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June 10, 2021

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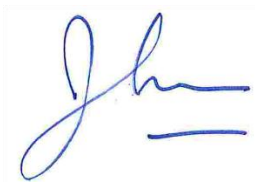
Dear Counsel:

**Re: In the Matter of a Plan of Compromise or Arrangement of GFA World  
Court File No.: CV-20-00643091-00CL**

Please find enclosed the responding factum of the respondents, GFA World and Pat Emerick, which is served upon you pursuant to the *Rules of Civil Procedure*.

Yours truly,

**BENNETT JONES LLP**

A handwritten signature in blue ink, appearing to read 'Jh' with a horizontal line underneath.

Jeffrey S. Leon  
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Enclosure



Bennett Jones

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C.  
1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
GFA WORLD**

**RESPONDENTS' FACTUM  
GFA WORLD and PAT EMERICK**

Motion for Representation Order  
(Returnable June 21-22, 2021)

June 10, 2021

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## **PART I: OVERVIEW**

1. For almost 40 years, the respondent GFA World (**GFA Canada**), a Christian charity, has been raising funds from donors to help alleviate poverty in South Asia. These funds have provided tens of thousands of people, including vulnerable women and children, with clean drinking water, healthcare and basic necessities.

2. In 2017, U.S. lawyer Marc Stanley, one of the plaintiff's lawyers in this proceeding, sued the respondent Gospel for Asia, Inc. (**GFA USA**) and the individual respondents named here (including Father Emerick) in Arkansas on behalf of a class of charitable donors. After settling that action, on a no admission of liability basis, Stanley went to Nova Scotia, where he and local lawyers (assisted by Reverend Bruce Morrison) started essentially the same action against most of the same defendants and GFA Canada, making the same allegations.

3. The core allegation is that the respondents promised donors that their donations would be spent "in the field", but were not. The applicant and proposed representative plaintiff Greg Zentner's supporting affidavits and his counsel's cross-examinations of the respondents' witnesses have uncovered no evidence that meets the "some basis in fact" standard for class certification of this action:

- (a) the evidence confirms that donors provided GFA Canada with unencumbered gifts (not trust funds) with no expectation of any consideration or benefit in return, and thus they could not have suffered a compensable harm;
- (b) there is no evidence that any donor suffered a loss, which is required before a class action can be certified and is an essential element of every cause of action asserted;



- (c) Stanley represented to the U.S. courts that the funds donated to GFA USA were, in fact, being sent to South Asia and put towards charitable purposes, contradicting the core allegations advanced in this proceeding;
- (d) GFA Canada made clear to donors that it may direct their donations to other charitable purposes that GFA Canada considers appropriate;
- (e) in any event, an amount equivalent to the funds donated to GFA Canada was ultimately used in the field in satisfaction of the Canadian donors' preferences—achieved either with the “actual” funds provided by the Canadian donors (which is an artificial concern anyway given money is fungible) or with an equivalent amount of funds held by GFA Canada's field agent in South Asia;
- (f) the alleged misrepresentations were made in church presentations and promotional materials, on GFA Canada's website, and by word of mouth, all by different volunteers and donors (including Morrison, who encouraged his congregation to donate to GFA Canada), meaning that the key issue here will require individual determinations of reliance;
- (g) Zentner, Morrison, and Bryan Wall (the only other donor supporting Zentner) really only want an “investigation” into GFA Canada's finances and corporate governance, but multiple investigations have already occurred—several regulators and two police forces either found no wrongdoing or saw no basis to continue investigating GFA Canada, so a class action would be an unfair and inefficient method for yet another investigation into Zentner's unfounded allegations; and
- (h) even if successful, this class action would “rob Peter to pay Paul”—new donations, which supporters have gifted to GFA Canada to help the poor in South Asia, would be used to

pay class members' claims (even though the majority of donors who testified here do not want their donations back).

4. This class action, despite its lack of merit, threatens the very existence of GFA Canada. As a result, in June 2020, GFA Canada applied for and this court granted it protection under the *Companies' Creditors Arrangement Act*. The court ordered that Zentner's claim and motion for class certification would be determined by this court in the CCAA proceedings (including as against GFA USA and the individual respondents).

5. Zentner's claim discloses no cause of action and is in any event not suitable for a class proceeding—the proposed class suffered no actionable loss, there are no common issues that would meaningfully advance the litigation, the regulatory framework to address the alleged wrongdoing offers a preferable procedure, and Zentner is not a suitable representative because his claim is statute-barred.

6. In the alternative, a CCAA claims process would also be a preferable procedure here: it allows Zentner and others donors to make their claims against GFA Canada (the only proper party here) in a tailored opt-in CCAA claims process that is more cost-effective, efficient and less onerous than a Nova Scotia class action on behalf of proposed class members, most of whom appear to have no desire for this class action to proceed.

## **PART II: FACTS**

### **A. Overview of GFA Canada**

7. GFA Canada is a federally incorporated nonprofit organization and a registered charity with the CRA.<sup>1</sup> GFA Canada was formed in 1984 by a small group of volunteers passionate about

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<sup>1</sup> Affidavit of Pat Emerick sworn February 5, 2021 (**Emerick Affidavit**), page 3, para 6, Respondents' Motion Record (**RMR**), Vol 1, Tab 1, page 3.

missionary and humanitarian work and the Christian faith. Over time, GFA Canada has expanded across Canada and established a sizable volunteer and donor base.

8. GFA Canada's primary charitable purpose is to raise funds in Canada to support humanitarian and Christian missionary initiatives in countries in South Asia. GFA Canada often calls South Asia the "Mission Field" or the "Field".<sup>2</sup>

9. GFA Canada partners with local organizations in the Field to provide charitable and religious services. GFA Canada does not directly provide services in the Field—it works with its Field partners, who execute GFA Canada's charitable projects. GFA Canada's Field partners also have the discretion to re-allocate donor funds towards more pressing and urgent charitable initiatives. Even though this is standard procedure for any charitable organization, GFA Canada expressly advises its Canadian donors that it has this discretion. This discretion is necessary to allow Field partners to respond to changing circumstances on the ground or emergency situations (such as natural disasters).<sup>3</sup>

10. GFA Canada's primary Field partner is currently Believers Eastern Church (**BEC**).<sup>4</sup> BEC is based in India. It operates several charitable trusts there. GFA Canada raises donations domestically and gifts these donations to BEC, or trusts operated by BEC. In turn, BEC and the trusts use GFA Canada's donations to provide charitable services in the Field. BEC and the trusts also solicit donations locally. These local funds are often used towards GFA Canada's charitable commitments until BEC can transfer donations already received from GFA Canada into South Asia. This flexibility is critical because it permits BEC to transfer funds into the countries in which charitable operations take place efficiently—given currency, remittance rates, and regulatory requirements.

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<sup>2</sup> Emerick Affidavit page 4, para 16, RMR, Vol 1, Tab 1, page 4.

<sup>3</sup> Emerick Affidavit, page 5, 13, para 17, 44, RMR, Vol 1, Tab 1, page 5, 13.

<sup>4</sup> Emerick Affidavit, page 5, paras 18-19, RMR, Vol 1, Tab 1, page 5.

11. GFA Canada raises funds for four broad categories of charitable initiatives: (a) community development projects; (b) children and youth education and health initiatives; (c) compassion and disaster relief; and (d) the sponsorship of national workers.<sup>5</sup>

12. GFA Canada's donations fund: adult and youth literacy programs; clean drinking water infrastructure; healthcare training for women; emergency aid after a natural disaster; poverty-alleviation programs; and healthcare for the needy, among other initiatives.

13. The costs of this litigation, even if GFA Canada succeeds, could cripple GFA Canada and irreparably damage the people it serves.

#### **B. GFA Canada and GFA USA are Separate Entities**

14. GFA Canada is affiliated with the respondent GFA USA, a nonprofit corporation and non-denominational mission organization incorporated under Texas law.<sup>6</sup> Dr. K.P. Yohannan and Gisela Punnose founded GFA USA in 1979 to support Christian missionary initiatives and the impoverished in South Asia. Several "Gospel for Asia" organizations have since been established around the world.

15. While GFA Canada and GFA USA share common ecclesiastical ties and charitable purposes, they are legally and operationally distinct entities.<sup>7</sup> Each organization has independent directors, who determine their organization's strategic objectives and goals. No evidence supports the bald accusation by Zentner that there is a global "Gospel for Asia syndicate" controlled by Dr. Yohannan.<sup>8</sup>

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<sup>5</sup> Emerick Affidavit, page 6, para 21, RMR, Vol 1, Tab 1, page 6.

<sup>6</sup> Affidavit of Daniel Punnose sworn September 15, 2020 (**Punnose Affidavit**), pages 3-4, paras 7, 12, RMR, Vol 7, Tab 3, pages 3455-3456.

<sup>7</sup> Emerick Affidavit, pages 3, 7, paras 10-11, 23, RMR, Vol 1, Tab 1, pages 3, 7.

<sup>8</sup> Zentner's Notice of Action and Statement of Claim, Exhibit "R" to the Affidavit of Bruce Morrison sworn November 27, 2020, page 2 para 2, RMR, Tab 4R, page 207.

16. Father Emerick oversees GFA Canada's day-to-day operations. He became GFA Canada's Ministry Director in 2008 and President in 2015. He also became a director of GFA Canada in 2018. The evidence here shows that he discharged his fiduciary duties faithfully and diligently as an officer and director of GFA Canada throughout the proposed class period. There is simply no evidence to sustain any cause of action against him.

### **C. GFA Canada's Fundraising and Outreach Methods**

17. GFA Canada's donor base is extremely diverse. There is no one type of GFA Canada donor.<sup>9</sup> Each donor has unique and individual motives for donating to GFA Canada, which is common in the religious charitable giving sector.<sup>10</sup> Most of GFA Canada's donors learn of the organization through: (a) church presentations; (b) promotional materials sent by mail; (c) the GFA Canada website; and (d) word of mouth. The information and promotional materials shared through this outreach varies significantly. As a result, contrary to Zentner's allegations, there is no evidence that GFA Canada's donors receive a single common message or "representation".

18. For example, GFA Canada's staff and volunteers delivered around 450 presentations at church services and community groups during the proposed class period.<sup>11</sup> There was no common script or guideline for these presentations. It is impossible to know if donors "relied" on church presentations to donate, or other motivating factors (such as their church or community group's endorsement).<sup>12</sup>

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<sup>9</sup> Emerick Affidavit, pages 10, 18, paras 33, 65, RMR, Tab 1, pages 10, 18.

<sup>10</sup> Affidavit of Dr. Russell James (**James Report**), pages 9-10, RMR, Vol 9, Tab 11, pages 4089-4090.

<sup>11</sup> Emerick Affidavit, pages 10-11, paras 35-36, RMR, Vol 1, Tab 1, pages 10-11.

<sup>12</sup> Transcript of the Cross-Examination of Dr. Russell James conducted on May 11, 2021, questions 100-101, page 35, ASMR, Tab 9, page 1320; James Report, pages 14-15, RMR, Volume 9, Tab 11, pages 4094-4095.

19. GFA Canada also used over 200 different types of promotional materials during the class period, comprising 87 brochures, 16 catalogues, and 112 appeal letters.<sup>13</sup> Even if GFA Canada's donors decided to donate based on these materials, there was no common representation among these materials and the proposed class. Even Zentner, Morrison, and Wall each received different information about GFA Canada at different times from different people and sources.

20. GFA Canada also updated its website regularly during the proposed class period.<sup>14</sup> Donors who visited the GFA Canada website at different times would have seen different promotional materials and messaging.

21. Finally, donors who learned about GFA Canada through word of mouth from their friends, family, or community members were told different things.<sup>15</sup> The nature of this type of outreach is highly variable and also outside GFA Canada's purview.

#### **D. Donors' Decision to Donate Influenced by Various Different Factors**

22. Several of GFA Canada's donors (who are part of the proposed class) filed affidavits in support of it and Father Emerick on this motion. All of their evidence is uncontradicted and uncontested. The donors make clear that they: did not donate to GFA Canada as a result of the 100% Statement (defined below); view the donated funds as no longer their own after gifted to GFA Canada; will continue to donate to GFA Canada despite Zentner's allegations; and do not want their donations returned under any circumstances (*i.e.*, Zentner and Wall are the outliers).

23. These donors say the following:

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<sup>13</sup> Emerick Affidavit, page 11, para 37, RMR, Vol 1, Tab 1, page 11.

<sup>14</sup> Emerick Affidavit, page 11, para 38, RMR, Vol 1, Tab 1, page 11.

<sup>15</sup> Emerick Affidavit, page 12, para 40, RMR, Vol 1, Tab 1, page 12.

- (a) “Donating is an act of faith. When I give money to Christian charities, I wholeheartedly believe that the money is not my own, but God’s. If money was applied for charitable purposes other than my selected preference, *or even if money was used for a non-charitable purpose*, I would never expect that my money be returned.”<sup>16</sup>
- (b) “...the 100% language played no role in my decision to donate. I was persuaded to donate after reading Revolution and its description of national missionaries.”<sup>17</sup>
- (c) “I consider it anathema to the spirit of Christ for me to try and control or direct the administration of the money I donate after I give GFA Canada my donations. [...] I believe GFA Canada is a good organization supporting important work in the mission field”.<sup>18</sup>
- (d) “If my specific preference was not fulfilled, I would not want my money refunded. I want the money to go to help people in the mission field. What matters is that what I gave is used to help others”.<sup>19</sup>
- (e) “If I told someone at GFA Canada that I wanted my donation to be used a certain way but one of the partners in the mission field had decided it should be used differently to help others in need, that is fine with me...In my opinion, it is wrong for people who are not in the field to think that they know best how a donation should be used”.<sup>20</sup>

#### **E. GFA Canada Honoured Donor Preferences During the Proposed Class Period**

24. GFA Canada’s promotional materials and website describe different charitable initiatives, such as the Bridge of Hope children’s program and the National Missionary Sponsorship program. Donors who donate through the website or in response to mail promotions can request that GFA Canada allocate their donation to a specific GFA program (the **Donor Preference**).

25. While donors can indicate a preference for their donations, the only assurance GFA Canada ever provided was that donations designated for a charitable initiative in the Field would be sent to the

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<sup>16</sup> Affidavit of Ruth Guy sworn February 5, 2021 (**Guy Affidavit**), pages 7-8, para 27, RMR, Vol 8, Tab 5, pages 3655-3656 (*emphasis added*).

<sup>17</sup> Affidavit of Ed Knorr sworn February 5, 2021 (**Knorr Affidavit**), page 4, para 13, RMR, Vol 8, Tab 6, page 3738.

<sup>18</sup> Affidavit of Herb Hart sworn February 5, 2021 (**Hart Affidavit**), page 6, para 22, RMR, Vol 8, Tab 7, page 3802.

<sup>19</sup> Affidavit of Helen Mensina-Dykema sworn February 5, 2021 (**Mensina-Dykema Affidavit**), pages 2, para 6, 12, RMR, Vol 8, Tab 9, pages 3974.

<sup>20</sup> Affidavit of Helen Pietersen (**Pietersen Affidavit**) sworn Feb 5, 2021, page 5, para 19, RMR, Vol 8, Tab 10, 4017.

Field.<sup>21</sup> GFA Canada's charitable tax receipts issued (including to Zentner and Wall) during the proposed class period stated that GFA Canada may re-allocate donations in the Field to other charitable initiatives. This discretion enables GFA Canada and its Field partners to re-allocate donor funds in the Field where it is most needed and respond promptly to urgent situations.<sup>22</sup>

26. Contrary to Zentner's allegations, the evidence here is that an amount equal to all funds GFA Canada raised for use in the Field were ultimately used in the Field. GFA Canada's forensic accounting expert Andy Harrington confirmed this fact both in his expert's report and during his long cross-examination.<sup>23</sup>

27. Some of GFA Canada's promotional materials and its website between 1996 and 2016 contained statements that 100% of all donations requested for use in the Field would be used for humanitarian and missionary projects in the Field (the **100% Statement**).<sup>24</sup> There is no evidence disputing that the donated funds were used this way, other than Morrison's bald unsubstantiated assertions in areas on which he is clearly unqualified to opine.<sup>25</sup>

28. In 2016, GFA Canada's board of directors approved a new gift acceptance policy (the **Gift Policy**).<sup>26</sup> The Gift Policy states that GFA Canada may use donations it receives however it considers appropriate, including to cover administrative and operational expenses. GFA Canada posted the Gift

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<sup>21</sup> Emerick Affidavit, pages 12-13, paras 42, 44-46, RMR, Vol 1, Tab 1, page 12.

<sup>22</sup> Emerick Affidavit, pages 12-13, paras 42, 44-45, RMR, Vol 1, Tab 1, page 12; Tax Receipt Examples, Exhibit "P" to Emerick Affidavit, Vol 6, pages 2734-274.

<sup>23</sup> Affidavit of Andrew Harrington (**Brattle Report**), page 38-39, paras 101-102, RMR, Vol 9, Tab 12, pages 4174-4175; Transcript of the Cross-Examination of Andrew Harrington conducted on April 27, 2021 (**Harrington Transcript**), questions 266, 356, 413, 416-418, 465, pages 63, 84-85, 100-101, 113, Applicant's Supplemental Motion Record (**ASMR**), Tab 2, pages 227, 248-249, 265, 277.

<sup>24</sup> Emerick Affidavit, page 16, paras 56-57, RMR, Vol 1, Tab 1, page 16.

<sup>25</sup> Transcript of the Cross-Examination of Bruce Morrison conducted on May 5, 2021 (**Morrison Transcript**), questions 31-37, pages 11-12, ASMR, Tab 5, pages 952-953.

<sup>26</sup> Emerick Affidavit, page 17, paras 60-61, RMR, Vol 1, Tab 1, page 17.



Policy on its website and directed donors to the Gift Policy on its charitable tax receipts and promotional materials. After September 29, 2016, GFA Canada no longer used the 100% Statement.<sup>27</sup>

## F. Litigation Commenced Against GFA

29. Zentner commenced this proceeding under the Nova Scotia *Class Proceedings Act* in February 2020 in the Nova Scotia Supreme Court. Zentner has modelled his claim after the *Murphy v Gospel for Asia, Inc.* claim started in the Arkansas District Court (the **U.S. Action**) by Stanley.<sup>28</sup> Stanley and his partner Marc Woodward are two of Zentner's lawyers here (under a temporary practice permit from the Nova Scotia Barristers' Society).

30. GFA Canada sought and was granted CCAA protection because of Zentner's claim. Zentner seeks C\$170 million in damages on behalf of the proposed class. The severity of Zentner's unsubstantiated allegations (which impugn GFA Canada's reputation and integrity) have seriously affected GFA Canada's ability to raise donations and satisfy its charitable pursuits (including now, during the catastrophic COVID-19 surge that has killed over 350,000 people in India alone). Zentner's claim also raised the risk of copycat litigation, which would also affect GFA Canada's ability to pursue its charitable objectives.<sup>29</sup>

31. The CCAA proceeding provides GFA Canada with the flexibility to continue its charitable mission while responding to Zentner's allegations.<sup>30</sup> It also provides existing and potential donors with transparency about GFA Canada's current operations and the management of donors funds. While

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<sup>27</sup> Emerick Affidavit, page 17, paras 60-61, RMR, Vol 1, Tab 1, page 17.

<sup>28</sup> Applicant's certification motion factum (**Applicant's Factum**), page 8, para 30; Punnose Affidavit, pages 1-2, para 4, RMR, Tab 3, pages 3453-3454.

<sup>29</sup> Affidavit of Pat Emerick sworn June 25, 2020 (the **Emerick CCAA Affidavit**), Exhibit "B" to Affidavit of Natasha Kruitwagen sworn February 12, 2021 (**Kruitwagen Affidavit**), pages 4-5, paras 9-10, Applicant's Motion Record, Tab 2B, pages 54-55.

<sup>30</sup> Emerick CCAA Affidavit, Exhibit "B" to Kruitwagen Affidavit, pages 4-5, paras 8, 10, Applicant's Motion Record, Tab 2B, pages 54-55.

GFA Canada maintains that Zentner’s claim is meritless and certification should be denied, the CCAA proceeding can alternatively facilitate a quicker resolution of Zentner’s request for a court-supervised “investigation” and determination of his claim.

**G. Zentner’s Claim Rests on Prior Investigated and Rejected Allegations against GFA Canada**

32. Zentner is the proposed representative plaintiff here. But he relies entirely on Morrison’s evidence, most of which is hearsay or unsubstantiated allegations framed as fact. Morrison is not a neutral party—he has dedicated himself to “investigating” GFA Canada since 2001 (after his daughter’s employment with GFA Canada was terminated); spent hundreds of hours lodging complaints against GFA Canada; and publicly criticizing the organization. Morrison’s allegations (like Zentner’s) are baseless and unfounded. No regulator in Canada has found evidence of wrongdoing by GFA Canada. Both the RCMP and the New Glasgow Police also declined to continue to investigate Morrison’s fraud allegations.<sup>31</sup>

33. The CRA completed a two-year audit of GFA Canada following Morrison’s complaints. Contrary to the assertions in Zentner’s factum, the CRA did not sanction GFA Canada or make any findings about its financial management practices. It issued two minor recommendations about GFA Canada’s recordkeeping practices and annual information return.<sup>32</sup> Neither of these recommendations supported Morrison’s incendiary allegations of fraud, negligence, or financial mismanagement.

34. Besides making complaints to several regulatory bodies, Morrison also published an open letter to the Christian community accusing GFA Canada of fraud and improper financial

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<sup>31</sup> CBC News article dated February 23, 2020, Exhibit “BB” to Emerick Affidavit, page 2946J, RMR, Vol 6, Tab 1BB, page 2932; Morrison’s complaint to the New Glasgow Police Service dated February 11, 2016, Exhibit “CC” to Emerick Affidavit, RMR, Vol 6, Tab 1CC, 2949.

<sup>32</sup> CRA Audit Conclusion Letter to GFA Canada dated March 19, 201 (CRA Audit Letter), Exhibit “DD” to Emerick Affidavit, pages 1-2, RMR, Vol 6, Tab 1DD, pages 2968-2969.

mismanagement in 2015.<sup>33</sup> He sent this letter to over 400 churches across Canada and arranged to have it publicly posted on a blog.

## **H. There Is No Evidence of Fraud or Wrongdoing**

35. None of Zentner's inflammatory allegations of fraud or unjust enrichment are supported by his evidence on this motion. His factum instead repeatedly mischaracterizes the respondents' expert and fact witness evidence in an attempt to support his claims. The actual record reveals not a shred of evidence that any of the respondents engaged in any wrongdoing or that Father Emerick (or the other individual respondents) misdirected donor funds for their own personal gain.

36. Zentner alleges that there is a "significant and credible basis" that (a) GFA Canada did not abide by donor preferences or the 100% Statement; and (b) donations made to GFA Canada were "knowingly misdirected by the defendants for their benefit".<sup>34</sup> But Zentner fails to substantiate this "significant and credible basis" with any evidence. Mr. Harington's expert's report shows, through forensic analysis, that amounts equal to all the funds raised by GFA Canada were received and used in the Field.<sup>35</sup> Zentner also has no evidence to support his bald claim of unjust enrichment.

37. Zentner also repeatedly asserts that BEC's auditor's working papers contained discrepancies or irregularities indicative of fraud. Mr. Harington concluded that this assertion was meritless: "As far as the actual numbers themselves, all of the financial analysis I've done is not affected".<sup>36</sup> Mr. Harington also stated it was not a "reasonable statement" to allege that BEC's auditors would "fudge the numbers".<sup>37</sup> Zentner relies only on Morrison's "investigations" and "research" as evidence of GFA

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<sup>33</sup> Morrison Transcript, questions 215-218, pages 68-69, ASMR, Tab 5, pages 1009-1010.

<sup>34</sup> Applicant's Factum, pages 10-11, para 41.

<sup>35</sup> Brattle Report, pages 38-39, paras 101-102, RMR, Tab 12, pages 4174-4175.

<sup>36</sup> Harington Transcript, questions 413, 418, pages 100, 101 ASMR, Tab 2, pages 264, 265

<sup>37</sup> Harington Transcript, questions 413, 418, pages 100, 101 ASMR, Tab 2, pages 264, 265

Canada's wrongdoing—which is inadmissible and inadequate to meet the evidentiary standard here.<sup>38</sup>

Unlike Mr. Harington, Morrison is not an expert, nor is he qualified to complete a forensic accounting of GFA Canada's transfer of donations to BEC.<sup>39</sup>

38. Zentner also repeatedly alleges that GFA Canada disregarded Canadian charity law, engaged in illegal practices, and that the CRA had “significant concerns about GFA Canada's activities outside Canada”.<sup>40</sup> The only support provided for this allegation is Morrison's affidavit (based on his bald conclusions) and CRA's audit letter. The CRA however did not find or even suggest that GFA Canada engaged in “illegal practices” or fraud and only issued two minor recommendations at the end of its audit.

#### **I. GFA Canada Donors Expected No Return or Benefit in Exchange for their Donations**

39. The proposed class's donations were necessarily gratuitous, given their donative intent.<sup>41</sup>

Donations to charities are unencumbered gifts to the organization to use for charitable purposes. GFA Canada's donors are motivated to donate for many reasons, such as their Christian faith, the desire to help the impoverished, and supporting missionary work in the Field. Unlike a contract or any other consumer or investment transaction, GFA Canada donors did not expect any consideration or tangible “benefit” in return for their donation.<sup>42</sup>

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<sup>38</sup> Morrison Transcript, questions 31-37, pages 11-12, ASMR, Tab 5, pages 952-953.

<sup>39</sup> Zentner blatantly ignores the *Consolidated Practice Direction Concerning the Commercial List*, which limits factums to 25 pages by including several Schedules, including a 19-page Schedule E that is just plain wrong. For example, Zentner's “significant and credible evidence” of wrongdoing, including the allegation that GFA Canada broke charities law is Morrison's hearsay investigations and the 100% Statement. Nothing else.

<sup>40</sup> CRA Audit Letter, Exhibit “DD” to Emerick Affidavit, pages 1-1, RMR, Vol 6, Tab 1DD, pages 2968-2969.

<sup>41</sup> [McNamee v McNamee, 2011 ONCA 533](#), ¶23-24.

<sup>42</sup> Guy Affidavit, page 2, paras 5-6, RMR, Vol 8, Tab 5, page 3650; Knorr Affidavit, pages 1-3, paras 3, 9, RMR, Vol 8, Tab 6, pages 3735-3737; Hart Affidavit, page 1, para 3, RMR, Vol 8, Tab 7, page 3797; Eyer Affidavit, pages 1-2, paras 3-5, RMR, Vol 8, Tab 8, pages 3843-3844; Mensina-Dykema Affidavit, page 2, para 4, RMR, Vol 8, Tab 9, page 3974; Pietersen Affidavit, pages 1-2, para 4, RMR, Vol 8, Tab 10, pages 4013-4014.

40. All of GFA Canada’s donors also received charitable receipts for their donations during the proposed class period. These receipts provide donors with records of their donations and donors can use them to claim charitable tax credits. Both Zentner and Wall admit receiving receipts and claiming the tax credit every year that they donated.<sup>43</sup> The tax receipts provided proposed class members with a potential financial benefit upon donating to GFA Canada, which they may need to return to the government if this court refunds their donations, as Zentner seeks in his claim.

### **PART III: ISSUES, LAW & AUTHORITIES**

41. Under the Nova Scotia [Class Proceedings Act](#), the court shall certify a proceeding as a class proceeding if, in the opinion of the court: (a) the pleadings disclose a cause of action; (b) there is an identifiable class of two or more persons that would be represented by a representative party; (c) the claims of the class members raise a common issue; (d) a class proceeding would be the preferable procedure for the fair and efficient resolution of the dispute; and (e) there is an appropriate representative party.<sup>44</sup>

#### **A. No Reasonable Cause of Action**

42. The [Class Proceedings Act](#) is procedural, not substantive. Pleadings survive judicial review unless it is “plain and obvious” the cause of action will fail.<sup>45</sup> That said, the pleaded facts must support the underlying cause of action.

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<sup>43</sup> Transcript of the Cross-Examination of Greg Zentner conducted on May 6, 2021 (**Zentner Transcript**), questions 26-27, page 10, ASMR, Tab 6, page 1103; Transcript of the Cross-Examination of Bryan Wall conducted on May 6, 2021, questions 91, 103, 116, 157, page 26, 30, 32, 42, ASMR, Tab 7, pages 1211, 1215, 1217, 1227.

<sup>44</sup> [Class Proceedings Act](#), SNS 2007, c 28, s 7(1).

<sup>45</sup> [Organigram Holdings Inc. v Downton](#), 2020 NSCA 38 ¶18-20.

43. Further, bare allegations and conclusory legal statements based on assumptions or speculation are not material facts; they are incapable of proof and therefore they are not assumed to be true for the purposes of a motion to determine whether a viable cause of action has been pleaded.<sup>46</sup>

44. This claim discloses no reasonable cause of action—it is based on a fundamental misconception of a right to recovery of an unencumbered gift and lacks the necessary material facts to support the causes of action alleged.

45. The essence of Zentner’s claim for relief (regardless of the precise cause of action) is that GFA Canada should refund him the donations years earlier (for which he claimed and received a tax credit), allegedly because the donated funds were used for a different charitable purpose than he designated. Neither Zentner nor Wall can show that they have suffered “damages” as a result of the respondents’ conduct. Even if there were some basis in fact for this issue, the alleged “losses” incurred by Zentner and the proposed class members are not actionable as civil causes of action absent a trust, which he has not pleaded.<sup>47</sup>

46. A bequest to a charitable corporation takes effect simply as “a gift to that body beneficially, unless there are circumstances which show that the recipient is to take the gift as a trustee.”<sup>48</sup> Corporations incorporated to carry out charitable objects, like GFA Canada, “generally do not hold property on trust for any of their objects or purposes, but are presumed to hold their assets beneficially.”<sup>49</sup>

47. The donated funds belonged to GFA Canada after being donated. The donors did not attach any express trust conditions to the donation or expect GFA Canada to return their donations if not

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<sup>46</sup> [Whitehouse v BDO Canada LLP, 2021 ONSC 2454](#), ¶19 (Div Ct).

<sup>47</sup> [Christian Brothers of Ireland in Canada \(Re\), 2000 CanLII 5712](#), ¶24 (Ont CA).

<sup>48</sup> [Christian Brothers of Ireland in Canada \(Re\), 2000 CanLII 5712](#), ¶72 (Ont CA).

<sup>49</sup> [Rowland v Vancouver College Ltd., 2000 BCSC 1221](#), ¶100 (BCSC).

used towards their preferred charitable project. With no expectation or entitlement to a return of the funds or any consideration for their donation, the donors cannot have an actionable claim.<sup>50</sup> As a result, no matter what charitable purpose the donated funds were put towards after they became GFA Canada's property, the donors suffered no actionable harm or injury.

48. Without a pleaded injury supported by material facts, Zentner has not advanced and cannot advance a reasonable cause of action for any of his claims. For each of the pleaded causes of action, the law requires a compensable loss as an essential element.<sup>51</sup>

49. Even accepting the material facts pleaded as true, Zentner and the other donors cannot have suffered a loss if they gifted their funds with no expectation of receiving the funds back or anything else in return for their donations. They got exactly what they expected: a donation to a Christian charity doing missionary work in South Asia (and a corresponding tax credit from CRA).

50. Further, Zentner's claims are based on bare allegations and conclusory legal statements:

- (a) *Civil Fraud, Equitable Fraud, and Negligent Misrepresentation.* The claim lacks particulars of the alleged fraud and the specific representations the respondents made to the entire class—to the contrary, it states that donors learned about GFA Canada through various means (*i.e.*, the GFA Canada website, mail, radio, church presentations), thereby conceding that there were a variety of different “representations” about GFA Canada's charitable activities.

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<sup>50</sup> [Bacic v Millennium Educational & Research Charitable Foundation, 2014 ONSC 5875](#), ¶30, 89; [Doukbobor Heritage Retreat Society #1999 v Vancouver Foundation, 2020 BCCA 80](#), ¶53, ¶57.

<sup>51</sup> [Bruno Appliance and Furniture, Inc. v Hryniak, 2014 SCC 8](#), ¶21 (Civil Fraud); [Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd., 2002 SCC 19](#), ¶39 (Equitable Fraud); [Queen v Cognos Inc., \[1993\] 1 SCR 87](#), ¶34 (Negligent Misrepresentation); [Stirrett v Cheema, 2020 ONCA 288](#), ¶65 (Breach of Fiduciary Duty); [Cement LaFarge v. B.C. Lightweight Aggregate, \[1983\] 1 SCR 452](#), ¶31-34 (Civil Conspiracy); and [Kerr v Baranov, 2011 SCC 10](#), ¶41 (Unjust Enrichment).

- (b) *Civil Conspiracy*. The only particulars Zentner pleads in support of conspiracy are that: (a) Dr. Yohannan is the “head” or “leader” of the “syndicate”; (b) the respondents and other GFA entities form a “syndicate”; and (c) the “syndicate” assisted or engaged in illegal acts to obtain class members’ donations. Zentner’s conspiracy claims lack material facts relating to (a) the “what”, “where”, “when”, and “how” of the alleged conspiracy and (b) the respondents acting in *concert* to commit deceit, negligent misrepresentation, or any other unlawful act.
- (c) *Unjust Enrichment*. On top of there being no “deprivation” absent any loss suffered by the proposed class members, donative intent is a juristic reason, so this claim is doomed to fail.<sup>52</sup>

## **B. No Basis in Fact for the Proposed Common Issues**

51. The legal principles relating to the alleged common issues relevant here are:

- the proposed common issue must be a substantial ingredient of each class member’s claim and its resolution must be necessary to the resolution of that claim, and the common issues should not be framed in overly broad terms;
- a common issue cannot depend on individual findings of fact that have to be made with respect to each individual claimant; and
- where questions relating to causation or damages are proposed as common issues, the plaintiff must demonstrate (with supporting evidence) that there is a workable methodology for determining such issues on a class-wide basis.<sup>53</sup>

52. Zentner’s claim fails in establishing some basis in fact for the existence of the core matters underlying the proposed common issues. The evidence here shows that there is no basis in fact that

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<sup>52</sup> [Pacific National Investments Ltd. v Victoria \(City\), 2004 SCC 75, ¶123.](#)

<sup>53</sup> [Canada \(AG\) v MacQueen, 2013 NSCA 143, ¶123.](#)



the common issues related to liability and damages actually exist (which is required as part of the two-part test relating to common issues) or that any issue that would advance the litigation in any meaningful way can be answered in common across the class.<sup>54</sup>

53. Zentner himself seems to recognize the glaring deficiencies in the evidence to support his various claims. He now seeks to re-characterize the many proposed common issues as two broad “core” issues in his factum, effectively abandoning the rest. Even so, these two issues have no evidentiary basis in support. There is no basis in fact for the allegation that the respondents “fraudulently misappropriated” donations made to GFA Canada. Mr. Harrington, the only expert on forensic accounting before the court, concluded the opposite—that all funds designated for use in the Field were ultimately received and used in the Field. The only evidence in the record is that GFA Canada transferred all Canadian donor funds designated for the Field to its Field partner’s bank account for ultimate use in the Field. As for the \$20 million that GFA Canada’s *Field partner* transferred from its Canadian bank account to GFA USA, the evidence shows BEC used an equivalent \$20 million held locally to satisfy the Canadian donors’ preferences.<sup>55</sup> All that Zentner points to in support of his allegation are unsubstantiated statements from Morrison, who has a personal vendetta against GFA Canada.<sup>56</sup>

54. Rather than provide some basis in fact, Zentner tries to argue that this class action should be certified because a claim against a different and separate GFA entity in the U.S. was certified and ultimately settled (with no admission of liability), as if that is somehow determinative or even helpful to this court. But rather than help Zentner’s case, the outcome of the U.S. litigation is simply more

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<sup>54</sup> [Kuiper v Cook \(Canada\) Inc., 2020 ONSC 128 \(Div Ct\)](#), ¶26-27, 29.

<sup>55</sup> Minutes of BEC and GFA India’s Board of Trustees Joint Meeting dated July 4, 2013, Exhibit “I” to Punnose Affidavit, page 65, RMR, Vol 7, Tab 3I, page 3620.

<sup>56</sup> Brattle Report, pages 41-43, paras 106, 108-109, RMR, Vol 9, Tab 12, page 4177-4179; Morrison Transcript, Responses to Undertakings, Tab 5C, ASMR.

evidence refuting Zentner's allegations in this claim. His counsel, Stanley, represented to the U.S. court that the funds donated to GFA USA were in fact being sent to the Field and being used for charitable purposes.<sup>57</sup> In other words, the allegation underpinning that litigation, which Zentner here admits is the basis for this claim, simply does not exist.

55. While Zentner, in his factum, seeks to characterize the optional designations chosen by some donors as “a promise”, there is no factual basis to support that allegation. Zentner relies on the reference to the 100% Statement on the charitable tax receipt received by donors—but conveniently disregards that those same receipts specifically state that donor funds may be directed to other purposes as GFA Canada considers appropriate. The only evidence on this motion as it relates to the so-called “promise” is that GFA Canada expressly indicated that funds may be used towards other charitable purposes in the Field. There is therefore no basis in fact that this issue, at the “centre of the Zentner Claim” (in his words), is grounded in reality.<sup>58</sup>

56. Even if there were some evidence that the issues complained of in the claim exist, there is in any event no basis in fact that the core proposed issues can be determined in common across the class. Zentner's core allegation is grounded in misrepresentation, which requires reliance. But reliance cannot be determined in common across the class. That is especially the case here, where Zentner admits that people donated for various reasons, with various different motivations, relying on various different “representations”, through various different media, over two decades. Many of the alleged misrepresentations came from non-GFA Canada employees. It, remarkably, also includes Morrison, who appealed to his congregants in his own words to donate to GFA Canada.

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<sup>57</sup> U.S. Class Action Settlement Approval Hearing Transcript, Exhibit “G” to the Punnose Affidavit, pages 11-13, lines 15-25, 5-10, 1-6, RMR, Vol 8, Tab 3G, pages 3583-3585.

<sup>58</sup> Applicant's Factum, page 6, para 22; Zentner Transcript, questions 26-27, page 10, ASMR, Tab 6, page 1103.

57. There was no common representation. In that case, the case law is clear that reliance on the alleged misrepresentations, and therefore causation, cannot be inferred.<sup>59</sup>

**C. No Basis in Fact that Class Proceeding is the Preferable Procedure**

58. The party seeking certification of a class action bears the burden of showing some basis in fact for every certification criterion. In the context of the preferability requirement, this requires the representative plaintiff to show: (a) that a class proceeding would be a fair, efficient, and manageable method of advancing the claim, and (b) that it would be preferable to any other reasonably available means of resolving the class members' claims. A respondent can lead evidence "to rebut the inference of some basis in fact raised by the plaintiff's evidence".<sup>60</sup>

59. Having failed to establish some basis in fact for the existence of a compensable harm suffered by the proposed class, a class proceeding cannot be certified.<sup>61</sup> That would contravene the important gatekeeping function of certification and "the need to weed out unmeritorious and de minimis claims".<sup>62</sup> This alone justifies dismissal of Zentner's motion.

60. Nor has Zentner established some basis in fact that a class proceeding would be a fair, efficient, and manageable method of advancing this type of claim, which even Zentner and Wall (who offers to also be a representative plaintiff) effectively call "an investigation". Investigating unsubstantiated allegations (which are refuted by plaintiff counsel's own representations to the U.S. court about the actual work being done in the Field with donated funds) through a class action is not preferable to other available means of addressing the issues raised.

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<sup>59</sup> [Singer v Schering-Plough Canada Inc.](#), 2010 ONSC 42, ¶164.

<sup>60</sup> [Organigram Holdings Inc. v Downton](#), 2020 NSCA 38, ¶125.

<sup>61</sup> [Maginnis v FCA Canada Inc.](#), 2021 ONSC 3897 (Div Ct), ¶49-50.

<sup>62</sup> [Setoguchi v Uber](#), 2021, ABQB 18, ¶123.

61. Zentner asserts in his factum that this “case raises two fundamental questions”. But neither of these “fundamental questions” warrant a class proceeding. By their nature they are “questions” that the Ontario Public Guardian and Trustee or the CRA can (and are expected to) investigate and address as part of their regulatory functions.<sup>63</sup>

62. Morrison knows about these alternative procedures for addressing Zentner’s allegations against GFA Canada *because he already tried to exercise them*. Before starting this action, Morrison complained to the Public Guardian and CRA, requesting that they investigate GFA Canada. These governmental bodies have the authority and mandate to investigate and ultimately remedy wrongdoing by charitable organizations in Ontario and Canada.<sup>64</sup> The CRA’s investigation revealed nothing to substantiate the baseless allegations advanced in this action, as with Morrison’s complaints to the RCMP, New Glasgow Police, and the Chartered Professional Accountants of Ontario, all of which found no wrongdoing against GFA Canada (or Father Emerick). Zentner’s last resort of a class proceeding is not preferable to those other procedures just because they refused to support his allegations.<sup>65</sup>

63. It is not preferable to now have a class proceeding based on the same unsubstantiated allegations rejected by the aforementioned governmental authorities, which will require individual analysis of what thousands of donors were “told” by GFA Canada, what those donors relied on to make donations, and towards which charitable project their specific donations were used (if that is even possible). Compounded with the individualized nature of determining whether individual class members relied on the alleged misrepresentations and assessing whether their specific donations were

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<sup>63</sup> [Charities Accounting Act, RSO 1990, c C10](#), ss 4, 6.

<sup>64</sup> [Charities Accounting Act, RSO 1990, c C10](#), ss 4, 6; [Faas v CAMH](#), 2018 ONSC 3386, ¶58-61.

<sup>65</sup> [Poulin v Ford Motor Co. of Canada Ltd](#), 2008 CanLii 54299 (Ont Div Ct), ¶51, 54-55; [Singer v Schering-Plough Canada Inc.](#), 2010 ONSC 42, ¶207.

used towards their designated preference in the Field is the problematic nature of this claim and the damages sought by Zentner and his proposed class.

64. It is clear on the evidence and by plaintiff counsel's representations to the U.S. court that: (a) donations were ultimately transferred to BEC (the same agent used by GFA Canada) and put towards the charitable purposes in South Asia, and (b) the individual respondents do not have anywhere close to the personal funds available to satisfy the judgments sought by Zentner. GFA Canada's funds come solely from donations. So even if Zentner's claim had merit, any damages to the proposed class of donors must come from later donors to GFA Canada, as there could be no other source of funds.

65. Zentner is asking this court to order GFA Canada to give its recent donations to prior donors and to Class Counsel (to pay their fee) rather than use them for South Asia's poor. This simply highlights the absurdity of pursuing this claim or investigation into these allegations against a CRA-registered charity through a class action.

66. Zentner argues that this action should be certified because "courts have repeatedly held that class actions against charities alleging fraud and misstatement should be certified".<sup>66</sup> Leaving aside that this is an improper basis to grant certification as each case must be decided on the record before the motion judge,<sup>67</sup> Zentner relies on two (nearly identical) cases that could not be more different from this one. *Cannon* and *Robinson* both related to sham investment opportunities that failed because the CRA rejected the proposed class members' attempts to claim charitable tax credits for funds provided to a "gift program". The CRA found that the donors in those cases "lacked 'donative intent'", as "there was no element of impoverishment in the so-called charitable donation, because the donor

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<sup>66</sup> Applicant's Factum at page 17, para 48.

<sup>67</sup> [Maginnis v FCA Canada Inc., 2021 ONSC 3897 \(Div Ct\)](#), ¶51.

expected to be enriched by receiving a tax credit well in excess of his or her donation. The “donation” could not be characterized as a gift.”<sup>68</sup>

67. The only cases against a “charity” that Zentner relies on could therefore be certified because the proposed class members in those actions did not actually “donate” any funds. Those donors admittedly had no donative intent— they gave money as part of an investment scheme, expecting a financial return on their “gift”. Whereas here, even Zentner and Wall assert they had donative intent in providing their funds to GFA Canada. The CRA also accepted their claimed tax credits, since GFA Canada is a legitimate charity. Zentner therefore points to no comparable case against a charity that has ever been certified as a class action.

68. While GFA Canada maintains that a class proceeding is not preferable to other reasonably available means of addressing the allegations made by Zentner, there is another alternative procedure to address the proposed class members’ claims that is preferable to a class action: a claims process through the CCAA proceeding. The evidence confirms that a majority of donors to GFA Canada do not want their donations returned to them. They want nothing to do with this crusade against GFA Canada, preferring that GFA Canada continue the good work it has been doing.

69. On the record here, Zentner and Wall are the only donors who want these unsubstantiated allegations pursued through a civil claim. If necessary, their claims can be litigated through a court-supervised claims process. A tailored CCAA claims process, which by its nature is flexible, judicially supervised, and can allow for a “bespoke” inquiry into the claims of those limited donors who want to be involved, provides a more cost-effective, less onerous and streamlined means of resolving Zentner’s claims.<sup>69</sup>

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<sup>68</sup> [Cannon v. Funds for Canada Foundation, 2012 ONSC 399](#), ¶1,5; [Robinson v. Rochester et al., 2010 ONSC 463](#), ¶1.

<sup>69</sup> [Century Services Inc. v Canada, 2010 SCC 60](#), ¶21; [Laurentian University of Sudbury, 2021 ONSC 3885](#), ¶ 41.

**D. Zentner Cannot be Representative Plaintiff Because His Claim is Statute-Barred**

70. Unless otherwise provided in the Nova Scotia *Limitations of Actions Act*, a claim may not be brought after the earlier of: (a) two years from the day that the claim was discovered; or (b) fifteen years from the day that the act or omission underlying the claim occurred.<sup>70</sup>

71. A claim is discovered on the day that a plaintiff first knew or ought reasonably to have known that: (a) an injury, loss, or damage had occurred; (b) an injury, loss, or damage was caused by or contributed to by an act or omission; (c) the defendant caused the act or omission; and (d) the injury, loss, or damage was sufficiently serious to warrant commencing a claim.<sup>71</sup>

72. Zentner and Wall discovered, or could have reasonably discovered, all of the material facts underlying the allegations in the statement of claim by or before February 24, 2018:

- (a) Morrison shared his allegations against GFA Canada with his congregation, including Zentner, in 2015;
- (b) Morrison's allegations were communicated to hundreds of churches across Canada and published on the internet in 2015; and
- (c) Zentner and Wall each received charitable tax receipts from GFA Canada in 2007, which stated that GFA Canada could use designated gifts "where needed most";
- (d) Zentner received similar receipts until he stopped donating in 2015; and
- (e) Wall received similar receipts until 2016, then he received receipts directing him to the Gift Acceptance Policy.

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<sup>70</sup> [Limitations of Actions Act, SNS 2014, c 35](#), s 8(1).

<sup>71</sup> [Limitations of Actions Act, SNS 2014, c 35](#), s 8(2).

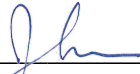
**PART IV: ORDER REQUESTED**

73. Zentner's claim fails to disclose a reasonable cause of action, as all of the claims are doomed to fail. It is clear from the pleading that Zentner and his proposed class could have suffered no harm compensable at law. Zentner has also failed to establish some basis in fact that the issues complained of, which form the basis for his overly-broad common issues, actually exist.

74. Zentner, Morrison, and Wall are clear about their objective: they want this court to investigate GFA Canada, GFA USA, and their officers and directors to discover whether GFA Canada misappropriated their donations. Taken at its highest, a class proceeding is not the appropriate use of judicial resources to accomplish that goal. Class proceedings are vehicles for access to justice, behaviour modification, and judicial economy—not investigations into baseless allegations. None of the objectives of class proceedings are met here.

75. GFA Canada and Father Emerick respectfully ask this court to: (a) dismiss Zentner's motion for an order that he be appointed as a representative of the class and a declaration that the criteria for certification under the *CPA* are satisfied; (b) declare that Zentner's claim is statute-barred by the applicable limitations period; (c) declare that the respondents satisfy the test for summary judgment dismissal of the claim under the *Nova Scotia Civil Procedure Rules*; and (d) grant the respondents their costs of these proceeding.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 10<sup>th</sup> day of June, 2021.

  
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**BENNETT JONES LLP**  
Lawyers for the respondents  
GFA World and Pat Emerick



**SCHEDULE "A"**

**LIST OF AUTHORITIES**

1. *McNamee v McNamee*, 2011 ONCA 533
2. *Organigram Holdings Inc. v Downton*, 2020 NSCA 38
3. *Whitehouse v BDO Canada LLP*, 2021 ONSC 2454 (Div Ct)
4. *Christian Brothers of Ireland in Canada (Re)*, 2000 CanLII 5712 (Ont CA)
5. *Rowland v Vancouver College Ltd.*, 2000 BCSC 1221
6. *Bacic v Millennium Educational & Research Charitable Foundation*, 2014 ONSC 5875
7. *Doukhobor Heritage Retreat Society #1999 v Vancouver Foundation*, 2020 BCCA 80
8. *Bruno Appliance and Furniture, Inc. v Hryniak*, 2014 SCC 8
9. *Performance Industries Ltd. v Sylvan Lake Golf & Tennis Club Ltd.*, 2002 SCC 19
10. *Queen v Cognos Inc.*, [1993] 1 SCR 87
11. *Stirrett v Cheema*, 2020 ONCA 288
12. *Cement LaFarge v B.C. Lightweight Aggregate*, [1983] 1 SCR 452
13. *Kerr v Baranow*, 2011 SCC 10
14. *Pacific National Investments Ltd. v Victoria (City)*, 2004 SCC 75
15. *Canada (AG) v MacQueen*, 2013 NSCA 143
16. *Kuiper v Cook (Canada) Inc.*, 2020 ONSC 128 (Div Ct)
17. *Singer v Schering-Plough Canada Inc.*, 2010 ONSC 42
18. *Maginnis v FCA Canada Inc.*, 2021 ONSC 3897 (Div Ct)
19. *Setoguchi v Uber B.V.*, 2021 ABQB 18
20. *Faas v CAMH*, 2018 ONSC 3386
21. *Poulin v Ford Motor Co. of Canada Ltd*, 2008 CarswellOnt 6184 (Div Ct)
22. *Cannon v Funds for Canada Foundation*, 2012 ONSC 399
23. *Robinson v Rochester et al.*, 2010 ONSC 463

24. *Century Services Inc. v Canada*, 2010 SCC 60
25. *Laurentian University of Sudbury*, 2021 ONSC 3885

## SCHEDULE "B"

### TEXT OF RELEVANT LEGISLATIVE PROVISIONS

*Class Proceedings Act*, [SNS 2007, c 28](#).

#### Certification by the court

**7 (1)** The court shall certify a proceeding as a class proceeding on an application under [Section 4, 5 or 6](#) if, in the opinion of the court,

- (a) the pleadings disclose or the notice of application discloses a cause of action;
- (b) there is an identifiable class of two or more persons that would be represented by a representative party;
- (c) the claims of the class members raise a common issue, whether or not the common issue predominates over issues affecting only individual members;
- (d) a class proceeding would be the preferable procedure for the fair and efficient resolution of the dispute; and
- (e) there is a representative party who
  - (i) would fairly and adequately represent the interests of the class,
  - (ii) has produced a plan for the class proceeding that sets out a workable method of advancing the class proceeding on behalf of the class and of notifying class members of the class proceeding, and
  - (iii) does not have, with respect to the common issues, an interest that is in conflict with the interests of other class members.

*Limitations of Actions Act*, [SNS 2014, c 35](#).

#### General rules

**8 (1)** Unless otherwise provided in this Act, a claim may not be brought after the earlier of

- (a) two years from the day on which the claim is discovered; and
- (b) fifteen years from the day on which the act or omission on which the claim is based occurred.

**(2)** A claim is discovered on the day on which the claimant first knew or ought reasonably to have known

- (a) that the injury, loss or damage had occurred;
- (b) that the injury, loss or damage was caused by or contributed to by an act or omission;
- (c) that the act or omission was that of the defendant; and
- (d) that the injury, loss or damage is sufficiently serious to warrant a proceeding.

*Charities Accounting Act, [RSO 1990, c C10](#)*

**Application to court where executor or trustee in default**

**4** If any such executor or trustee,

- (a) refuses or neglects to comply with section 1, 2 or 3, or with any of the regulations made under this Act;
- (b) is found to have misapplied or misappropriated any property or fund coming into the executor's or trustee's hands;
- (c) has made any improper or unauthorized investment of any money forming part of the proceeds of any such property or fund; or
- (d) is not applying any property, fund or money in the manner directed by the will or instrument,

a judge of the Superior Court of Justice upon the application of the Public Guardian and Trustee, may make an order,

- (e) directing the executor or trustee to do forthwith or within the time stated in the order anything that the executor or trustee has refused or neglected to do in compliance with section 1, 2 or 3, or with the regulations made under this Act;
- (f) requiring the executor or trustee to pay into court any funds in the executor's or trustee's hands and to assign and transfer to the Accountant of the Superior Court of Justice, or to a new trustee appointed under clause (g), any property or securities in the hands or under the control of the executor or trustee;
- (g) removing such executor or trustee and appointing some other person to act in the executor's or trustee's stead;
- (h) directing the issue of an attachment against the executor or trustee to the amount of any property or funds as to which the executor or trustee is in default;
- (i) fixing the costs of the application and directing how and by whom they shall be payable;

(j) giving such directions as to the future investment, disposition and application of any such property, funds or money as the judge considers just and best calculated to carry out the intentions of the testator or donor;

(k) imposing a penalty by way of fine or imprisonment not exceeding twelve months upon the executor or trustee for any such default or misconduct or for disobedience to any order made under this section;

(l) appointing an executor or trustee in place of an executor or trustee who has died, or has ceased to act, or has been removed, or has gone out of Ontario, even if the will or other instrument creating the trust confers the power to make such an appointment upon another executor or trustee or upon any other person.

### **Collection of funds from the public, right of complaint**

**6 (1)** Any person may complain as to the manner in which a person or organization has solicited or procured funds by way of contribution or gift from the public for any purpose, or as to the manner in which any such funds have been dealt with or disposed of. R.S.O. 1990, c. C.10, s. 6 (1).

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GFA WORLD

Court File No. CV-20-00643091-00CL

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

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