 2006. 2016, c. 12, Sched. 2, s. 14 (5).

Same

(6) Subsection (5) applies regardless of whether any provision of the regulation described in clause (4) (b) that imposes a responsibility in respect of the material is in force. 2016, c. 12, Sched. 2, s. 14 (6).

Application of subs. (4)

(7) Subsection (4) applies with respect to,

(a) the waste diversion program for municipal hazardous or special waste;

(b) the waste diversion program for used tires; and

(c) the waste diversion program for waste electrical and electronic equipment. 2016, c. 12, Sched. 2, s. 14 (7).

Non-application of subs. (4), ss. 12 and 13

(8) On and after the day the Minister makes a direction to wind up a program in full, subsection (4) and sections 12 and 13 do not apply to the program. 2016, c. 12, Sched. 2, s. 14 (8).

Same

(9) On and after the day the Minister makes a direction to wind up the program in respect of a

designated waste, sections 12 and 13 do not apply in respect of the program's application to that designated waste. 2016, c. 12, Sched. 2, s. 14 (9).

Timeline

(10) In a direction the Minister may specify a date by which the plan must be submitted to the Authority and may specify a timeline for the implementation of the plan, including a timeline for the program, or a part of it, to cease operation. 2016, c. 12, Sched. 2, s. 14 (10).

Same

(11) The Minister may, in writing, extend the timelines referred to in subsection (10). 2016, c. 12, Sched. 2, s. 14 (11).

Contents of plan

(12) The plan shall include the following:

1. A description of the designated waste that will no longer be included in the program.
2. A description of how the program will be operated while the plan is being implemented.
3. A proposed timeline according to which key aspects of the plan will be implemented.
4. A proposal for dealing with the affected assets, liabilities, rights and obligations of any affected industry funding organization.
5. A proposal for transferring or sharing data that is within the industry funding organization's custody or control and that relates to the waste that will no longer be included in the program.
6. A description of changes to the program that are anticipated to be necessary to implement the plan.

7. Any other information the Minister specifies. 2016, c. 12, Sched. 2, s. 14 (12).

Consultation

(13) In developing the plan, the industry funding organization shall consult with,

(a) representatives of municipalities;

(b) representatives of persons who are designated as stewards under the rules made by an industry funding organization under section 33 or a regulation made under subsection 73 (3) in respect of the designated waste to which the waste diversion program applies; and

(c) any other persons the industry funding organization considers to be affected by the winding up. 2016, c. 12, Sched. 2, s. 14 (13).

Consultation

(14) In assessing the plan, the Authority shall consult with,

(a) representatives of municipalities;

(b) representatives of persons who are designated as stewards under the rules made by an industry funding organization under section 33 or a regulation made under subsection 73 (3) in respect of the designated waste to which the waste diversion program applies; and

(c) any other persons the Authority considers to be affected by the winding up. 2016, c. 12, Sched. 2, s. 14 (14).

Approval

(15) After reviewing the industry funding organization's submission, the Authority may approve the plan, but the plan shall not be approved unless it is consistent with the Minister's direction. 2016, c. 12, Sched. 2, s. 14 (15).

Same

(16) An approval under subsection (15) shall be in writing and may include the conditions the Authority determines are appropriate. 2016, c. 12, Sched. 2, s. 14 (16).

Amendments

(17) The Minister may, in writing, direct the industry funding organization to develop amendments to a plan approved under subsection (15), and subsections (10) to (16) apply with necessary modifications in respect of the amendment. 2016, c. 12, Sched. 2, s. 14 (17).

Implementation of plan

(18) On receiving the Authority's approval of the wind up plan or the amended wind up plan, the industry funding organization shall implement it in accordance with,

(a) the timeline specified by the Minister, if any; and

(b) any conditions specified by the Authority in the approval. 2016, c. 12, Sched. 2, s. 14 (18).

Deemed changes to program

(19) On the day the Authority approves the wind up plan or the amended wind up plan, the waste diversion program is deemed to be changed as necessary to implement the plan. 2016, c. 12, Sched. 2, s. 14 (19).

Final report, full wind up plan

(20) An industry funding organization that has implemented an approved plan to wind up a program in full shall prepare a final report to the Authority and the Minister setting out the steps that were taken to implement the plan and confirming that the plan has been implemented. 2016, c. 12, Sched. 2, s. 14 (20).

Notice of termination, plan to wind up in full

(21) When a plan to wind up a program in full has been implemented and the Minister has received the final report described in subsection (20), the Minister shall issue a notice terminating the program as of the date set out in the notice. 2016, c. 12, Sched. 2, s. 14 (21).

Same, plan to wind up in part

(22) When a plan to wind up a program in respect of a designated waste has been implemented, the Minister shall issue a notice terminating the part of the program affected by the plan as of the date set out in the notice. 2016, c. 12, Sched. 2, s. 14 (22).

Publication

(23) The Minister shall publish each notice issued under subsections (21) and (22) on the registry under the Environmental Bill of Rights, 1993. 2016, c. 12, Sched. 2, s. 14 (23).

Publication

(24) The Authority shall publish on the Registry each approval given under subsection (15) and each notice issued under subsections (21) and (22). 2016, c. 12, Sched. 2, s. 14 (24).

[...]

Corporations Act and Corporations Information Act

23 The *Corporations Act*, the *Not-for-Profit Corporations Act, 2010* and the *Corporations Information Act* do not apply to an industry funding organization, except as provided by the regulations. 2016, c. 12, Sched. 2, s. 23, 77 (2); 2017, c. 20, Sched. 8, s. 143 (2).

[...]

Existing funds continued

35 (1) Each fund that was established under subsection 32 (1) of the old Act by an industry funding organization in respect of a waste diversion program and that was being maintained immediately before the day this subsection comes into force shall continue to be maintained by the organization after that day in accordance with this section.

Purposes of fund

(2) The fund shall be held in trust by the industry funding organization and shall only be used for the following purposes:

1. To pay the costs of operating the program.
2. To pay the costs of developing and implementing changes to the program.
3. To pay the costs of developing and implementing a plan to wind up all or part of the program.
4. To pay the costs incurred by the organization or the Authority to wind up all or part of the program.
5. To pay the costs incurred by the organization or the Authority to wind up the organization.
6. To pay the costs incurred by the Authority in exercising its powers and carrying out its duties as they relate to the industry funding organization.
7. To pay the costs incurred by the Crown in administering this Act and the regulations, as the costs relate to the industry funding organization and the Authority's oversight of it, including costs associated with appeals to the Tribunal of the Authority's orders.

Money to be paid into fund

(3) All money received by the industry funding organization, including the following amounts, shall be paid into the fund:

1. All fees paid to the organization under section 34 and all interest and penalties paid in respect of those fees.
2. All voluntary contributions of money to the organization.
3. All investment income earned by the fund.

Payment of Authority's costs

(4) The Authority may, from time to time, determine the amount to be paid by the industry funding organization that reflects the costs incurred by the Authority in exercising its powers and carrying out its duties as they relate to the industry funding organization, and the industry funding organization shall pay the amount out of the fund.

Distribution of remaining property

(5) If an industry funding organization develops a plan under section 14 with respect to a waste diversion program, nothing in this section prohibits the plan from providing for the distribution to the Authority by the industry funding organization, or a liquidator of the industry funding organization, of any property of the industry funding organization related to a designated waste or the program that remains after all liabilities of the industry funding organization in respect of the designated waste or the program have been satisfied. 2019, c. 14, Sched. 8, s. 79.

Same

(6) If a distribution is made under subsection (5), the Authority shall use the property it receives to cover costs of the Authority under the Resource Recovery and Circular Economy Act, 2016 related to the designated waste in respect of which the program was operated. 2019, c. 14, Sched. 8, s. 79.

O.REG 357/17: Industry Funding Organizations – Rules that Apply on Winding Up, made under the *Waste Diversion Transition Act, 2016*

Application of *Corporations Act* provisions

1. (1) Subject to subsections (2) to (6), Part VI (Winding Up) of the *Corporations Act* applies to an industry funding organization.

(2) The provisions of the *Corporations Act* that apply for the purposes of this Regulation are subject to necessary modifications, including the modifications set out in this Regulation.

(3) The provisions of the *Corporations Act* that apply for the purposes of this Regulation shall be read without reference to shareholders and inspectors.

(4) If a provision of the *Corporations Act* that applies for the purposes of this Regulation requires that a document be given to the Minister as defined in the *Corporations Act*, the provision shall be read as requiring that the document also be given to the Minister of the Environment and Climate Change and to the Authority.

(5) If a provision of the *Corporations Act* that applies for the purposes of this Regulation requires a resolution of members, the provision shall be read as requiring that the resolution be passed by majority vote.

(6) If an administrator is appointed under section 43 of the *Waste Diversion Transition Act, 2016* and has the exclusive right to exercise all the powers and perform all the duties of the members of the board and the officers of the industry funding organization, a provision of the *Corporations Act* that applies for the purposes of this Regulation that authorizes or requires the members of the industry funding organization to do a thing shall be read as authorizing or requiring the administrator to do that thing.

(7) The following provisions in Part VI of the *Corporations Act* do not apply:

1. Section 229.

2. Subsection 231 (2).
3. Section 232.
4. Section 242.
5. Subsection 259 (2).
6. Section 263.
7. Subsection 266 (6).
8. Subsection 267 (3).
9. Subsections 268 (1) and (2).

Modifications re corporate law matters

2.

[...]

(9) Section 252 of the *Corporations Act* is modified by adding “with the modifications set out in Ontario Regulation 357/17” after “apply”.

(11) Clause 254 (1) (a) of the *Corporations Act* is modified by striking out “proportionately and, subject thereto, shall distribute the property rateably among the shareholders or members according to their rights and interests in the corporation” at the end and substituting “and, after satisfying the liabilities, shall distribute the property in a way that is consistent with the wind up plan approved under section 14 of the *Waste Diversion Transition Act, 2016* and with the purposes set out in section 35 of that Act”.

(12) Subsection 259 (1) of the *Corporations Act* is modified by striking out “belonging to the

corporation if such sums” and substituting “belonging to the corporation, including all funds held in trust under section 35 of the *Waste Diversion Transition Act, 2016*, if such sums”.

(13) Subsection 259 (5) of the *Corporations Act* is modified by striking out “the inspectors, if any” and substituting “the Authority”.

**IN THE MATTER OF THE LIQUIDATION AND WINDING
UP OF ONTARIO ELECTRONIC STEWARDSHIP
APPLICATION UNDER SS. 243, 244 AND 245 OF THE
CORPORATIONS ACT, RSO 1990, C C38**

DELOITTE RESTRUCTURING INC.

APPLICANT

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

PROCEEDING COMMENCED AT TORONTO

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