

CV-11-422615-00CF

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

WILLIAM BRUCE WOODS

Plaintiff

and

REDEEMER FOUNDATION and REDEEMER UNIVERSITY COLLEGE

Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

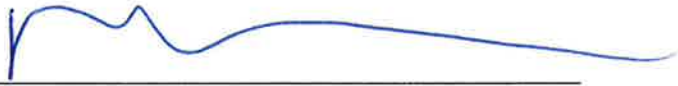
IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date March 21, 2011

Issued by 

Local Registrar

Address of court office:
393 University Avenue
10th Floor
Toronto, Ontario
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(M. Brenton)

TO **Redeemer Foundation**
777 Garner Road East
Ancaster, Ontario
L9K 1J4

AND **Redeemer University College**
TO 777 Garner Road East
Ancaster, Ontario
L9K 1J4

CLAIM

DEFINITIONS

1. The following definitions apply for the purpose of this statement of claim:
 - (a) **“Bruce”** means the plaintiff, William Bruce Woods;
 - (b) **“Class Members”** means all individuals who participated in the **Redeemer Foundation Forgivable Loan Program** for the taxation years 2001 and 2002;
 - (c) **“FLP”** means the Redeemer Foundation Forgivable Loan Program more particularly described below;
 - (d) **“ITA”** means the *Income Tax Act*, R.S.C. 1985, c.1;
 - (e) **“Redeemer Foundation”** means a non-share corporation incorporated pursuant to the law of Ontario, which was at all material times a registered charity. Redeemer Foundation was voluntarily dissolved effective August 28, 2009 pursuant to its application to surrender its charter;
 - (f) **“Redeemer University College”** means a non-share corporation incorporated pursuant to the law of Ontario, operating Redeemer University College, an undergraduate Christian liberal arts and science university in Ancaster.

CLAIM FOR RELIEF

2. The plaintiff claims:

- (a) an order certifying this action as a class proceeding and appointing him as representative plaintiff;
- (b) general damages and special damages in the amount of FIVE MILLION DOLLARS (\$5,000,000.00) or such sum as this Honourable Court may find appropriate in the circumstances;
- (c) punitive damages in the amount of ONE MILLION DOLLARS (\$1,000,000.00);
- (d) disgorgement from the defendants of excess tuitions received to the deprivation of Class Members as referenced below;
- (e) an order directing a reference or such other directions as may be necessary to determine issues not determined at the trial of the common issues;
- (f) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. 43, as amended;
- (g) postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. 43, as amended;
- (h) the costs of this proceeding on a full indemnity basis, plus a premium/multiplier, as well as costs of notice and of administering the plan

of distribution of recovery in this action, plus disbursements and applicable taxes; and

- (i) such further and other relief as this Honourable Court may deem just and appropriate in the circumstances.

THE NATURE OF THIS ACTION

3. Redeemer Foundation was established in 1987 for the ostensible purpose of raising funds to support scholarships and other forms of financial assistance to students at Redeemer University College.

4. Redeemer Foundation established the FLP in approximately 1989. The FLP was devised in order that official donation receipts would be generated by Redeemer Foundation for payment of tuition and related education costs for attending Redeemer University College, a payment which would otherwise not result in a donation tax receipt, but only eligible education tuition and textbook receipts.

5. Students attending Redeemer University College were encouraged to solicit "donations" to Redeemer Foundation which then in turn loaned those "donated" monies to the student who solicited the funds, to pay for part or all of their tuition and related education costs for an academic year. Provided certain nominal conditions were met, the loan was forgiven at the end of the academic year. Parents or other family members of students attending Redeemer University College were encouraged to participate in the FLP as "donors".

6. "Donations" to Redeemer Foundation could be made by anyone and all such amounts were receipted for income tax purposes. Under the FLP, Redeemer Foundation generated official donation receipts to support concomitant charitable donation tax credits to be claimed by donors.

7. Canada Revenue Agency ("CRA") disallowed the charitable donation tax credits for 2001 and 2002, however, CRA eventually extended a settlement offer to allow 10% of amounts contributed to Redeemer Foundation to be recognized and considered valid gifts.

8. Class Members are liable to CRA for interest charges on income tax filing reassessments.

9. In addition, Class Members paid an additional amount of 10% over and above tuition and related education costs of an academic year, such additional amount having said to be required to cover administrative costs.

10. Redeemer University College controls Redeemer Foundation acting as its directing mind and alter-ego.

11. Redeemer University College and Redeemer Foundation acted in concert in all respects with respect to the FLP.

FORGIVABLE LOAN PROGRAM/FLP

12. The FLP operated as follows:

- (a) students attending Redeemer University College were encouraged to solicit "donations" to Redeemer Foundation;
- (b) 90% of funds donated were allocated to fund a forgivable loan in favour of the student soliciting the "donation";
- (c) the "donor" to Redeemer Foundation received an official donation receipt with respect to the amount "donated";
- (d) Redeemer Foundation made a forgivable loan to the student which covered tuition and related education costs, such as housing, textbook allowance and student fees, for the academic year at Redeemer University College;
- (e) provided certain nominal conditions were met, the entire loan was forgiven after the end of the academic year;
- (f) students were contractually assured that they would receive 90% of donation amounts as a forgivable loan;
- (g) only students who solicited "donations" to Redeemer Foundation qualified for a forgivable loan;
- (h) the loan under the FLP was interest-free with no scheduled payment of the principal of the loan;

- (i) to qualify for the FLP, a student was required to demonstrate financial need and meet certain terms and conditions:
- (i) the student was required to notify Redeemer Foundation of any change in his/her name or address as such change occurred;
 - (ii) the "loan" would be forgiven provided:
 - the student completed the then current academic year at Redeemer University College; and,
 - the student was not dismissed from Redeemer University College for disciplinary reasons;
 - (iii) the academic year was considered to be complete when all required work had been performed including the writing of final examinations and full payment of related charges;
 - (iv) if the conditions were not met, the "loan" by Redeemer Foundation would become due and payable on demand on the date the student ceased to be enrolled at Redeemer University College, and any amounts outstanding on that date would accrue interest at the rate of 2% above the prime interest rate of Canadian Imperial Bank of Commerce.

13. Under the terms of the FLP, donors would receive an official donation receipt of approximately 29% of the donation amount, and in addition the student (almost always related to the "donor") would have a portion of tuition and related education costs paid through the FLP, equal to 90% of the "donation" amount.

14. By way of example, a \$10,000.00 education cost per year would generate a charitable donation tax credit of approximately 29% of the "donation" amount, being \$2,900.00 as well as a tuition receipt of \$1,600.00 resulting in total federal tax savings of \$4,500.00 as well as provincial tax savings of \$2,250.00 for total tax savings of \$6,750.00. As indicated, an additional amount of 10% over and above tuition and related education costs of an academic year was also required to be paid under the FLP. The net cash outlay for a \$10,000.00 education cost per year was therefore \$4,250.00.

15. Absent participation in the FLP, the total eligible tax savings would only be the tuition receipt at 16% generating total federal tax savings of \$1,600.00 and provincial tax savings of \$800.00 for a total tax savings of \$2,400.00. The net cash outlay for a \$10,000.00 education cost per year would be \$7,600.00.

16. Participation in the FLP was promised to result in a benefit of \$3,350.00 (difference between net cash outlay of \$7,600.00 and net cash outlay of \$4,250.00):

<u>Annual \$10,000.00 Education Cost</u>	<u>Forgivable Loan Program</u>	<u>No Forgivable Loan Program</u>
Tuition/related Costs	\$10,000.00	\$10,000.00
10% administrative fee	\$1,000.00	\$0.00
Donation tax credit – 29%	\$2,900.00	\$0.00
Tuition receipt – 16%	<u>\$1,600.00</u>	<u>\$1,600.00</u>
Federal tax savings	\$4,500.00	\$1,600.00
Provincial tax savings (50% of Federal amount)	\$2,250.00	\$800.00
Total tax savings	<u>\$6,750.00</u>	<u>\$2,400.00</u>
Net cash outlay for \$10,000.00 tuition related costs	\$4,250.00	\$7,600.00

17. Redeemer University College was not fully publicly-funded. The tuition and related education costs paid by students were higher than tuition and related education costs at fully publicly-funded universities.

18. The FLP was designed, in part, to equalize the differential in tuition and related education costs between Redeemer University College and fully publicly-funded universities.

19. All loans made in 2001 and 2002 under the FLP were in fact forgiven.

CRA AUDIT OF FLP AND LEGAL PROCEEDINGS

20. In October, 1998, CRA audited the Redeemer Foundation and Redeemer University College in respect of the 1997 taxation year. The audit raised concerns regarding compliance with the *ITA* by Redeemer Foundation. CRA was concerned that many of the contributions to the FLP may not have been valid donations because they were made by parents of students attending Redeemer University College, with the

intent that the money “donated” would be used for the sole purpose of paying for their child’s education.

21. CRA cautioned the defendants, in writing, on November 26, 1999 and January 20, 2000, that it would consider disallowing deductions to parents on their individual income tax returns.

22. CRA did not pursue its audit of the 1997 taxation year because the defendants were not able to provide CRA with completed transmittal forms which recorded the identity of each donor and the name of the student who was to receive credit for the donation.

23. CRA resumed its audit of Redeemer Foundation in 2001 for the 1998 – 2000 taxation years, however, completed transmittal forms were again not available for review by CRA.

24. CRA served Redeemer Foundation with a notice under section 230(3) of the *ITA* requiring it to maintain proper records to enable CRA to properly investigate the link between donors and students.

25. CRA commenced a further audit in 2003 with respect to the 2001 and 2002 taxation years.

26. In approximately June 2004, CRA requested donor lists for the 2002 and 2003 taxation years, from Redeemer Foundation.

27. Redeemer Foundation refused to provide the requested donor lists to CRA and applied to the Federal Court for judicial review of CRA's request.

28. Following the application for judicial review by Redeemer Foundation, CRA held in abeyance all Notices of Objection that it had received.

29. Redeemer Foundation and Redeemer University College succeeded before the Federal Court, which vacated all assessments on the basis that CRA did not have judicial authorization to request the FLP donor lists for 2001 and 2002 taxation years. The Federal Court of Appeal reversed that decision, which reversal was upheld by the Supreme Court of Canada on July 31, 2008. The Supreme Court of Canada determined that CRA did not require judicial authorization to obtain the FLP donor lists in the possession of the defendants.

CIRCUMSTANCES OF THE REPRESENTATIVE PLAINTIFF

30. Bruce participated in the FLP for the taxation years 2001 and 2002 in connection with the attendance of his daughter, Lauren Woods, at Redeemer University College.

31. In 2001, Bruce contributed \$11,800.00 to Redeemer Foundation under the FLP.

32. In 2002, Bruce contributed \$10,564.00 to Redeemer Foundation under the FLP.

33. Bruce received official donation receipts from Redeemer Foundation of \$11,800.00 for the 2001 taxation year, and \$10,564.00 for the 2002 taxation year.

34. Bruce was not advised of any of the following:
- (a) that CRA had previously conducted audits of Redeemer Foundation and Redeemer University College in respect of the FLP in 1997 and 2001;
 - (b) that CRA had cautioned the defendants that it would consider disallowing deductions to parents on their individual income tax returns;
 - (c) that CRA was investigating the link between donors and students and was considering disallowance of the charitable donation tax credits claimed by parents who participated in the FLP in support of their student children.
35. Bruce filed his personal income tax return for the 2001 and 2002 taxation years, claiming charitable donation tax credits based upon the official donation receipts received under the FLP.
36. Bruce was first notified by the CRA by letter dated December 15, 2004 that his claimed charitable donation tax credits under the FLP for the taxation years 2001 and 2002 were being reviewed.
37. On February 18, 2005, CRA reassessed Bruce's income tax returns for the 2001 and 2002 taxation years. By its reassessment, CRA determined that Bruce was not entitled to charitable donation tax credits for the purported charitable donations made under the FLP.

38. As a result of CRA's reassessment of Bruce's 2001 and 2002 income tax returns, Bruce was required to make payment of additional taxes to CRA. CRA charged interest on tax arrears arising from the reassessments.

39. Bruce filed a Notice of Objection objecting to CRA's reassessment on June 7, 2005.

40. CRA informed Bruce by letter dated June 23, 2005 that his Notice of Objection was being held in abeyance because it was part of a larger group of similar fact objections.

41. Bruce received numerous letters from Redeemer Foundation from 2005 to 2010 describing the status of the judicial review case before the Federal Court, Federal Court of Appeal and Supreme Court of Canada, as well as the status of Notices of Objection with CRA.

42. The letters received from Redeemer Foundation led Bruce to believe that the legal proceedings underway were intended to defend the validity of the FLP on its merits.

43. On July 31, 2008, Redeemer Foundation notified Bruce that the appeal before the Supreme Court of Canada was dismissed.

44. On August 18, 2008, Redeemer Foundation notified Bruce that his Notices of Objection remained in abeyance.

45. On August 28, 2009 Redeemer Foundation surrendered its corporate charter and dissolved. Redeemer University College assumed all of Redeemer Foundation's responsibilities, including the regular communication to FLP donors.

46. On February 12, 2010, Redeemer University College wrote to Bruce and advised that CRA would extend an offer of settlement to recognize 10% of the amount contributed to the FLP as a charitable donation tax credit. Redeemer University College recommended that Bruce accept the offer.

47. On March 4, 2010, CRA confirmed to Bruce that his charitable donation tax credits were disallowed, however, CRA extended a settlement offer to allow 10% of the amount contributed to Redeemer Foundation to be recognized and considered a valid gift, entitling Bruce to a charitable donation tax credit for that amount. Bruce accepted the CRA settlement offer, as recommended by Redeemer University College.

BREACH OF CONTRACT

48. The terms of the FLP as set out above, formed the terms of the contract of participation in the FLP.

49. Furthermore, it was an express or, in the alternative, an implied fundamental term of the contract of participation in the FLP that all participants would receive an official donation receipt that would be recognized by CRA for eligible charitable donation tax credit purposes.

50. CRA has performed audits with respect to all Class Members in connection with the 2001 and 2002 taxation years, and in all cases has refused to recognize the validity

of the official donation receipts issued by Redeemer Foundation and has disallowed the charitable donation tax credits claimed.

51. CRA has determined that the FLP does not comply with the gifting requirements under the *ITA*. Amounts paid to Redeemer Foundation are not “true gifts”.

52. CRA says that amounts paid to Redeemer Foundation under the FLP were made for the sole purpose of assisting students with tuition and related education costs payable to Redeemer University College.

53. CRA determined that “donors” to Redeemer Foundation were not dealing at “arms-length” with the individuals who received a forgivable loan from Redeemer Foundation.

54. CRA extended a settlement offer to Class Members to allow 10% of the amounts contributed to Redeemer Foundation to be recognized and considered valid gifts, entitling them to charitable donation tax credits for that amount.

55. Participants in the FLP did not receive official donation receipts that were recognized by CRA for charitable donation tax credit purposes.

NEGLIGENCE

56. Bruce and Class Members state that the defendants owed them a duty of care with respect to the design and structure of the FLP and with respect to disclosure of material information relating to the FLP and the CRA audits.

57. Bruce and Class Members state that the defendants were negligent, particulars of which are as follows:

- (a) the defendants failed to ensure that CRA would in fact recognize the official donation receipts issued by Redeemer Foundation for purposes of entitling Class Members to charitable donation tax credits;
- (b) the defendants failed to retain competent agents and advisors to ensure that the FLP would in fact generate official donation receipts which would be recognized by CRA;
- (c) the defendants failed to advise Class Members of the risk that CRA would not in fact recognize the official donation receipts as valid entitling Class Members to charitable donation tax credits claimed;
- (d) the defendants continued to promote the FLP despite knowing as early as 1998 that CRA had cautioned that it would disallow the claimed charitable donation tax credits to FLP participants;
- (e) the defendants failed to disclose that CRA had audited the Redeemer Foundation and Redeemer University College in respect of the FLP in 1998 and 2001 and had cautioned that it was considering disallowing the claimed charitable donation tax credits of participants;
- (f) the defendants published and circulated standard-form letters to all Class Members regarding the status of the judicial review case before the Federal Court, Federal Court of Appeal and Supreme Court of Canada, as

well as the status of Notices of Objection with CRA, which standard-form letters were misleading and led Class Members to believe that the legal proceedings underway were intended to defend the validity of the FLP on its merits, which was not the case.

58. Bruce and Class Members state that had the defendants disclosed the risk that CRA might not recognize the official donation receipts as valid, and had the defendants disclosed the CRA audits in respect of the FLP, no Class Member would have participated in the FLP.

59. Bruce and Class Members state that but for the expectation of receiving an official donation receipt entitling Class Members to charitable donation tax credits, no Class Member would have participated in the FLP since the FLP involved an additional cost, i.e. 10% over and above tuition and related education costs of an academic year, without any corresponding benefit.

UNJUST ENRICHMENT

60. Redeemer University College, acting in concert with Redeemer Foundation, used the FLP to enrich itself by way of higher tuitions paid and increased enrolment.

61. Class Members paid higher tuition based upon participation in the FLP and the expectation of receipt of charitable donation tax credits.

62. Participants in the FLP were correspondingly deprived.

63. There was no juristic reason for the enrichment of Redeemer University College. The FLP contract was breached and Class Members did not receive charitable donation tax credits.

64. Class Members claim entitlement to a disgorgement of the enrichment received by the defendants.

DAMAGES

65. As a result of the conduct of the defendants described above, Class Members have suffered the following damages and losses:

- (a) charitable donation tax credits have been disallowed by CRA resulting in 2001 and 2002 tax year reassessments as well as liability to CRA for payment of interest;
- (b) payment of an additional 10% charge to the Redeemer Foundation to cover administrative costs;
- (c) special damages, being out-of-pocket expenses, including professional, accounting and legal advice and consulting fees, incurred due to CRA reassessments;

66. Redeemer University College recommended to Class Members that they accept the CRA offer of settlement to recognize 10% to the amounts contributed to the FLP as charitable donation tax credits. Many Class Members accepted the CRA offer on the

recommendation of Redeemer University College and did so in order to mitigate damages.

PUNITIVE DAMAGES

67. Bruce states that the conduct of the defendants was entirely without care, deliberate, callous, wilful and in intentional disregard of the rights of Class Members and indifferent to the consequences.

68. The defendants breached their obligations to Class Members and failed to report to them fully and accurately as to the nature and purpose of the legal proceedings underway in respect of the FLP.

69. The defendants behaved with arrogance and high-handedness demonstrating a callous disregard and complete lack of care for the rights of Class Members. The conduct of the defendants ought to be punished and deterred.

70. The defendants were, or ought to have been aware, of the probable consequences of their conduct and the damage such conduct would cause to Class Members.

71. The conduct of the defendants as set-out above renders the defendants liable to Class Members for payment of punitive damages.

LEGISLATION

72. Bruce pleads and relies upon the *Class Proceedings Act*, R.S.O. 1992 c. 6 and the *Courts of Justice Act*, R.S.O. 1990, c. 43 as amended.

73. Bruce pleads and relies upon section 242(1) of the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended. Bruce reserves the right to rely in the alternative upon section 241 of the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended.

PLACE OF TRIAL

74. Bruce proposes that this action be tried in Toronto, Ontario.

March 21, 2011

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