

Superior Court of Justice, Family Court

(Name of Court)

at **469 Montreal St., Kingston, Ontario, K7K 3H9**

(Court office address)

Form 14: Notice of Motion

Applicant(s)

<p><i>Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).</i></p> <p>Mervin Brian Schick 2845 Washburn Road Inverary, Ontario K0H 1X0</p>	<p><i>Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).</i></p> <p>Mark S. LaFrance Kamin, LaFrance Barristers and Solicitors 797 Princess Street, Suite 300 Kingston, Ontario K7L 1G1 Tel: 613-549-3294 Fax: 613-549-2615 mark.lafrance@kingston.net</p>
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Respondent(s)

<p><i>Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).</i></p> <p>Deborah Lynn Cardinal (formerly Schick) c/o Counsel</p> <hr/> <p>1475459 Ontario Inc. (operating as End of The Roll) 695 Gardiners Road Kingston, Ontario K7M 3Y4</p> <hr/> <p>Schick's Holdings Inc. 695 Gardiners Road Kingston, Ontario K7M 3Y4</p>	<p><i>Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).</i></p> <p>Kulbir K. Rahal Vaid Gene C. Colman Family Law Centre Barristers and Solicitors 25 Bowring Walk, Toronto, Ontario M3H 5Z5 Tel: 416-635-9264 Fax: 647-930-1835 kulbir@complexfamilylaw.com</p> <hr/> <hr/>
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SALES OFFICER BY ORDER DATED March 2nd, 2022 and LIQUIDATOR BY ORDER DATED April 6th, 2023

<p>BDO Canada Limited Court-appointed Sales Officer 20 Wellington Street East, Suite 500 Toronto ON M5E 1C5 mmarchand@bdo.ca</p>	<p>Fogler, Rubinoff LLP Lawyers 77 King Street West Suite 3000, P.O. Box 95 TD Centre North Tower Toronto ON M5K 1G8 Tim Duncan (LSO# 61840S) Tel: 416-941-8817 Fax: 416-941-8852</p>
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	tduncan@foglers.com
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The person making this motion or the person's lawyer must contact the clerk of the court by telephone or otherwise to choose a time and date when the court could hear this motion.

TO THE PARTIES:

THE COURT WILL HEAR A MOTION on (date) January 3, 2024
at (time) 10:00 a.m., or as soon as possible after that time at:
 469 Montreal St., Kingston, Ontario, K7K 3H9

This motion will be made by (name of person making motion) **BDO Canada Limited, in its capacity as the Court-appointed Sales Officer (the "Sales Officer") and the Court-appointed Liquidator of the assets of 1475459 Ontario Inc. and the assets of Schick's Holdings Inc. (the "Liquidator")**

who will be asking the court for an order for the item(s) listed on page 2 of this notice.

- A copy of the affidavit(s) and Court Officer's Report in support of this motion is/are served with this notice.
- A notice of a case conference is served with this notice to change an order.

If this material is missing, you should talk to the court office immediately.

The person making this motion is also relying on the following documents in the continuing record: *(List documents)*
 Third Report of the Court Officer (defined below), dated December 1, 2023 (the "**Third Report**")

If you want to oppose this motion or to give your own views, you should talk to your own lawyer and prepare your own affidavit, serve it on all other parties and file it at the court not later than 4 days before the date above. Only written and affidavit evidence will be allowed at a motion unless the court gives permission for oral testimony. You may bring your lawyer to the motion.

IF YOU DO NOT COME TO THE MOTION, THE COURT MAY MAKE AN ORDER WITHOUT YOU AND ENFORCE IT AGAINST YOU.

December 21, 2023
Date of signature



Signature of person making this motion or of person's lawyer

Fogler, Rubinoff LLP
Lawyers
 77 King Street West
 Suite 3000, P.O. Box 95
 TD Centre North Tower
 Toronto ON M5K 1G8

Tim Duncan (LSO# 61840S)
Tel: 416-941-8817
Fax: 416-941-8852
tduncan@foglers.com

Typed or printed name of person or of person's lawyer, address for service, telephone & fax number and e-mail address (if any)

NOTE TO PERSON MAKING THIS MOTION: You **MUST** file a Confirmation (Form 14C) not later than 2:00 p.m. 3 days before the date set out above.

If this is a motion to change past and future support payments under an order that has been assigned to a government agency, you must also serve this notice on that agency. If you do not, the agency can ask the court to set aside any order that you may get in this motion and can ask for court costs against you.

State the order or orders requested on this motion.

THE MOTION IS FOR

1. An Order, substantially in the form attached hereto as **Schedule "A"** (the "**HOLDCO Approvals Order**"), among other things:

- (a) if necessary, abridging the time for service and filing of this notice of motion and the evidence in support of this motion or, in the alternative, dispensing with same;
- (b) approving, *nunc pro tunc*, the claims process as set out in the Third Report (defined below), including the form and content of the Liquidator's Newspaper Advertisement and Creditor's Package, as described and set out in the Third Report, the Liquidator's list of parties served with the Creditor's Package, and authorizing the Liquidator, *nunc pro tunc*, to deliver the Creditor's Package to all parties on the Claims Notice List;
- (c) setting a claims bar date of April 2, 2024 with respect to the Sales Process;
- (d) approving the Third Report including the actions and activities of the Court Officer set out therein;
- (e) approving the Court Officer's interim statement of receipts and disbursements relating to HOLDCO for the period March 2, 2022 to November 28, 2023; and
- (f) approving the fees and disbursements of the Court Officer and its legal counsel, as detailed in the supporting fee affidavits, to be split equally (50/50) between OPCO and HOLDCO.

2. An Order, substantially in the form attached hereto as **Schedule "B"** (the "**OPCO Discharge Order**"), among other things:

- (a) if necessary, abridging the time for service and filing of this notice of motion and the evidence in support of this motion or, in the alternative, dispensing with same;

- (b) authorizing and directing the Sales Officer to remit to Canada Revenue Agency on behalf of OPCO HST collected in the course of its mandate in the amount of \$16,250.00;
- (c) approving and authorizing the Liquidator to make an assignment in bankruptcy on behalf of OPCO;
- (d) discharging the Court Officer of its appointments with respect to OPCO and releasing the Court Officer from any liability arising out of its actions as Sales Officer and/or Liquidator of OPCO, save and except for any gross negligence or wilful misconduct on the Court Officer's part;
- (e) approving the Third Report including the actions and activities of the Court Officer set out therein;
- (f) approving the Court Officer's interim statement of receipts and disbursements relating to OPCO for the period March 2, 2022 to November 28, 2023; and
- (g) approving the fees and disbursements of the Court Officer and its legal counsel, as detailed in the supporting fee affidavits, to be split equally (50/50) between OPCO and HOLDCO, and the Court Officer and legal counsel's estimated cost to complete the administration of OPCO.

3. Such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE

1. Pursuant to an Order of the Court made by the Honourable Justice Minnema on March 2, 2022 (the "**Sales Officer Appointment Order**"), BDO Canada Limited was appointed as sales officer of all of the assets of OPCO and HOLDCO (the "**Sales Officer**"). Amongst other things, the Appointment Order authorized the Sales Officer to: carry out a process for the sale of the assets of OPCO and HOLDCO (the "**Corporate Property**") with the approval of the Court; market any or all of the Corporate Property including soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Sales Officer – Corporate in its sole discretion deems appropriate; enter into one or more sales agreements on behalf of OPCO

and HOLDCO, subject to Court approval; engage brokers; enjoy a first charge against the Corporate Property and the proceeds thereof in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any person as security for its fees and those of its counsel; and from time to time apply to the Court for advice and direction in the discharge of its powers and duties thereunder. Pursuant to its mandate under the Sales Officer Appointment Order, the Sales Officer developed and carried out a sales process for the Corporate Property.

2. Pursuant to an Order of the Court made by the Honourable Justice Minnema on April 6, 2023 (the "**Liquidator Appointment Order**"), BDO Canada Limited was appointed as Liquidator of all of the estate and effects of OPCO and HOLDCO (the "**Liquidator**").

3. The Sales Officer and Liquidator (together, the "**Court Officer**") has filed its Third Report, dated December 1, 2023 (the "**Third Report**") outlining, among other things, (i) the Court Officer's activities since the Liquidator Appointment Order, (ii) its opinion that the fees and disbursements of the Court Officer and its legal counsel are fair and reasonable, and (iii) its proposed next steps in its mandates as Sales Officer and Liquidator of OPCO and HOLDCO.

Approval of the HOLDCO Claims Process and Other Proposed Steps

4. In accordance with its mandate under the Liquidator Appointment Order, the Court Officer commenced a creditor claims process with respect to HOLDCO (the "**Claims Process**"). The Liquidator published an advertisement in The Kingston Whig-Standard newspaper informing the public of the appointment of the Liquidator and the seeking of claims. The Liquidator also issued a creditor's package to all known creditors and potential claimants of HOLDCO, thereby providing notice of the Liquidator Appointment Order and the seeking of claims.

5. Pursuant to the provisions of the *Business Corporations Act*, R.S.O. 1990, c. B.16, the Liquidator is required to obtain a claims bar order from the Court with respect to all claims under the Claims Process whereby

any claimant who fails to submit a claim to the Liquidator by the date specified in the claims bar order, the claimant shall be deemed to no longer be a creditor of the estate and will thereafter be wholly barred of any right to share in the proceeds of the estate.

6. Pursuant to the Claims Process, the Liquidator will publish a further claims process newspaper advertisement and issue a second creditor's package to all known creditors and potential claimants of HOLDCO. Upon receipt of claims submissions up to the claims bar date, the Liquidator will admit or disallow, either in whole or in part, each claim received. Where a notice of revision or disallowance is issued, the Liquidator will also provide a blank notice of dispute to the claimant and the claimant will have fifteen (15) days to submit a dispute notice to the Liquidator, failing which the Liquidator's position as set out in the notice of revision or disallowance will be final and binding. Where a claimant submits a dispute notice which cannot be resolved as between the claimant and the Liquidator, the Liquidator may bring the matter before the Court for resolution.

7. On completion of the Claims Process the Liquidator will present the results of the Claims Process to the Court and seek the Court's approval to apply the property of HOLDCO in satisfaction of its proven debts, if any.

Approval of the Discharge of the Sales Officer and Liquidator of OPCO and Other Proposed Steps

8. As reported to the Court in the Second Report of BDO Canada Limited, in its capacity as the Court-appointed Sales Officer of OPCO, dated March 27, 2023, the Sales Officer completed the Personal Property Transaction, as defined therein, on November 4, 2022. In the course of completing that transaction the Sales Officer collected sales taxes in the amount of \$16,250.00 (the "**Personal Property Transaction HST**"). The Sales Officer seeks the Court's authorization and direction to remit the Personal Property Transaction HST to Canada Revenue Agency, for whom such funds have been held in trust.

9. In accordance with its mandate under the Liquidator Appointment Order, the Court Officer is empowered and authorized to file an assignment in bankruptcy on behalf of either OPCO or HOLDCO. It is the view of the Liquidator that OPCO is in fact insolvent, as its reported liabilities of approximately \$460,000 exceed all known

assets of OPCO, currently being held in trust by the Liquidator in the approximate amount of \$72,000. As a result, the Liquidator is unable to complete the windup and dissolution of OPC under the provisions of *Business Corporations Act*, R.S.O. 1990, c. B.16 and therefore seeks to file an assignment in bankruptcy on behalf of OPCO. BDO has advised that it will consent to act as trustee in bankruptcy ("**Trustee**") of OPCO.

10. The Court Officer of OPCO is of the opinion that, upon completion of the remaining specified tasks and undertaking described in the Third Report, it will have completed its duties insofar as possible as Court Officer of OPCO and it should therefore be discharged as Sales Officer and Liquidator of OPCO.

11. The other grounds set out in the Third Report.

12. Rules 2, 3, 6 14 and 25 of the *Family Law Rules*, O. Reg. 114/99.

13. The provisions of the *Business Corporations Act*, R.S.O. 1990, c. B.16.

14. Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

1. The Affidavit of Brandy Kaddoura, sworn December 1, 2023, filed.

2. The Affidavit of Matthew Marchand, sworn November 29, 2023, filed.

3. The Affidavit of Jonathan Gross, sworn November 29, 2023, filed.

4. The Third Report, filed.

5. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

AND TO:

<p>DEPARTMENT OF JUSTICE Ontario Regional Office 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1</p> <p>Frank D'Alessandro Email: frank.dalessandro@justice.gc.ca</p> <p>Lawyers for Canada Revenue Agency</p>	
<p>HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE Legal Services Branch 33 King Street West, 6th Floor Oshawa, ON L1H 8H5</p> <p>Insolvency Unit Email: Insolvency.Unit@ontario.ca</p> <p>Lawyers for the Province of Ontario</p>	