

CV-13-487917 OOC

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

TERRY EMMS

Plaintiff

and

CHRISTIAN ECONOMIC ASSISTANCE FOUNDATION and
ONTARIO ALLIANCE OF CHRISTIAN SCHOOL SOCIETIES

Defendants

Proceeding under the *Class Proceedings Act*, 1992, S.O. 1992, c.6

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 Aug 29/2013 Issued by Sagaria M. Sagaria
Local Registrar

Address of court office:
393 University Avenue, 10th Floor
Toronto, Ontario
M5G 1E6

TO **CHRISTIAN ECONOMIC ASSISTANCE FOUNDATION**
617 Garner Road East
Ancaster, Ontario
L9G 3K9

AND TO **ONTARIO ALLIANCE OF CHRISTIAN SCHOOL SOCIETIES**
790 Shaver Road
Ancaster, Ontario
L9G 3K9

DEFINITIONS

1. The following definitions apply for purposes of this Statement of Claim:
 - (a) **“Terry”** means the plaintiff, Terry Emms;
 - (b) **“CEAF”** means the Christian Economic Assistance Foundation, a non-share capital corporation incorporated in Ontario in 1972, operating as a not-for-profit organization which is a registered charity for income tax purposes;
 - (c) **“Class/Class Members”** means all individuals who participated in the SSP for the taxation years 2009, 2010, 2011 and 2012;
 - (d) **“CPA”** means *Class Proceedings Act*, 1992, S.O. 1992, c.6
 - (e) **“CRA”** means Canada Revenue Agency;
 - (f) **“ITA”** means the *Income Tax Act*, R.S.C. 1985, c.1 (5th Supp)
 - (g) **“OACS”** means the Ontario Alliance of Christian School Societies, a non-share capital corporation incorporated in Ontario in 1981;
 - (h) **“SSP”** means the CEAF School Support Program;

CLAIM

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 Court may find appropriate in the circumstances;
- (c) punitive damages in the amount of ONE MILLION DOLLARS (\$1,000,000.00);
- (d) 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;
- (e) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (f) postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (g) 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,
- (h) such further and other relief as this Court may find appropriate in the circumstances.

THE NATURE OF THIS ACTION

3. CEAFF was a registered charity for income tax purposes and operated as a not-for-profit organization. Its charitable organization status was revoked by CRA for cause, on July 20, 2013.
4. CEAFF designed, developed and promoted the SSP which has been operational since 1985 with up to 50 Christian schools participating.
5. The SSP is endorsed by OACS and has been so endorsed since 1985.
6. The SSP operates to purportedly increase the tax credit available to families paying tuition at Ontario Christian schools.
7. Generally, the SSP operates so as to characterize what are truly and properly tuition payments for students to attend Ontario Christian schools, as grants in order to generate charitable donation tax receipts and concomitant tax credits.
8. CRA disallowed the charitable donation tax credits for all Class Members for participation in the SSP for the 2009 and 2010 years. CRA will disallow charitable donation tax credits for 2011 and 2012 as well.
9. CRA characterized the SSP as a tax scheme to artificially maximize charitable donation receipts received by parents for private school tuition fees by improperly characterizing tuition payments by parents as grants. "Donations" made to the SSP do not meet the legal definition of a gift.
10. Class Members are liable to CRA for interest charges on income tax filing reassessments.

11. Class Members were contractually promised favourable tax treatment in respect of payments to the SSP, which did not materialize.

12. The Board of Directors of CEAF put a moratorium on the SSP as of January 22, 2013, after CRA's reassessments of Class Members.

SSP

13. The SSP was designed, developed and promoted by CEAF and OACS.

14. The SSP has been operating since 1985. Approximately 50 Ontario Christian schools participate in the SSP.

15. The SSP, as described by CEAF is "basically... a way to increase the tax credit available to families paying tuition at OCS [Ontario Christian Schools]".

16. Pursuant to the SSP, parents of students attending an Ontario Christian School pay a tuition pledge amount to the Ontario Christian School. The remainder of the tuition pledge is paid to CEAF.

17. In exchange, the parents receive a tax receipt from CEAF for the amount "donated".

18. The Ontario Christian School attended by the child/children of the SSP participant requests a grant from CEAF for eligible expenses. In all cases, grants are made by CEAF in favour of the child/children of the SSP participant to cover tuition and expenses at the Ontario Christian School being attended by that student.

19. Since 1985, CEAF has returned 98.5% of “donated funds” to the various Ontario Christian Schools in grants. A 1.5% administrative fee was paid to CEAF and/or the Ontario School in question.

20. Approximately 5,000 individuals participated in the SSP for the time period in question.

21. The SSP was designed “to offset the impact of unfair government policies” according to the CEAF SSP brochure.

CRA AUDIT OF CEAF

22. CEAF was audited three times by CRA in respect of the SSP. The defendants failed to disclose to SSP participants that CRA had audited CEAF in respect of the SSP.

23. Class Members state that CRA cautioned CEAF that it was considering disallowing the claimed charitable donation tax credits of SSP participants.

24. Class Members state that had the defendants disclosed the risk that CRA might not recognize the charitable donation tax receipts as valid, and had the defendants disclosed the CRA audits in respect of the SSP, no Class Member would have participated in the SSP.

25. Class Members state that but for the expectation of receiving a charitable donation tax receipt entitling Class Members to charitable donation tax credits, Class Members would not have participated in the SPP. The SSP involved an additional cost, i.e. a 1.5% administrative fee over and above related education costs, paid to CEAF and/or the Ontario Christian School in question, without any corresponding benefit.

CIRCUMSTANCES OF THE REPRESENTATIVE PLAINTIFF

26. Terry's son attended John Knox Christian School in Brampton from September, 2009 to June, 2013. Terry participated in the SSP paying tuition on behalf of his son for attendance at John Knox Christian School, in the approximate amount of \$9,500.00 for 2009 and slightly increased amounts for 2010, 2011 and 2012 school years.

27. CEAF issued a charitable donation tax receipt in favour of Terry for the period January 1, 2010 to December 31, 2010 in the amount of \$7,594.00.

28. CEAF issued a charitable donation tax receipt in favour of Terry for the period January 1, 2011 to December 31, 2011 in the amount of \$7,878.00.

29. CEAF issued a charitable donation tax receipt in favour of Terry for the period January 1, 2012 to December 31, 2012 in the amount of \$3,360.00.

30. Terry filed his personal income tax return for the years 2010, 2011 and 2012 claiming charitable donation tax credits in accordance with the charitable donation tax receipts issued by CEAF referenced above.

31. CRA has denied the amounts claimed as charitable donations to CEAF under the SSP as referenced above.

32. CRA adjusted Terry's charitable donation claim for the 2010 tax year from \$7,992.00 to the maximum allowable of \$398.00.

33. CRA adjusted Terry's charitable donation claim for the 2011 tax year from \$8,655.00 to the maximum allowable of \$777.00.

34. CRA adjusted Terry's charitable donation claim for the 2012 tax year from \$4,433.00 to the maximum allowable of \$1,073.00.

35. Terry was/is liable to CRA for interest charges on income tax filing reassessments.

36. The promised favourable tax treatment in respect of payments to the SSP did not materialize.

BREACH OF CONTRACT

37. All participants in the SSP had a direct and specific understanding that they would receive a charitable donation tax receipt that would be recognized by CRA for tax credit purposes. It was an express, or in the alternative, an implied, term of the contract that all participants would receive a charitable donation tax receipt that would be recognized by CRA.

38. CRA has performed audits with respect to all Class Members in connection with the 2009 and 2010 tax years and in all cases has disallowed the donation claims and has refused to recognize the charitable donation tax receipts as valid. 100% of the tax credits claimed by Class Members for the 2009, 2010 and 2011 years have been disallowed. CRA will disallow claimed tax credits with respect to participation in the SSP for 2012.

39. CRA will reassess all claimed tax credits with respect to participation in the SSP for 2012. CRA will take the same position in respect of that year as it has taken in respect of 2009, 2010 and 2011 participation in the SSP, i.e. 100% of the charitable donation tax credits claimed by Class Members will be disallowed.

40. CRA has determined that the amounts paid to CEAF in connection with the SSP do not qualify as gifts under section 118.1 of the *ITA*.

41. CRA determined that all participants in the SSP received a material benefit for their donations in the form of a larger charitable donation tax receipt. Individuals who participate receive a larger donation receipt in respect of tuition fees paid which represents a material benefit which flows back to the individual. The end result of such transaction allows for participating individuals to receive a larger portion of their tuition fees paid for private Christian education refunded to them through donation tax credits. The donation receipts issued by CEAF are not for valid gifts. The “donations” are, in effect, tuition payments.

42. CRA determined that amounts paid to CEAF were not valid gifts because those amounts were directed by a donor to be paid to a non-qualified donee. The payments were not valid gifts as they were not provided to an eligible charity, but rather to a specified recipient.

43. CRA is of the view that the intention of the SSP is merely a tax scheme to artificially maximize charitable donation tax receipts for private school tuition fees by improperly characterizing tuition payments as grants.

NEGLIGENCE

44. Class Members state the defendants were negligent, particulars of which are as follows:

- (a) they failed to ensure that CRA would in fact recognize the charitable donation tax receipts and tax credits claimed by Class Members;
- (b) they failed to retain competent agents and advisors to accurately opine on the operation of the SSP;
- (c) they failed to properly investigate and consider the income tax consequences of participation in the SSP; and,
- (d) they failed to disclose to SSP participants that CEAF had been and was subject to ongoing audits by CRA in respect of the SSP.

45. The defendants owed a duty of care to SSP participants and had a duty to warn Class Members and to make full disclosure to them as to the facts and circumstances set-out above and failed to do so.

46. The defendants failed to advise Class Members that participation in the SSP may not generate valid charitable donation tax receipts.

47. The defendants failed to take proper steps to fully investigate the SSP to ensure that CRA would in fact recognize the charitable donation tax receipts issued and tax credits claim.

48. OACS took a lead role in assisting Class Members in responding to CRA reassessments. OACS wrote to all Class Members and suggested that all appoint OACS as an authorized representative on their behalf with CRA pursuant to form T1013E.

UNJUST ENRICHMENT

49. Class Members paid an administrative fee of 1.5% to CEAF and/or the Ontario Christian School in question in connection with participation in the SSP, based upon the expectation of receipt of valid charitable donation tax receipts.

50. Participants in the SSP were correspondingly deprived.

51. There is no juristic reason for the enrichment of the defendants. The SSP contract was breached and Class Members did not receive valid charitable donation tax credits.

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

DAMAGES

53. 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 2009, 2010 and 2011 tax year reassessments as well as liability to CRA for payment of interest;
- (b) anticipated disallowance of charitable donation tax credits for 2012 and tax reassessments for that year, including liability to CRA for payment of interest;
- (c) loss of the promised tax benefit in respect of the charitable donation tax credits disallowed;

- (d) payment of a 1.5% administrative fee, without receiving any benefit in return;
- (e) special damages, being out-of-pocket expenses, including professional accounting and legal advice and consulting fees, incurred or to be incurred due to CRA reassessments.

PUNITIVE DAMAGES

54. The plaintiff states that the conduct of the defendants was entirely without care, deliberate, callous, willful, and in intentional disregard of the rights of Class Members, and indifferent to the consequences.

55. The defendants breached their obligations to Class Members and failed to report to them fully and accurately as to the CRA audit of CEAF and the risks involved in participation.

56. The defendants behaved with arrogance and highhandedness 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.

57. 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.

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

LEGISLATION

59. The plaintiff pleads and relies upon the *CPA, ITA* and the *Courts of Justice Act*, R.S.O. 1990, c. C. 43 as amended.

PLACE OF TRIAL

60. The plaintiff proposes this action be tried in Toronto, Ontario.

Aug. 29 / 2013

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Plaintiff

-and-

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Defendants

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STATEMENT OF CLAIM

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