

# Firm will 'vigorously defend' \$55-million claim

BY ROBERT TODD  
Law Times

A national law firm has been named in a statement of claim that alleges it issued favourable tax opinion letters that became inaccurate but were used to promote a gift program that has hurt the pocketbooks of potential class members.

Fraser Milner Casgrain LLP is named as a defendant in the claim, which seeks \$55 million in damages from several defendants.

"Fraser Milner Casgrain has a well-earned reputation for consistently delivering the highest quality legal services and counsel to our clients and we firmly stand behind our lawyers and the quality of their counsel. Therefore, we intend to vigorously defend this claim," said FMC chairman and CEO Michel Brunet, in an e-mail to *Law Times*. "It is not uncommon for law firms such as ours to be involved in litigation. Regrettably, it is inappropriate for us to comment deeply, because this matter is the subject of pending litigation."

The defendants in the matter, which has been brought under the Class Proceedings Act, have

presented a motion seeking a stay of the action, and a motion to have that issue dealt with before the certification motion.

A judge has set both of those motions to be heard the week of June 22 according to Scarfone Hawkins LLP, which is acting for plaintiffs Kathryn and

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Aside from the law firm, the claim names Rochester Financial Ltd., Promittre Capital Group Inc., Promittre Asset Management Ltd., and Banyan Tree Foundation. It was filed Feb. 27, 2008.

The claim seeks, among other things, an order certifying the action as a class proceeding and appointing the plaintiffs as representative plaintiffs; general damages and special damages of \$50 million; and punitive damages of \$5 million.

The claim alleges that Promittre Capital, Promittre Asset, and Banyan Tree, with the help

of Rochester, "developed, promoted, sold, and administered a gift program under which participants borrowed money to make a charitable donation in order to receive a charitable donation receipt and concomitant tax credit." It goes on to allege that, "Participants borrowed

tax consequences of an individual participating in the gift program." The claim alleges that, "In the opinion letter, FMC opined that the gift program will operate such that the monies borrowed by participants and pledged to Banyan Tree will entitle participants to a tax credit."

substantially all of the funds donated and actually paid in cash only a small portion of the total donation amount.

It alleges that, "FMC issued the opinion letters which were a necessary prerequisite to the promotion of the gift program to participants."

The Canada Revenue Agency has disallowed the charitable donation tax credits for 2003 and "intends to do so" for 2004 to 2007, the claim alleges. It goes on to allege that the CRA will hold class members liable for interest charges on income tax filing reassessments.

Also, the claim alleges, gift program participants paid security deposits that have been "severely compromised," while "promissory notes remain outstanding with respect to all funds borrowed by participants," and that "class members remain at risk to demands, enforcement, and possible liability to Rochester under the promissory notes."

In terms of the accusations involving FMC, the claim alleges that the firm issued an opinion letter on Oct. 23, 2002, to Promittre Asset regarding the "income

ought to have known that the opinion letters were no longer accurate or reliable following the issuance by Canada Revenue Agency of its fact sheets in November and December 2003, and November 2005; the legislative changes announced on December 5, 2003; and, the Canada Revenue Agency issued taxpayer alerts in November 2005 and October 2006."

The firm did not disclose to the gift program administrators, prospective donors, or existing program participants that its opinion letters "were no longer accurate or reliable," the claim alleges.

It alleges that, "FMC's issuance of its opinion letters was the proximate cause of damages to all class members," and that the firm "owed a duty of care" to those who relied on the accuracy of the opinion letters.

Rochester, Promittre Capital, Promittre Asset, and Banyan Tree have filed a notice of motion for, among other things, a stay of action "pending the final disposition of existing notices of objection and any subsequent appeals respecting taxation reassessments referred to in the statement of claim."

The claim alleges that all class members knew of the opinion letters, and that they were noted in promotional materials.

"In fact, the existence of the opinion letters and opinion from FMC was an express term of the loan arrangements between the gift program participants and Rochester," alleges the claim.

The claim goes on to allege that the law firm "was negligent in the preparation of the opinion letters" and that it "knew or

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The motion further states that the "vast majority" of the Banyan Tree gift program participants are disputing the tax reassessments for 2003 and 2004. If the reassessments are confirmed, the motion states, appeals will be pursued at the Tax Court of Canada.

"Accordingly, the tax appeals, if successful, will render the Robinson action moot," reads the motion.

Scarfone Hawkins lawyer David Thompson, who is acting for the plaintiffs, was unavailable for comment by press time. **LT**