

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**



THE HONOURABLE MR.
JUSTICE BROWN

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MONDAY, THE 14TH
DAY OF NOVEMBER, 2011

B E T W E E N:

(Court Seal)

THE TORONTO-DOMINION BANK

Applicant

and

2026227 ONTARIO INC.

Respondent

ORDER

THIS MOTION made by 2026227 Ontario Inc. ("202") for the appointment of BDO Canada Limited as Interpleaded Fund Advisor and by The Toronto-Dominion Bank for an adjournment of 202's Motion was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Jim Garland and the Exhibits thereto and on hearing the submissions of counsel for 2026227 Ontario Inc. ("202"), Carriere Industrial Supply Limited, Active Mechanical, The Toronto-Dominion Bank and BDO Canada Limited and on reading the Affidavit of Dale Alexander and the Exhibits and on reading the consent of BDO Canada Limited to act as the Fund Advisor.

UPON HEARING submissions of counsel for The Toronto-Dominion Bank requesting an adjournment of this Motion, which Motion for adjournment was denied.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

STANDING

2. **THIS COURT ORDERS** that Carriere Industrial Supply Limited be granted leave to intervene as an added party to this application with all the rights, duties and privileges of a party to this application.

APPOINTMENT

3. **THIS COURT ORDERS** that BDO Canada Limited is hereby appointed as Interpleaded Fund Advisor (the "Fund Advisor") of the monies (the "Fund") paid into Court by The Toronto Dominion Bank.

FUND ADVISORS DUTIES

4. **THIS COURT DECLARES** that the purpose of the appointment of BDO Canada Limited as Fund Advisor is to assist the Court in determining those persons who are entitled to participate in the distribution of the monies constituting the Fund and in furtherance thereof to submit its recommendations by way of one report or more to the Court.

FUNDS ADVISOR'S POWERS

5. **THIS COURT ORDERS** that the Fund Advisor is empowered and authorized in the fulfilment of its duties to:

- (i) examine the books and records of 202, to interview employees, officers and directors of 202 as it deems necessary;
- (ii) communicate with such persons, firms, corporations and government agencies including specifically the Canada Revenue Agency ("CRA"), relating to the Fund and in connection therewith to request and obtain such information, documents and material relating to the dealings of such persons with 202, and, to the extent that contact information is available, any of their franchisees and the customers and clients (the "Customers") represented by such franchisees;
- (iii) determining those persons who are entitled to participate in the distribution of the monies in the Fund (the "Claimants");
- (iv) retain such counsel as it considers advisable in connection with the performance by it of its duties as Fund Advisor; and
- (v) to communicate from time to time with representatives of a committee that has been formed of two to five Claimants for the purposes of providing such committee with information relating to the Fund Advisor's activities and its determinations with respect to the Funds.

APPROVAL OF THE CLAIMS DETERMINATION PROCESS

6. **THIS COURT ORDERS** that the claims determination process provided for herein (the “Claims Determination Process”), is hereby approved.

7. **THIS COURT ORDERS** that for the purposes of this Order the term “Claim” shall mean any right of any Customer of 202 against 202 in connection with any obligation of 202 owed to such Person on account of monies that may be owing to such Customer in relation to Canada Pension Plan, Employment Insurance, Income Tax amounts and Employers Health Tax amounts owing to the Minister of Finance, which were collected from such Customer by 202, which were not remitted by 202 to the appropriate taxing authority, which obligations are based in whole or in part on facts existing prior to February 15, 2011.

8. **THIS COURT ORDERS** that the Fund Advisor shall be and is hereby authorized and directed to send by electronic transmission, ordinary mail or courier by no later than December 16, 2011, unless otherwise ordered by this Court, to Provincial and Federal taxing authorities, all known customers of 202 and to other Persons from whom the Fund Advisor has received notice of a potential claim, a copy of the Notice to Customers attached as Schedule “A” to this Order and a Proof of Claim substantially in the form attached as Schedule “B” to this Order (“Proof of Claim”), together with detailed instructions on its completion.

9. **THIS COURT ORDERS** that the Fund Advisor be and it is hereby authorized and directed to forthwith, place a notice substantially in the form attached hereto as Schedule

“A” to this Order (the “Notice”) in the national edition of the Globe and Mail inviting parties to file a Proof of Claim with the Fund Advisor.

10. **THIS COURT ORDERS** that the Claims Bar Date shall be at 5:00 p.m. Toronto, Ontario Time on January 31, 2012 (the “Claims Bar Date”).
11. **THIS COURT ORDERS** that the Fund Advisor shall send a Proof of Claim to each Customer responding to the Notice and to any other Persons who, prior to the Claims Bar Date otherwise notify the Fund Advisor that they wish to make a claim.
12. **THIS COURT ORDERS** that all Proofs of Claim must be delivered by ordinary mail, registered mail, courier, facsimile, electronic transmission or personal delivery and be received by the Fund Advisor at BDO Canada Limited, 123 Front Street West, Suite 1200, Toronto, Ontario, M5J 2M2, Attention: The Fund Advisor of 2026227 Ontario Inc. on or before the Claims Bar Date.
13. **THIS COURT ORDERS** that the Fund Advisor is hereby authorized and directed to use reasonable discretion as to the adequacy of the compliance as to the manner in which any Proof of Claim is delivered, completed and executed and may, where it is satisfied a Claim has been adequately proven, waive strict compliance with the requirements of this Order as to completion and execution of such a form.
14. **THIS COURT ORDERS** that the Fund Advisor may, at any time following receipt by the Fund Advisor of the Customer’s Proof of Claim, but prior to the distribution of any funds to Customers, give notice in writing, by ordinary mail, facsimile transmission, electronic transmission or personal delivery to any Claimant at the address, facsimile number or e-mail address shown on the Customer’s Proof of Claim, of its intention to

disallow the claims set out in such Proof of Claim and, if disallowed, the reasons therefore, by sending the Creditor a Notice of Disallowance, substantially in the form attached as Schedule "C" to this Order, which shall be deemed made when sent by depositing in a mailbox if mailed, or upon receipt of confirmation of delivery of electronic transmission, facsimile or personal delivery. A Notice of Disallowance issued by the Fund Advisor shall be accompanied by a blank Notice of Dispute, substantially in the form attached as Schedule "D" to this Order, for use by the Customer in question, of the Customer chooses to dispute the Notice of Disallowance.

15. **THIS COURT ORDERS** that Customers may dispute the disallowance of their Claim by delivering, by registered mail, courier, facsimile, electronic transmission or personal delivery, to the Fund Advisor at the address noted in paragraph 12 of this Order, a Notice of Dispute in the prescribed form, which Notice of Dispute must be received by the Fund Advisor by no later than 5:00 p.m. Toronto, Ontario Time on the 30th business day following the date of the Notices of Disallowance.
16. **THIS COURT ORDERS** that if no Notice of Dispute is received by the Fund Advisor in accordance with the terms of this Order, the Claim in question shall be deemed to have been disallowed in accordance with the Fund Advisor's Notice of Disallowance.
17. **THIS COURT ORDERS** that where a Customer delivers a Notice of Dispute in accordance with the terms of this Order, such dispute shall be resolved as directed by this Court or as the Customer in question and the Fund Advisor may agree.

18. **THIS COURT ORDERS** that no proceeding shall be instituted by a Customer to establish the validity, priority and/or amount of any disputed Claim, except as provided in this Order or as the Court may subsequently direct.
19. **THIS COURT ORDERS** that the terms of this Order, are without prejudice to the rights of Customers to commence proceedings as against the Applicant, 202, or the directors and officers of 202 in relation to monies pulled from their account by any or all of The Toronto-Dominion Bank, 202, and/or the directors and officers of 202.
20. **THIS COURT ORDERS** that notwithstanding any term of this Order, the solicitation by the Fund Advisor of any Claims against 202 and the filing by any Customer of any Proof of Claim shall not, for that reason only, grant any Customer or other person any right to any payments to be made by the Fund Advisor.
21. **THIS COURT ORDERS** that any Customer that does not file a Proof of Claim as provided for in paragraph 12 of this Order so that such Proof of Claim is received by the Fund Advisor on or before the Claims Bar Date or such later date as the Fund Advisor may agree in writing or this Court may otherwise order:
 - (a) Shall be and is hereby forever barred from making or enforcing any Claim against the Fund;
 - (b) Shall not be entitled to any further notice; and
 - (c) Shall not be entitled to participate as a Claimant in these proceedings.
22. **THIS COURT ORDERS** that any Trustee in Bankruptcy or Receiver of 202 shall accept any Proof of Claim filed with the Fund Advisor pursuant to the terms of this Order as a

proof of claim pursuant to the *Bankruptcy & Insolvency Act* without the requirement that the Customer file any further proof of claim.

23. **THIS COURT ORDERS** that if, during any period during which notices, Proofs of Claim, Claims or other communication are being given pursuant to this Order, a postal strike or postal work stoppage shall occur, such notices are deemed not received and ineffective absent further order of this Court. Notices, Proofs of Claim, Claims and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery or e-mail delivery in accordance with this Order.

REPORT OF FUND ADVISOR

24. **THIS COURT ORDERS** that the Fund Advisor shall provide an initial report to this Court on or before December 16, 2011, or such other date as this Court may further order, with respect to the results of its determinations and recommendations in relation to the approximate sum of \$1,612,064.97 which was pulled from the accounts of Customers by 202 on February 7, 2011 to February 10, 2011, inclusive.
25. **THIS COURT ORDERS** that the Fund Advisor shall report to the Court with respect to all determinations and recommendations relating to the Fund, other than as set out in the initial report, and the Fund Advisor shall apply to this Court on or before March 2nd, 2012, for further directions that the Court may deem advisable in connection with the Fund and notices that should be given to interested parties or their representatives.

FURTHER DIRECTIONS

26. **THIS COURT ORDERS** following the filing of the report with the Court, the Fund Advisor shall apply to this Court for further directions that the Court may deem advisable in connection with the Fund and notices that should be given to interested parties or their representatives.

27. **THIS COURT ORDERS** that the Fund Advisor is hereby expressly empowered and authorized to discuss with the franchisees, the Customers, and the CRA as it deems appropriate on all matters relating to the Fund subject to such terms as to confidentiality as the Fund Advisor deems advisable and to take any steps reasonably incidental to the exercise of these powers or the performance of such obligations, and in each case where the Fund Advisor takes any such actions or steps it shall be authorized and empowered to do so without interference from any other person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE FUND ADVISOR

28. **THIS COURT ORDERS** that (i) 202, (ii) all of its current and former directors, officers and accountants, (iii) all other individual, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order, (all of the forgoing, collectively, being "Persons" and each being a "Person") shall forthwith co-operate with the Fund Advisor and shall to the extent relevant to the duties of the Fund Advisor provide the Fund Advisor with information reasonably required by it.

29. **THIS COURT ORDERS** that The Toronto-Dominion Bank upon request shall provide to the Fund Advisor on request and at no cost copies of account statements of 202 relating to the account or accounts 202 maintained with the Applicant.

30. Nothing in this Order shall require communication or delivery of information which may not be disclosed or provided to the Fund Advisor due to statutory provisions prohibiting such disclosure.

NO PROCEEDINGS AGAINST THE FUND ADVISOR

31. **THE COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Fund Advisor except with the written consent of the Fund advisor or with leave to this Court.

NO PROCEEDINGS WITH RESPECT TO THE FUND

32. **THIS COURT ORDERS** that no Proceedings against or in respect of the Fund shall be commenced or continued except with leave of this Court and any and all Proceedings currently under way against or in respect of the Fund are hereby stayed and suspended pending further Order of this Court.

PIPEDA

33. **THIS COURT ORDERS** pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, that the Fund Advisor shall disclose personal information of identifiable persons, firms or corporations only to the extent desirable or required for the purpose of gathering information reasonably required by it for the preparation of its Report.

LIMITATIONS ON THE FUND ADVISORS LIABILITY

34. **THIS COURT ORDERS** that the Fund Advisor 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.

FUND ADVISOR ACCOUNTS

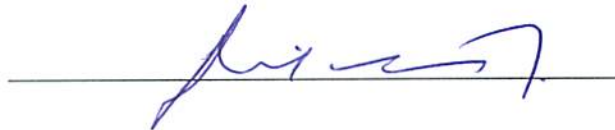
35. **THIS COURT ORDERS** that the Fund Advisor and its counsel shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Fund Advisor and its counsel shall be entitled to and are hereby granted a charge (the "Charge") on the Fund, as security for such fees and disbursements, and that the Charge shall form a first charge on the Fund in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person.
36. **THIS COURT ORDERS** that once the costs of the Fund Advisor and its legal counsel approach or exceed the sum of \$100,000.00, the Fund Advisor shall report to the Court thereon and seek further directions of this Court.
37. **THIS COURT ORDERS** that the Fund Advisor and its legal counsel shall pass their accounts from time to time.

GENERAL

38. **THIS COURT ORDERS** that the Fund Advisor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
39. **THIS COURT ORDERS** that any party affected by this Order may apply to this Court for an alteration or variation of this Order or direction as to the implementation of this

Order upon seven day notice to the Fund Advisor and the other parties on the Service List.

40. **THIS COURT ORDERS** that nothing in this Order shall prevent the Fund Advisor from acting as a trustee in bankruptcy of 202, or as a trustee in any proposal that may be submitted by 202 pursuant to the *Bankruptcy and Insolvency Act*.
41. **THIS COURT ORDERS AND REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any Court of any judicial, regulatory or administrative body of the United States of America and the states or other subdivisions of the United States of America and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this Order.



ENTERED AT / ENREGISTRÉ À TORONTO
BOOK / BOOK NO:
LE / DANS LE REGISTRE NO.:

NOV 15 2011

PER/PAR: 

Schedule "A" to the Order

Court File No. CV-11-9336-00-CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF 2026227 ONTARIO INC., C.O.B. AS TIME PLUS CANADA ("202")

RE: NOTICE OF CLAIMS DETERMINATION PROCESS FOR 202

PLEASE TAKE NOTICE that this notice is being published pursuant to the Order of the Ontario Superior Court of Justice – Commercial List made on November 14, 2011 pursuant to a Motion by 202 under Rule 43.01(1)(g) of the Rules of Civil Procedures. Any person who believes they have a claim against 202 as of February 15, 2011 (a "Pre-filing Claim") arising out of their position as a customer of 202, should send a Proof of Claim to the Fund Advisor to be received by 5:00 p.m. (Toronto, Ontario Time) on January 31, 2012 (the "Claims Bar Date").

PRE-FILING CLAIMS WHICH ARE NOT RECEIVED BY THE FUND ADVISOR ON OR BEFORE THE CLAIMS BAR DATE WILL BE FOREVER BARRED AND EXTINGUISHED AND WILL NOT PARTICIPATE IN ANY DISTRIBUTIONS.

Customers who wish to receive a CLAIMS DETERMINATION PROCESS package including a Proof of Claim form should contact the Fund Advisor at:

BDO Canada Limited
Fund Advisor
45 Vogell Road, Suite 300
Richmond Hill, Ontario L4B 3P6
Telephone: 416-508-0080
Fax: 416-865-0904
E-mail: fundadvisor@bdo.ca

Dated at Toronto, Ontario this 22nd day of November, 2011.

Schedule "B" to the Order

Court File No. CV-11-9336-00-CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF 2026227 ONTARIO INC., C.O.B. AS TIME PLUS CANADA ("202")

PROOF OF CLAIM AND INSTRUCTIONS

Please read carefully the instructions accompanying this Proof of Claim.
Please print legibly.

Full Name of Customer _____ (the "Customer")

Full Mailing Address of Customer _____
(All Notices and correspondence _____
regarding your Claim will be _____
forwarded to this address)

Telephone No. _____
Fax No. _____
E-Mail Address _____
Attention: _____

THE UNDERSIGNED HEREBY CERTIFIES AS FOLLOWS:

1. That I am the Customer or that I hold the position of _____ of the Customer and am an authorized representative of the Customer (state position or title).
2. That I have personal knowledge of all the circumstance connected with the Claim against 202 hereafter referred to.
3. Attached hereto is a separate schedule for the Claim that the Customer has against 202. The schedule sets out:
 - i) The amount of the Claim against 202 which was or was deemed to be in existence as at February 15, 2011 (the "Determination Date") together with a detailed and complete statement of account and the basis of calculation of the Claim.
 - ii) A description of each transaction or agreement giving rise or relating to all or any portion of the Claim against 202.
 - iii) The following shall be attached to the Schedule:
 - a. Time Plus Payroll summary for the appropriate period;
 - b. copy of a Notice of Assessment for source deductions owing, or proof of payment of source deductions made directly to Canada Revenue Agency for the time period corresponding to the claim;
 - c. a copy of a Notice of Assessment from the Minister of Finance with respect to Employer's Health Tax;
 - d. Bank Account Statement confirming a balance owing to Canada Revenue Agency;

- e. a reconciliation of payroll tax remittances where applicable; and
- f. any other relevant information.

4. As at the Determination Date, the Customer had a Claim against 202.

DATED at _____, this _____ day of _____, 201__.

(Signature of Witness)

(Customer Signature)

(Please print name)

(Please print name)

The duly completed Proof of Claim together with the schedules and accompanying documents, must be returned to and received by the Fund Advisor c/o BDO Canada Limited by registered mail, courier, facsimile, e-mail message or personal delivery by no later than 5:00 p.m. Toronto, Ontario Time on January 31, 2012 at the following address:

BDO Canada Limited
Fund Advisor
45 Vogell Road, Suite 300
Richmond Hill, Ontario L4B 3P6
Telephone: 416-508-0080
Fax: 416-865-0904
E-mail: fundadvisor@bdo.ca

AS NOTED ABOVE, A DETAILED, COMPLETE STATEMENT OF ACCOUNT AS AT THE VALUATION DATE MUST BE ATTACHED TO EACH SCHEDULE SETTING OUT THE BASIS OF CALCULATION OF EACH CLAIM AGAINST 202, INCLUDING, AS APPLICABLE, THE DATE, THE NUMBER AND THE AMOUNT OF ALL PAYROLL RELATED REMITTANCES OR PAYMENTS MADE BY THE CUSTOMER TO 202, WHICH WERE NOT THEN PAID BY 202 TO THE CUSTOMER'S EMPLOYEES, OR TO THE CANADA REVENUE AGENCY OR OTHER ENTITIES FOR RELATED PAYROLL DEDUCTIONS, OR OTHER MATTERS.

Schedule "C" to the Order

Court File No. CV-11-9336-00-CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF 2026227 ONTARIO INC., C.O.B. AS TIME PLUS CANADA ("202")

NOTICE OF DISALLOWANCE OF PROOF OF CLAIM

TO: _____

TAKE NOTICE that, in accordance with the Order of this Court dated November 14, 2011, \$ _____
[INSERT AMOUNT] of your Proof of Claim against 202 as filed in the amount of \$ _____
[INSERT AMOUNT] has been rejected on the following grounds:

FURTHER TAKE NOTICE that if you intend to dispute this Disallowance you must deliver, by registered mail, courier, facsimile, e-mail message or personal delivery a completed Notice of Dispute, a copy of which is attached to this Notice of Disallowance, to the Fund Advisor, which must be received by the Fund Advisor no later than 5:00 p.m. Toronto, Ontario Time on the 30th business day following the date of this Notice of Disallowance, at BDO Canada Limited, Fund Advisor, 45 Vogell Road, Suite 300, Richmond Hill, Ontario, L4B 3P6, email: fundadvisor@bdo.ca. Your dispute shall be resolved as directed by this Court or as you and the Fund Advisor may agree. If no Notice of Dispute is received by the Fund Advisor in accordance with these instructions and the Order of this Court dated November 14, 2011, the claim in question shall be deemed to have been disallowed in accordance with this Notice of Disallowance.

DATED at _____ this _____ day of _____, 201____.

**BDO CANADA LIMITED, in its
Capacity as Fund Advisor
Per: _____**

Schedule "D" to the Order

Court File No. CV-11-9336-00-CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF 2026227 ONTARIO INC., C.O.B. AS TIME PLUS CANADA ("202")

NOTICE OF DISPUTE

TO: BDO Canada Limited, Fund Advisor
45 Vogell Road, Suite 300
Richmond Hill, Ontario L4B 3P6

1. TAKE NOTICE that, in accordance with the Order of this Court dated November 14, 2011, _____
 [Insert Name of Customer] hereby notifies you that the Notice of Disallowance dated _____
 [Insert Date] of the claims against 202 is not accepted for the following reasons (state the reasons fully and
 completely on the following lines; if more space is required, attach additional pages):

NOTE: You must attach copies of any documents referred to above which are not attached to your Proof of Claim.

The Undersigned Customer acknowledges that the Claim referred to in the Notice of Disallowance shall be resolved by further Order of this Court or as the Undersigned Customer and the Fund Advisor may agree.

DATED at _____ this _____ day of _____, 201____.

Name of Customer

Signature of Witness

Name of Witness

Signature of Authorized Representative

Name of Authorized Representative