

## PRESS RELEASE

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### COURT CERTIFIES CLASS ACTION LAWSUIT OVER BANYAN TREE LEVERAGED CHARITABLE DONATION PROGRAM

The Ontario Superior Court of Justice has certified a class action lawsuit against Rochester Financial Limited, Promittere Capital Group Inc., Promittere Asset Management Ltd., Banyan Tree Foundation and national law firm Fraser Milner Casgrain <sup>LLP</sup>, with respect to a leveraged charitable donation program.

The plaintiffs, Kathryn and Rick Robinson of Oakville, Ontario, commenced the action under the *Class Proceedings Act*, 1992, on behalf of a class consisting of all persons who participated in the Banyan Tree Gift Program for the taxation years 2003 – 2007.

This ruling may represent the first certification of a class action relating to this type of charitable donation program in Canada and also the first against the law firm that provided the tax opinions said to have been necessary and instrumental in the marketing of the program.

2,825 individuals participated in the Banyan Tree Foundation Gift Program for the taxation years 2003 through 2007.

The lawsuit claims damages against the promoters of the program and the law firm as a result of the disallowance by Canada Revenue Agency of the tax benefits that the plaintiffs say they were to have received through their participation.

The court found that the class proceeding might achieve “behaviour modification by holding corporations and law firms accountable for the promotion of allegedly sham investments and...facilitates access to justice for litigants who would not bring individual claims”.

David Thompson and Matthew G. Moloci of Scarfone Hawkins <sup>LLP</sup>, the lawyers handling the case said, “We are extremely pleased with the decision of Justice Lax. We hope that this decision will assist in raising public awareness of the risks associated with participating in certain tax shelter donation arrangements, including leveraged donation programs”.

The lawsuit can now move forward to a trial of common issues as identified by the court.

Scarfone Hawkins <sup>LLP</sup> has significant experience handling complex class action claims on behalf of plaintiffs. It acted as lead counsel in successful settlement of claims against London Life Insurance Company and Canada Life Assurance Company regarding “vanishing premium” life insurance policies; against Bell Canada for alleged overbilling;

against Hamilton Health Sciences Corporation for performance of improper fertility surgery on approximately 200 women; against The Cash Store for charging alleged criminal interest rates on payday loans; against Royal Botanical Gardens for food poisoning and against Northstar Aerospace, Inc. and Northstar Aerospace (Canada) Inc. for contamination of a residential neighbourhood in Cambridge.

More information is available on the Scarfone Hawkins <sup>LLP</sup> class action website at [www.classactionlaw.ca](http://www.classactionlaw.ca).

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