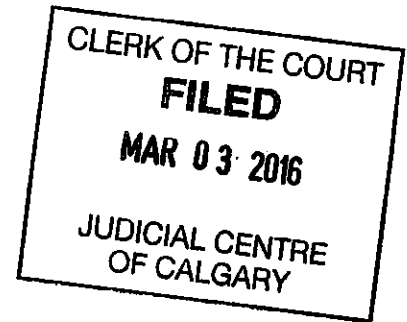


COURT FILE NUMBER 1501 – 00955  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
IN BANKRUPTCY AND INSOLVENCY  
JUDICIAL CENTER CALGARY

Clerk's Stamp

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

APPLICANTS LUTHERAN CHURCH – CANADA, THE  
ALBERTA-BRITISH COLUMBIA  
DISTRICT, ENCHARIS COMMUNITY  
HOUSING AND SERVICES, ENCHARIS  
MANAGEMENT AND SUPPORT  
SERVICES, AND LUTHERAN  
CHURCH-CANADA, THE ALBERTA-  
BRITISH COLUMBIA DISTRICT  
INVESTMENTS LTD.



DOCUMENT **AFFIDAVIT OF MARILYN HUBER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
Allan Garber Professional Corporation  
Barrister and Solicitor  
Suite 108, 17707 105 Avenue  
Edmonton, AB T5S 1T1  
Attn: Allan A. Garber  
Tel: (587) 400-9310  
Fax: (587) 400-9313  
File No.: 156-2015AG

**AFFIDAVIT OF Marilyn Huber**

Sworn on February 24, 2016.

I, Marilyn Huber, of Edmonton, Alberta

SWEAR AND SAY THAT:

1. I am one of the Representative Plaintiffs in a class proceeding commenced in Court of Queen's Bench of Alberta, Judicial District of Edmonton, Action Number 1603 – 03142. A copy of the Statement of Claim is attached as Exhibit "A" to this my Affidavit.

2. I was baptized and confirmed a member of Faith Lutheran Church in Grande Prairie, Alberta. I have been a member of Good Shepherd Lutheran Church in Valleyview, Alberta since approximately 1985.
3. Through my membership in Faith Lutheran Church and Good Shepherd Lutheran Church, I was introduced to the Church Extension and DIL programs. I decided to deposit my savings into the Church Extension Fund, as did my parents and, from time to time, my siblings. I also deposited money in the DIL Trust.
4. I was encouraged in church bulletins and Lutheran Church newsletters to invest money in the CEF and DIL trusts. Each congregation had a member who was a CEF representative who encouraged us to make deposits. Saving money was a good Christian thing to do. Saving money through the Church, and at the same time helping the Church to grow, was even better.
5. I felt my money was completely safe. The purpose of the CEF was to loan money to congregations to build or renovate churches. It was my belief that if one congregation got into trouble, the other congregations would step in and help them with the loan. Communications about CEF and DIL stated that not one penny had ever been lost.
6. Until this financial problem developed, I never knew there was a distinction between the District and the Lutheran Church of Canada. In my mind they were one and the same. If people asked me where my deposits were, I would say "Lutheran Church Canada."
7. By letter dated December 1, 2014, I received advice from the ABC District that my CEF deposit was maturing on January 29, 2015. I was advised that absent instructions to the contrary, my investment would be renewed on January 29, 2015 for a 60 month term. I was given no warning that the CEF had suffered losses on its mortgages, loans and other investments, or that my deposits were at risk. A copy of the December 1, 2014 letter is attached as Exhibit "B".
8. As of December 31, 2014, the balance in my CEF account with interest was \$14,073.65.
9. As of December 31, 2014, the balance in my Registered Retirement Savings Plan (RRSP) balance with DIL was \$72,179.36.
10. By letter dated January 5, 2015, the ABC District advised me that it was "facing some hardships" because "a number of congregations and other ministries have been unable to pay their mortgages ..." I was further advised that a moratorium was being placed on withdrawals from and deposits to the Church Extension Fund. A copy of the January 5, 2015 is attached as Exhibit "C".
11. By letter dated January 7, 2015, DIL advised me that the CEF fund was "facing some hardships" but "Currently all of District Investments Loans are in good standing and

payments are being received on time from our investment projects.” We were told there would be a meeting for DIL investors, but that did not happen. A copy of the January 7, 2015 letter is attached as Exhibit “D”.

12. I attended a meeting for CEF depositors on January 15, 2015 at St. Matthew Lutheran Church in Stony Plain. The meeting was in the sanctuary. The meeting started with prayer. Then Pastor Mark Ruf and Jim Kentel gave a short presentation explaining that the CEF was in trouble, that congregations were not paying their mortgages, and that some large estates had recently settled which required the payout of money. We were also told that Prince of Peace was in financial difficulty. The name made me think of a church. And then we heard about the Harbour and the Manor. I had not heard about Prince of Peace, the Harbour and Manor before. I had no idea what they were. I did not know that CEF had loaned money to a seniors living facility named Prince of Peace.
13. Two options were discussed. One was to liquidate the assets, which would take about two years, and the return would likely be 50 – 60 cents on the dollar. The other was to re-structure which would take a much longer time period, but there was a greater potential that everyone would be returned their “full investment plus interest.”
14. At this meeting, we were told:
  - a. not to tell anyone about the financial problems, because then the assets would have to be sold at fire sale prices.
  - b. the Prince of Peace had hired new management, they were now profitable, and there were ways to increase their profitability in the future, such as bringing in municipal water and sewer. They also said there was land available for more development.
  - c. the DIL accounts were in good standing, and the DIL depositors had no risk.
15. Following the presentation there were opportunities for people to ask questions. It was clear to me that people were very uncomfortable asking probing questions because we were in a sanctuary, which is a place of worship. It is not a place where we would ask our church leaders difficult questions.
16. One of the first people to ask questions was an elderly gentleman (in his eighties). He said he was a CEF Rep in his church and that he suspected about a year ago that there were financial problems with the CEF. He raised his concerns with the District office, and was assured that there were no problems. At the meeting, he said he had believed the assurances but now knew that he had been lied to. As a result, he felt that he had betrayed the trust of his fellow congregants by encouraging them to deposit their money in CEF.
17. Other questions were asked, such as “How much money does it cost to operate the District Office?” “Is there a conflict of interest if the board members for ABC District

are also board members for Encharis” and “Who has been withdrawing their money?” The concern was that people “in the know” had been withdrawing their deposits. Most of the questions were not answered. Ruf and Kentel said “I don’t know” to just about every question.

18. The tone of the meeting was very uncomfortable for some. One man said questions like this were “un-christian” and that we should remember where we were and behave accordingly.
19. The re-structuring option was presented as the option we should prefer.
20. We were asked to vote on a card that was handed out at the meeting. A copy of the card is attached as Exhibit “E”. Many people expressed a concern that they did not have enough information to vote.
21. We were told that they would read the cards, there would be another meeting in a month or so where they would share what the vote was, and what the path forward was going to be. We were also told there would be more information including financial statements to review at the next meeting. That meeting never happened.
22. We were given a phone number to call if we had questions. The phone number did not work. It was a dead number. Then I phoned the office to inquire about my DIL account. I left a message for Candice Rivet to call me back. No one called back. My emails were not answered. They hid from the depositors.
23. They set up a place for people to ask questions on their website. Questions were asked, but the difficult questions were not answered.
24. By letter dated January 26, 2015, I was advised that on January 23, 2015, the District had obtained an Order under the CCAA proceedings allowing it to restructure its affairs. A copy of this letter is attached as Exhibit “F”.
25. I was completely surprised by this development. The January 15 meeting was intentionally deceptive. There was no mention at that meeting of anyone seeking CCAA protection. We were led to believe that the solutions would come from within the Church.
26. By letter dated February 27, 2015, I was told by the District that as of January 23, 2015, my \$72,179.36 RRSP deposit had an “Estimated Write Down Balance” of \$54,882.20 – a loss of some 24%. A copy of this letter is attached as Exhibit “G”.
27. I do not believe that the people who have been in charge of the CCAA proceedings can be trusted, including Deloitte. I feel that I have been lied to and intentionally deceived. Nothing was ever said about the potential liability of lawyers or anyone else. Disturbing facts that have since come to light - such as the write-down of loans - were not discussed at the meeting or since. The District knew it was insolvent, and yet

they kept encouraging deposits.

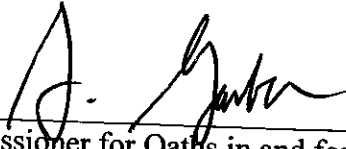
28. I felt betrayed by the correspondence from the District and the Lutheran Church of Canada. There were appeals for us to pray for the Church leaders, but there was no expression of concern for the depositors, most of whom are elderly. There was no recognition of the depositors' needs. They were invisible. There was never a request to pray for the depositors or recognition of what they were going through.
29. Many of the depositors are embarrassed and ashamed about what has happened to them. They don't tell anyone, even their families, that they have lost so much money.
30. I am opposed to the Sanction Order for the following reasons:
  - a. By email dated December 15, 2015, I was advised by Mr. Nishimura that the DIL Plan was drafted by DIL and their counsel (Mr. Taman and Bishop & McKenzie). Mr. Taman has not come clean about his own prior involvement and culpability in the matters giving rise to the events leading up to the CCAA proceedings.
  - b. I have no confidence that all proper parties – including Mr. Taman and the Lutheran Church Canada – will be sued in the Representative Action contemplated by the DIL Plan. There is an “old boys club” which protects power and privilege, and the old way of doing things.
  - c. The DIL Plan would limit depositors' ability to pursue remedies against defendants who have not sought CCAA protection.
  - d. The Plan is incomprehensible to most depositors.
  - e. If the DIL Plan is approved, I will be forced to decide whether I wish to participate in the proposed Representative Action without knowing who is going to be sued, why they are being sued, and what my financial obligations will be.
  - f. The DIL and CEF Creditors' Committees were deliberately set up so that the committee members would not communicate directly with the depositors. The inability or lack of desire to communicate is what got us into this mess in the first place.
  - g. The Creditors' Committees are not accountable to any of the depositors. I do not know whether their loyalties are to the Church/District or to the depositors. My loyalties are to the depositors first, and then to the Church leadership, in this situation.
  - h. In my correspondence with Mr. Nishimura, I asked for assurance that participation in the proposed Representative Action would give depositors full recovery. I did not receive that assurance.

i. Scriptures have been cited by Mr. Taman which support a "reluctance" on the part of some depositors to sue their Church. However, the scriptures which speak to the need for making things right are never quoted. If those scriptures were followed, there would be no need for lawsuits.

31. I make this Affidavit in opposition to the application of the Applicants for judicial sanction of the Amended Amended Plan of Arrangement and Compromise dated January 11, 2016, and in opposition to the application for a Stay of the Class Proceedings.

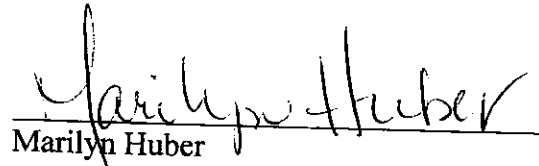
SWORN BEFORE ME at

Edmonton, Alberta, this 24 day of  
February,  
2016.



(Commissioner for Oaths in and for  
the Province of Alberta)

Allan A. Garber  
Barrister and Solicitor



Marilyn Huber

Form 10  
[Rule 3.25]

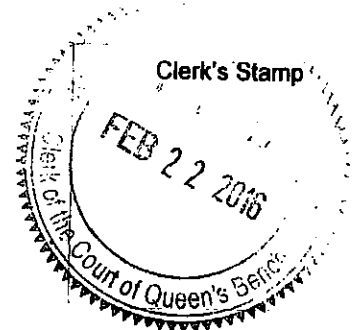
COURT FILE NUMBER 1603-03142

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFFS SHARON SHERMAN and MARILYN HUBER

DEFENDANTS LUTHERAN CHURCH - CANADA; LUTHERAN CHURCH - CANADA FINANCIAL MINISTRIES; FRANCIS TAMAN; BISHOP & MCKENZIE LLP; JOHN WILLIAMS; ROLAND CHOWNE; PROWSE CHOWNE LLP; CONCENTRA TRUST; and SHEPHERD'S VILLAGE MINISTRIES LTD.



DOCUMENT STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Allan Garber Professional Corporation Barrister and Solicitor Suite 108, 17707 105 Ave NW Edmonton, Alberta T5S 1T1 Tel: (587) 400-9310 Fax: (587) 400-9313 Lawyer: Allan A. Garber

**BROUGHT UNDER THE CLASS PROCEEDINGS ACT**

**NOTICE TO DEFENDANTS**

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

**Note: State below only facts and not evidence (Rule 13.6)**

This is Exhibit "A" referred to in the Affidavit of Marilyn Huber  
Signed before me this 24 day of February A.D., 2016  
A. Notary Public, A Commissioner for Oaths in and for the Province of Alberta

**Statement of facts relied on:**

1. The Plaintiff, Sharon Sherman, is approaching retirement and resides in the City of Edmonton, in the Province of Alberta.
2. The Plaintiff, Marilyn Huber, resides in the City of Edmonton, in the Province of Alberta.
3. The Defendant, the Lutheran Church — Canada (the "LCC"), is a religious body incorporated under the *Act to Incorporate Lutheran Church-Canada 7-8 Eliz. II Chap. 68 S.C. 1959* with a registered office located at 3074 Portage Avenue, in the City of Winnipeg, in the Province of Manitoba.
4. The Defendant, the Lutheran Church – Canada Financial Ministries (the "LCCFM"), is a non-profit corporation registered under the laws of Canada and has a registered and records office located at 3074 Portage Avenue, in the City of Winnipeg, in the Province of Manitoba.
5. The Defendant Francis Taman ("Taman") is a Barrister and Solicitor and a partner in the law firm of Bishop & McKenzie LLP, which is located at 1700 – 530 8<sup>th</sup> Avenue, in the City of Calgary, in the Province of Alberta.
6. The Defendant Bishop & McKenzie LLP ("Bishop & McKenzie") is a partnership of barristers and solicitors located at 1700 – 530 8<sup>th</sup> Avenue, in the City of Calgary, in the Province of Alberta.
7. The Defendant Prowse Chowne LLP ("Prowse Chowne") is a partnership of barristers and solicitors located at 1300-10020 101A Avenue NW, in the City of Edmonton, in the Province of Alberta.
8. The Defendant John Williams ("Williams") is a Barrister and Solicitor and a partner in the law firm of Prowse Chowne, which is located at 1300-10020 101A Avenue NW, in the City of Edmonton, in the Province of Alberta.
9. The Defendant Ronald Chowne ("Chowne") is a Barrister and Solicitor and a partner in the law firm of Prowse Chowne, which is located at 1300-10020 101A Avenue NW, in the City of Edmonton, in the Province of Alberta.
10. The Defendant Concentra Trust ("Concentra"), is an extra-provincial company incorporated under the laws of Canada, with a head office in the City of Saskatoon, in the Province of Saskatchewan, and a registered attorney in Alberta located at 403A – 25 Avenue NE, in the City of Calgary, in the Province of Alberta.
11. The Defendant Shepherd's Village Ministries Ltd. is a company registered under the laws of Alberta with a registered office located at 1700 – 530 8<sup>th</sup> Avenue SW, in the City of



Calgary, in the Province of Alberta.

**A. *The Lutheran Church – Canada [“LCC”]***

12. LCC is a statutorily incorporated national religious body divided into three separately incorporated Districts: the Alberta and British Columbia District, the Central District and the East District.
13. LCC has developed and implemented a program whereby congregations are encouraged to purchase lands upon which to construct churches and schools wherein to carry out the ministry of the Lutheran faith, using funds borrowed from their respective Districts. The source of those funds is deposits made with the Districts by the congregations within those Districts, and by individual members of those congregations, as well as by non-members. LCC refers to this program as “Church Planting” and/or “Church Extension” (the “LCC Church Extension Program”).

**B. *Lutheran Church – Canada Financial Ministries (“LCCFM”)***

14. LCC has delegated the administration of the LCC Church Extension Program to LCCFM.
15. LCCFM was formed to assist LCC districts and member congregations to finance the acquisition of sites and the erection of facilities to aid expansion for programs of ministry, witness, outreach and service or for any other programs of the LCC and/or LCCFM through the LCC Church Extension Program and other activities.
16. The LCCFM is responsible for establishing policies and programs for maintaining, supervising and enlarging the LCC Church Extension Program. It is responsible for administering those policies and programs on a sound financial basis.
17. LCC and its Districts, including the Alberta and British Columbia District, are members of LCCFM.

**C. *The Lutheran Church Canada – The Alberta-British Columbia District (the “ABC District”)***

18. In 1944, Lutheran Church – Canada, the Alberta-British Columbia District was incorporated as the Alberta and British Columbia District of the Evangelical Lutheran Synod of Missouri, Ohio and other States by way of a special Act of the Alberta Legislature, S.A. 1944, c. 82 *as am*. In 1991 the District was continued and renamed the Lutheran Church – Canada, the Alberta-British Columbia District (the “ABC District”) pursuant to the *Lutheran Church – Canada, The Alberta British Columbia District Corporation Act*, SA 1991, c. 42.

**D. Taman and Bishop & McKenzie LLP**

19. At all times material to these proceedings, Taman was a member of the Prince of Peace Congregation of the ABC District, and a partner in the law firm of Bishop & McKenzie.

**E. The LCC/ABC District Church Extension Fund**

20. In or about 1921 and prior to its incorporation in 1944, the ABC District created a Church Extension Program (the "ABC District Church Extension Program") to advance the Church Extension objectives and policies of its parent organization, which was then the Lutheran Church – Missouri Synod ("LCMS") and as of its incorporation in 1959, the LCC.
21. The ABC District operates the ABC District Church Extension Program as a joint enterprise with LCC and/or LCCFM in furtherance of a common purpose, in that:
- a. The ABC District is able to maintain the ABC District Church Extension Program only with the approval of LCC;
  - b. The ABC District is required to operate the ABC Church Extension Program in conformity with policies established by the LCC and/or LCCFM;
  - c. The LCC and/or LCCFM aids the ABC District in motivating individuals, congregations and organizations in acquiring investments for the ABC District Church Extension Program in a systematic manner;
  - d. The LCC and/or LCCFM provides leadership in advance site acquisition for further expansion of the ministry of the LCC;
  - e. The ABC District was required to provide to the LCC and/or LCCFM, on an annual basis, a complete financial statement of the ABC District Church Extension Program, including monies borrowed and received, total amount of loans outstanding, and any amounts delinquent;
  - f. All revenues earned by ABC District as a result of its Church Extension Program activities are shared with the LCC and/or LCCFM;
  - g. ABC District, LCC and/or LCCFM all receive direct or indirect financial and other benefits from the ABC District's Church Extension Program, in that:
    - (i) The acquisition and erection of new churches and schools in which to carry out the ministry of the Lutheran faith increases church membership at the congregation level;
    - (ii) Increased church membership at the congregation level results in increased member donations to the congregation. Those donations are shared with the District, which in turn shares those donations with the LCC and/or LCCFM;

22. The ABC District, together with the LCC and/or LCCFM as set out above, established two funds in furtherance of the ABC District Church Extension Program:
  - a. The Church Extension Fund (the "CEF") is a non-registered fund held by ABC District which offered term investments, savings accounts and a children's savings program; and
  - b. The Lutheran Church Canada, The Alberta-British Columbia District Investment Ltd. ("DIL"), is an incorporated tax-sheltered investment fund offering registered RRSP, RRIF and TFSA investments.
23. At all times material to these proceedings, the Defendant Concentra was the trustee of DIL's registered RRSP and RRIF trust funds (the "RRSP and RRIF Trusts"), pursuant to the terms of a RRSP and RRIF Agency Trust Agreement dated April 9, 2002 (the "2002 RRSP and RRIF Trust Agreement").
24. Concentra was also the trustee of DIL's TFSA trust funds (the "TFSA Trust") pursuant to the terms of a Tax Free Savings Account (TFSA) Agency Agreement dated October 30, 2009 (the "2009 TFSA Trust Agreement").
25. The RRSP and RRIF Trust and the TFSA Trust are referred to collectively herein as the "DIL Trusts".
26. It was a term of the DIL Trusts that all monies on deposit in the DIL Trusts would be held in trust for them by Concentra on the following terms:
  - (a) that the monies on deposit in the DIL Trusts would be used solely for the purposes of investment in accordance with the policies of the ABC District's Church Extension Program;
  - (b) that the monies on deposit in the DIL Trusts would be invested in "qualified investments" as that term is defined in the *Income Tax Act*, RSC 1985, c.1; and
  - (c) that the monies deposited to the DIL Trust would be repaid to the depositors on demand, or alternatively upon maturity of the depositor's deposit term, and with interest.
27. Pursuant to the terms of the 2002 RRSP and RRIF Trust Agreement and the 2009 TFSA Trust Agreement, Concentra appointed DIL to act as its agent in carrying out the administration of the DIL Trusts, including the matters set out in para. 26 herein.
28. In turn, DIL retained ABC District to provide management services in respect of the DIL Trusts, in exchange for a management fee.

29. At all times material to these proceedings, ABC District and DIL were under common control, in that several members of DIL's Board of Directors were also officers or directors of ABC District, including (but not limited to):
  - a. Donald Schiemann;
  - b. Mark Ruf; and
  - c. Kurtis Robinson.
30. Similarly, all of the funds deposited to the ABC District's CEF were held in trust for the depositors by the ABC District as trustee (the "CEF Trust"), on the following terms:
  - a. that the monies on deposit in the CEF Trust would be used solely for the purposes of investment in accordance with the mandate and policies of the ABC District's Church Extension Program; and
  - b. that the monies deposited to the CEF Trust would be repaid to the depositors on demand, or alternatively upon maturity of the deposit term, and with interest.
31. In the alternative, depositors to the CEF entered into contracts with the ABC District which contained the following express or implied terms:
  - a. That the monies on deposit would be used solely for the purposes of investment in accordance with the mandate and policies of the ABC District Church Extension Program;
  - b. That the monies would be repaid to the depositors on demand, or alternatively upon maturity of the depositor's deposit term, and with interest; and
  - c. That the monies on deposit with the CEF were guaranteed by the ABC District.
32. The ABC District's Department of Financial Ministries (the "DFM") established Loan Eligibility Policies in respect of the CEF and DIL funds which conformed to the policies established by the LCC and/or LCCFM for that purpose. Those Policies limited eligibility for loans to:
  - a. congregations of the ABC District "in good standing", defined as "those congregations which support the mission and ministry of the District and Synod in a responsible way, function under a district approved constitution and comply with the policy and practice established by the Lutheran Church – Canada"; and
  - b. institutions and entities of the LCC, whose constitutions, policies and practices are consistent with those of LCC.
33. Further, according to the Loan Eligibility Policies set by the DFM, the LCC and/or the

LCCFM, loans were to be made for capital projects only, including acquisition of land, purchase or construction of building facilities, major renovations to existing facilities or expansion of existing facilities.

34. The DFM also set Loan Criteria for the CEF and DIL funds in conformity with policies established by the LCC and/or LCCFM for that purpose, including (but not limited to) the following:
- a. The need for facilities, renovations or property in which to carry out the ministry of the Lutheran faith;
  - b. Need for financing of existing debt;
  - c. Relationship of total loan to property values and/or total assets;
  - d. Financial history of congregation and financial projections for future;
  - e. Growth potential of area and membership;
  - f. The existence of a pledge program for the building project;
  - g. Indebtedness per communicant;
  - h. Ability of congregation to service debt;
  - i. Percentage of total income for debt service; and
  - j. Continuity of the debtor congregation's financial support to the ABC District and the LCC.
35. The DFM also set Loan Conditions for the CEF and DIL funds in conformity with policies established by the LCC and/or LCCFM for that purpose, which required debtor congregations to provide certain items before loan funds would be disbursed, including (but not limited to) the following:
- a. Security documentation appropriate to the size and conditions of the loan;
  - b. Loan Repayment Agreement signed by the officers of the debtor congregation;
  - c. Commitment to promoting Church Extension investments among the members of the debtor congregation; and
  - d. Financial statements submitted annually to the DFM.
36. All loans in excess of \$100,000.00 required the approval of the ABC District's Board of Directors.

37. As a result of the ABC District's Church Extension Program and the implementation of the Loan Eligibility Policies, Loan Criteria and Loan Conditions, by the early 1990s the ABC District had built a diverse portfolio of mortgage loans to more than 65 congregations for the construction of churches and schools in which to carry out the ministry of the Lutheran faith. The ABC District guaranteed the investments of depositors in the CEF and DIL.

*F. The Prince of Peace Village Loans*

38. In or about 1993, however, the ABC District, on the advice and with the assistance of Taman acting as counsel to ABC District, decided to use the monies on deposit in the CEF Trust and the DIL Trust to purchase 156 acres of real property near Calgary, Alberta (the "POP Village Lands") for the purposes of developing those lands on its own behalf into a multi-use residential and commercial development called the Prince of Peace Village ("POP Village"), including a 174-unit seniors' condominium development, a seniors' assisted living residence ("The Manor"), and an Alzheimer's care centre ("The Harbour").
39. The ABC District set aside certain lands within the POP Village Lands for the location and construction of a church and school for the Prince of Peace Congregation (the "POP Congregation").
40. The decision of the ABC District to embark upon the speculative real estate development of the Prince of Peace Village on its own behalf, funded by the CEF Trust and the DIL Trust, was contrary to the purposes of the ABC District Church Extension Program, which was to provide mortgage financing for congregations to build churches and schools in which to carry out the ministry of the Lutheran faith.
41. LCC and/or LCCFM were aware (or ought to have been aware) of and approved the ABC District's decision to utilize the CEF and DIL Trust monies for the purpose of developing the POP Village.
42. The POP Village development commenced in 1993 and was carried on by the ABC District from 1993 through 2006.
43. At all times material to these proceedings Taman was the Chairman of the POP Congregation's Housing Committee, and was responsible for advancing the POP Village development on behalf of the POP Congregation.
44. The POP Village opened in or about 1998. However, at that time the development was operating at a financial deficit, and continued to do so. The ABC District financed those deficits through additional input of funds from the CEF Trust, and increased its promotion

of the CEF to its congregations and their members for the purpose of increasing deposits with which to fund the POP Village deficits. The ABC District failed to advise the depositors to the CEF that the POP Village was in financial difficulty.

45. Between 1993 and 2006, the ABC District utilized \$71,800,000.00 of funds on deposit in the CEF for the purchase and construction of the Prince of Peace Village and the lands upon which it was built (the "CEF POP Village Advances").
46. LCC and/or LCCFM were aware (or ought to have been aware) of and approved the extension of the CEF POP Village Advances.
47. ABC District began selling life leases in the POP Village in 1998. However, it failed to return any part of the proceeds of those sales to the CEF in payment of the CEF POP Village Advances.
48. On November 9, 2005, ABC District, on the advice and with the assistance of Taman, incorporated Encharis Community Housing and Services ("ECHS") to act as the developer of the POP Village.
49. At all times material to these proceedings, ABC District and ECHS were under common control, in that several members of ECHS's Board of Directors were also members of ABC District's Board of Directors, including but not limited to:
  - a. Donald Shiemann;
  - b. Mark Ruf; and
  - c. Jim Kentel.
50. In 2006, the ABC District transferred to ECHS all of its interest in the POP Village Lands in exchange for a mortgage loan in the amount of approximately \$38,000,000.00 (the "POP Village CEF Mortgage Loan") and the assumption of ABC District's contingent liabilities of approximately \$33,000,000.00 with respect to the POP Village life leases. The POP Village CEF Mortgage Loan was secured by a mortgage registered against the POP Village Lands and a 101 acre parcel of real property in Chestermere, Alberta.
51. On February 17, 2006, ABC District, on the advice and with the assistance of Taman, also incorporated Encharis Management Support and Services ("EMSS") to provide operational services to The Manor and the The Harbour.
52. LCC and LCCFM were aware (or ought to have been aware) of and approved the transfer of the POP Village lands from ABC District to ECHS, and the extension of the POP Village CEF Mortgage Loan.
53. The ABC District did not inform the depositors to the CEF that it had transferred to ECHS all of its interest in the POP Village Lands in exchange for the Mortgage Loan.

54. The ABC District transferred its interest in the POP Village lands to ECHS and authorized the POP Village CEF Mortgage Loan and the POP Village CEF Unsecured Loans for the sole purpose of divesting ABC District of the failing POP Village development and its associated financial liabilities and instead recording the POP Village CEF Mortgage Loan as an asset in the CEF's mortgage portfolio.
55. However, to the knowledge of ABC District, LCC and/or LCCFM, ECHS was insolvent from its inception and continued to operate at a deficit.
56. Subsequent to the transfer of ABC District's interest in the POP Village to ECHS, ECHS was unable to service its mortgage debt to ABC District. Despite this, ABC District approved additional advances of approximately \$7,000,000.00 to ECHS under the POP Village CEF Mortgage Loan and also made unsecured loans to ECHS from the CEF Trust in the amount of approximately \$28,500,000.00 (the "POP Village CEF Unsecured Loans") in order to allow ECHS to service its mortgage debt and finance its operating deficit in respect of the POP Village.
57. LCC and LCCFM were aware (or ought to have been aware) of and approved the initial and further advances made to ECHS under the POP Village CEF Mortgage Loan and the extension of the POP Village CEF Unsecured Loans to ECHS in circumstances where LCC and LCCFM knew or ought to have known that:
  - a. ECHS was insolvent, and
  - b. ECHS was operating at a deficit.
58. The POP Village CEF Mortgage Loan and the POP Village CEF Unsecured Loans (collectively, the "POP Village CEF Loans") contravened the mandate of the ABC District's Church Extension Program and the terms of the CEF Trust, in that they were not made for the purpose of building churches and/or schools in which to carry out the ministry of the Lutheran faith, but rather for the purpose of enabling ECHS to engage in speculative real estate development.
59. Further, on December 7, 2011 Concentra Trust on behalf of DIL approved two mortgage loans totaling \$7,950.00 to ECHS for the purpose of the POP Village development (the "POP Village DIL Mortgage Loans").
60. At all times material to these proceedings ECHS and DIL were under common control, in that several members of the ECHS Board of Directors were also members of DIL's Board of Directors, including (but not limited to):
  - a. Donald Schiemann; and
  - b. Mark Ruf.



61. Pursuant to an agreement between DIL and ABC District, the POP Village DIL Mortgage Loans were to be registered in priority to the POP Village CEF Mortgage Loans (the ABC District – DIL Priority Agreement”). However, in breach of the ABC District – DIL Priority Agreement the POP Village DIL Mortgage Loans were in fact registered in position behind the POP Village CEF Mortgage Loans.
62. At all times material to these proceedings, ABC District and DIL were under common control, in that several members of DIL’s Board of Directors were also officers of and/or directors of ABC District, including (but not limited to):
  - a. Donald Schiemann;
  - b. Mark Ruf; and
  - c. Kurtis Robinson.
63. At all times material to these proceedings, Taman was a director, trustee or like official of ECHS, and also counsel to both ECHS and ABC District.
64. Further, at all times material to these proceedings, Taman was a member of the POP Congregation. As such:
  - a. he knew or ought to have known the mandate of the ABC District Church Extension Program and the terms of the DIL Trust, and
  - b. he had a personal stake in the development of the POP Village.
65. The POP Village DIL Mortgage Loans contravened the mandate of the ABC District Church Extension Program and the DIL Trust, in that they were not made for the purpose of building churches and/or schools in which to carry out the ministry of the Lutheran faith, but rather for the purpose of enabling ECHS to engage in speculative real estate development.
66. Further, contrary to the terms of the DIL Trust, the POP Village DIL Mortgage Loans were not “qualifying investments” as that term is defined in the *Income Tax Act*, RSC 1985, c.1.
67. Further, the POP Village CEF Mortgage Loan, the POP Village CEF Unsecured Loan and the POP Village DIL Mortgage Loans (collectively, the “POP Village Loans”) contravened the ABC District’s Church Extension Program Loan Eligibility Policies, Loan Criteria and Loan Conditions in respect of the CEF and DIL Trusts in that:
  - a. ECHS was not a “congregation of the ABC District in good standing” nor an institution or entity of the LCC whose constitution, policies and practices were consistent with those of LCC;
  - b. The loan-to-value ratio in respect of each of the Loans was greater than that which would be commercially acceptable, or alternatively was based on an inflated

- valuation of the POP Village Lands;
- c. The POP Village development was commenced and continued in the absence of any, or any reliable, financial projections;
  - d. ECHS lacked the experience and qualifications to bring the POP Village to successful completion;
  - e. ECHS had no ability to service the POP Village Loans;
  - f. ECHS did not and was not required to provide financial support to ABC District and/or LCC in exchange for the POP Village Loans;
  - g. The POP Village Loans were unsecured or alternatively inadequately secured;
  - h. The officers of ECHS were not required to sign Loan Repayment Agreements with ABC District and DIL in respect of the POP Village Loans;
  - i. ECHS was not required to make a commitment to promote Church Extension investments among its members or others;
  - j. ECHS was not required to submit financial statements to the ABC District or to DIL, or alternatively the ABC District and/or DIL failed to scrutinize those financial statements to assess the risk to the POP Village Loans.

68. The POP Village development was ultimately unsuccessful and ECHS defaulted on the POP Village CEF Loans and the POP Village DIL Loans. There is insufficient equity in ECHS's interest in the POP Village Lands to satisfy the POP Village CEF Loans or the POP Village DIL Loans.

#### ***G. The POP Congregation Loan***

69. In or about 2008 the Prince of Peace ("POP") Congregation incurred an operating deficit of approximately \$1,200,000.00. It was unable to meet its operational financial requirements, or its obligations to ABC District in respect of previous mortgage loans from the CEF.
70. In or about 2008, ABC District loaned \$8,000,000.00 to the POP Congregation for the purpose of building a church and a school on the grounds of the POP Village, paying off its debts, and financing its operating deficit (the "POP Congregation Loan").
71. The LCC and/or LCCFM were aware (or ought to have been aware) of and approved the POP Congregation Loan.
72. The POP Congregation Loan violated the mandate of the ABC District's Church Extension Program and the terms of the CEF Trust in that it was granted, in whole or in part, to pay off the POP Congregation debts and to finance its operating deficit and not for the purposes

of building churches and schools in which to carry out the ministry of the Lutheran Church.

73. Further, the Prince of Peace Congregation Loan violated the Loan Eligibility Policies, Loan Criteria and Loan Conditions of the ABC District in that:
- a. The POP Congregation was not a “congregation in good standing” within the meaning of the ABC District Loan Eligibility Policy;
  - b. The Prince of Peace Congregation Loan was in whole or in part for operating purposes rather than a capital project;
  - c. The POP Congregation had no ability to service the debt;
  - d. The Prince of Peace Congregation Loan was unsecured or alternatively inadequately secured;
  - e. The Prince of Peace Congregation Loan was unaccompanied by a Loan Repayment Agreement signed by the officers of the congregation;
  - f. The POP Congregation was operating at a deficit and could not meet its existing financial obligations to the ABC District to repay a previous mortgage loan;
  - g. The POP Congregation did not and could not make a commitment to promoting Church Extension investments among its members; and
  - h. The ABC District did not require the POP Congregation to submit its financial statements on an annual basis, or alternatively failed to scrutinize those financial statements to assess the risk that the Prince of Peace Congregation Loan would not be repaid.
74. In or about 2009, the ABC District on the advice and with the assistance of Taman, forgave \$6,000,000.00 of the \$8,000,000.00 POP Loan in exchange for the right to receive proceeds from the future sale of certain property owned by the POP Congregation (the “POP Congregation Land Sale Proceeds Assignment Agreement”).
75. The LCC and/or LCCFM were aware (or ought to have been aware) of and approved the POP Congregation Land Sale Proceeds Assignment Agreement.
76. The POP Congregation Land Sale Proceeds Assignment Agreement does not stipulate a date nor any deadline for the sale of the subject property, and the ABC District has no recourse in the event that the eventual sale proceeds are insufficient to discharge the \$6,000,000.00 loan receivable in full. Accordingly, the POP Congregation Land Sale Proceeds Assignment Agreement is wholly inadequate consideration for ABC District’s forgiveness of the POP Congregation’s \$6,000,000.00 debt to the CEF Trust.

## ***H. The Strathmore Loans***

77. In or about August 2007, the ABC District approved a CEF mortgage loan of approximately \$5,850,000.00 to ECHS for the purpose of purchasing real property in Strathmore, Alberta (the "Strathmore Lands") and constructing a 50-unit seniors' condominium development (the "First Strathmore Loan").
78. In or about August 2008, ECHS transferred the title to the Strathmore Lands to ABC District for consideration of \$1.00. Concurrently, ABC District purported to "extinguish" the First Strathmore Loan payable by ECHS to the CEF, thereby simultaneously obtaining the Strathmore Lands on its own account and depriving the CEF Trust of the First Strathmore Loan receivable.
79. The LCC and/or LCCFM were aware (or ought to have been aware) of the First Strathmore Loan and the "extinguishment" of that Loan in exchange for the transfer of the Strathmore Property to ABC District.
80. ABC District then borrowed approximately \$6,000,000.00 from the DIL Trust for the purpose of developing the Strathmore Lands (the "Second Strathmore Loan"). However, ABC District did not execute a mortgage in favour of DIL Trustee Concentra in respect of the Second Strathmore Loan.
81. Concentra failed to require that the Second Strathmore Loan be secured by a mortgage registered against the Strathmore Property.
82. LCC and/or LCCFM were aware (or ought to have been aware) that Concentra and DIL had extended the Second Strathmore Loan to ABC District, and that the Loan was unsecured.
83. On December 23, 2014, Concentra registered a \$6,000,000.00 mortgage against the Strathmore property in respect of the Second Strathmore Loan (the "Concentra Strathmore Mortgage").
84. Due to Concentra and/or DIL's delay in registration of the Concentra Strathmore Mortgage, the Mortgage was unenforceable, rendering Concentra unable to execute on the security and collect the Second Strathmore Loan on behalf of DIL and the beneficiaries to the DIL Trusts.

## ***I. The Shepherd's Village Loans***

85. On July 28, 1999, Shepherd's Village Ministries Ltd. ("SVML") was incorporated for the purpose of acquiring a 12 acre parcel of real property and developing a 43-unit seniors' condominium housing project called the "Shepherd's Village" within the geographic

boundaries of the Good Shepherd Congregation located in Valleyview, Alberta (the "Shepherd's Village Lands").

86. From 2004 to 2005, Chowne and Prowse Chowne were the solicitors for both SVML and ABC District
87. From 2006 to 2013, Taman and Bishop & McKenzie were the solicitors for both SVML and ABC District.
88. Between 1999 and 2014, ABC District advanced to SVML either directly or indirectly through ECHS, CEF monies in the total amount of approximately \$17,000,000.00 for the purpose of acquiring and developing the Shepherd's Village lands (the "Shepherd's Village CEF Loans").
89. LCC and/or LCCFM were aware (or ought to have been aware) of and approved the ABC District's decision to make the Shepherd's Village CEF Advances to SVML.
90. As of 2005, ABC District and SVM were under common control, in that officers and/or directors of ABC District were also officers, directors and/or members of SVM, including (but not limited to):
  - a. Mark Ruf;
  - b. Judith Burns;
  - c. Paul Eifert;
  - d. Donald Schiemann; and
  - e. Jim Kental.
91. As of November 6, 2006, Taman was the solicitor for SVM.
92. The Shepherd's Village CEF Loans were contrary to the mandate of the ABC District Church Extension Program and the terms of the CEF Trust, in that in they were not made for the purpose of building churches and/or schools in which to carry out the ministry of the Lutheran faith, but rather for the purpose of enabling SVML to engage in speculative real estate development.
93. Further, the Shepherd's Village CEF Loans were contrary to the policies and procedures of the ABC District Church Extension Fund, in that:
  - a. SVML was not a "congregation of the ABC District in good standing" nor an institution or entity of the LCC whose constitution, policies and practices were consistent with those of LCC;
  - b. The loan-to-value ratio in respect of the Shepherd's Village CEF Loans was greater than that which would be commercially acceptable;

- c. The Shepherd's Village development was commenced and continued in the absence of any, or any reliable, financial projections;
  - d. SVML lacked the experience and qualifications to bring the Shepherd's Village development to successful completion;
  - e. SVML had no ability to service or repay the Shepherd's Village CEF Loans;
  - f. SVML did not and was not required to provide financial support to ABC District and/or LCC in exchange for the Shepherd's Village CEF Loans;
  - g. The Shepherd's Village CEF Loans were unsecured or alternatively inadequately secured;
  - h. The officers of SVML were not required to sign Loan Repayment Agreements with ABC District in respect of the Shepherd's Village CEF Loans;
  - i. Shepherd's Village was not required to make a commitment to promote Church Extension investments among its members or others;
  - j. SVML was not required to submit financial statements to the ABC District, or alternatively the ABC District failed to scrutinize those financial statements to assess the risk to the Shepherd's Village CEF Loans.
94. Between 2011 and 2014, ABC District and/or ECHS, forgave \$12,575,685.00 of the Shepherd's Village CEF Loans, thereby depriving the CEF Trust of those funds.
95. LCC and/or LCCFM were aware (or ought to have been aware) of and approved the forgiveness of the Shepherd's Village CEF Loans.

***J. The CCAA Proceedings***

96. As a result of the events set out herein, the ABC District and DIL were unable to meet their obligations to the depositors to the CEF Trust and the DIL Trusts.
97. Knowing they were unable to meet their obligations to the CEF and DIL depositors, the ABC District and DIL, acting in bad faith, nevertheless continued to encourage and accept deposits to the CEF Trust and DIL Trust up until and including December 31, 2014.
98. The LCC and/or LCCFM were aware (or ought to have been aware) of the insolvency of the ABC District and DIL and the impending CCAA application. However, LCC and/or LCCFM took no steps to halt the operations of the CEF or the DIL, or to inform the depositors to the CEF and/or DIL Trusts that their deposits were at risk.

99. On January 2, 2015 ABC District, DIL, ECHS and EMSS (the "Applicants") sought protection from their creditors under the *Company's Creditors Arrangement Act*, RSC 1985, c.C-36, as amended (the "CCAA Proceedings"). An Order to that effect was granted by the Court of Queen's Bench of Alberta on January 23, 2015 in Court of Queen's Bench Action No. 1501-00955.
100. Taman and Bishop McKenzie have acted as counsel for the Applicants in the CCAA Proceedings.
101. In the course of their representation of the Applicants in the CCAA Proceedings, Taman and Bishop & McKenzie:
- a. Failed to disclose to the Court and the CEF and District depositors, including the Plaintiffs and putative Alberta District Class and Sub-class, Extra-provincial District Class and Sub-class, Alberta DIL Class and Sub-class and Extra-provincial DIL Class and Sub-class the involvement of Taman and Bishop & McKenzie in the matters leading up to the CCAA Proceedings;
  - b. Failed to disclose to the Court and to the CEF and District depositors, including the Plaintiffs and putative Alberta District Class and Sub-class, Extra-provincial District Class and Sub-class, Alberta DIL Class and Sub-class and Extra-provincial DIL Class and Sub-class members their potential liability herein;
  - c. Perverted the purpose of the CCAA Proceedings by devising Plans of Restructuring on behalf of DIL and ABC District which would limit or negate the ability of the Plaintiffs and putative members of the Alberta District Class and Sub-Class, the Extra-provincial District Class and Sub-Class, the Alberta DIL Class and Sub-Class, and the Extra-provincial DIL Class and Sub-Class to seek recourse against Taman, Bishop & McKenzie and the other Defendants named in this action, none of whom have sought CCAA protection;
  - d. Intentionally sought to mislead the CEF and DIL Depositors as to their prior involvement in the matters leading up to the CCAA Proceedings and potential liability herein; and
  - e. Earned significant legal fees paid from the proceeds of the CEF and DIL Trusts, at the expense of the Alberta District Class and Sub-Class, the Extra-provincial District Class and Sub-Class, the Alberta DIL Class and Sub-Class, and the Extra-provincial DIL Class and Sub-Class.
102. By way of an agreement approved by the Court of Queen's Bench issued in the CCAA Proceedings on January 4, 2016, ABC District and DIL agreed, *inter alia*:

- (i) That District shall pay to DIL the all-inclusive sum of \$4,114,006.00 in settlement of DIL's claims against District in relation to the POP Village DIL Loans; and
  - (ii) That District shall pay to DIL 50% of the net proceeds of sale of the Strathmore Property in settlement of DIL's claims against District in relation to the Second Strathmore Loan.
103. The assets of the ABC District are not sufficient to satisfy its approximately \$97,000,000.00 in total outstanding obligations to its members who have made deposits to the CEF Trust.
104. The assets of the DIL Trust are not sufficient to satisfy DIL's approximately \$22,300,000.00 in total outstanding obligations to its depositors.

#### ***K. The Plaintiffs***

##### **(i) The Plaintiff Marilyn Huber**

105. Marilyn Huber is 50 years of age and currently resides in Edmonton, Alberta.
106. Ms. Huber was baptized and confirmed a member of the Faith Lutheran Church in Grande Prairie, Alberta. She has been a member of the Good Shepherd Lutheran Church in Valleyview, Alberta since approximately 1985.
107. Through her membership in the Faith Lutheran Church and the Good Shephard Lutheran Church, Ms. Huber was introduced to the ABC District's Church Extension program. She decided to deposit her savings into the Church Extension Fund. In 2007, Ms. Huber also deposited money in the DIL Trust.
108. Ms. Huber was encouraged in church bulletins to invest money in the CEF and DIL trusts. Each congregation had a member who was a CEF representative. The CEF representative also encouraged deposits.
109. By letter dated December 1, 2014, Ms. Huber received advice from the ABC District that her CEF deposit was maturing on January 29, 2015. She was advised that absent instructions to the contrary, her investment would be renewed on January 29, 2015 for a 60 month term. She received no warning that the ABC District had in any prior period suffered losses on its mortgages, loans and other investments made with her savings, or that her investments were otherwise at risk.
110. As of December 31, 2015, Ms. Huber's CEF account balance with interest was \$14,073.65.



111. As of December 31, 2014, Ms. Huber's Registered Retirement Savings Plan (RRSP) balance with DIL was \$72,179.36
112. By letter dated January 5, 2015, the ABC District advised Ms. Huber that it was "facing some hardships" because "a number of congregations and other ministries have been unable to pay their mortgages ..." Ms. Huber was further advised that a moratorium was being placed on withdrawals from and deposits to the Church Extension Fund.
113. By letter dated January 7, 2015, DIL advised Ms. Huber that the CEF fund was "facing some hardships" but "Currently all of District Investments Loans are in good standing and payments are being received on time from our investment projects."
114. By letter dated February 27, 2015 Ms. Huber was advised that DIL had obtained an Order under the CCAA proceedings allowing it to restructure its affairs, and that as of January 23, 2015, her \$72,179.36 RRSP deposit had an "Estimated Write Down Balance" of \$54,882.20 – a loss of some 24%.
115. On or about October 28, 2015, Ms. Huber received an interim distribution of \$29,688.64 leaving a shortfall of \$42,490.72 plus interest still owing.

**(ii) The Plaintiff Sharon Sherman**

116. Sharon Sherman is 65 years old and resides in Edmonton, Alberta. She is not a member of a Lutheran Church.
117. Sharon Sherman's mother, Ruby Sherman, moved into the Prince of Peace Manor in August 1, 2007. Ruby Sherman was 86 years of age at the time. The monthly charge for accommodation, meals, weekly laundry service and weekly housekeeping was initially \$2,650.00 per month. There have been increases since then. The accommodation charge is currently \$3,500.00 per month.
118. Ruby Sherman had two CEF investments. The first, in the amount of \$75,000.00, was taken out in July, 2007. In October, 2007, she deposited a further \$220,286.00.
119. The interest earned on the deposits was to be used to help pay for Ruby Sherman's accommodation charge at the Prince of Peace Manor.
120. In October, 2008, Sharon Sherman became a joint owner of Ruby Sherman's two CEF accounts for the purpose of allowing her to assist her mother in handling her financial affairs.

121. As of December 31, 2014, the balance in the first CEF account was \$75,000.00. The balance in the second CEF account was \$220,286.00.
122. By letter dated January 2, 2015, the ABC District advised Ruby Sherman that it was “facing some hardships” because “a number of congregations and other ministries have been unable to pay their mortgages ...” Ruby Sherman was further advised that a moratorium was being placed on withdrawals from and deposits to the Church Extension Fund.
123. Since January, 2015, Ruby Sherman has received no interest on her deposits. The value of her deposits is not currently known, but is substantially less than the book value.

#### **L. PROPOSED CLASS**

124. This is a proposed class proceeding on behalf of the Plaintiffs and:
- a. a putative class of people resident in Alberta who are members of a congregation of the Lutheran Church – Canada and who on January 2, 2015 were depositors to The Lutheran Church – Canada, Alberta and British Columbia District’s Church Extension Fund (the “Alberta District Class”);
  - b. a putative class of people resident in Alberta who are members of a congregation of the Lutheran Church – Canada and who on January 2, 2015 were depositors to The Lutheran Church – Canada, Alberta and British Columbia District Investments Ltd. (the “Alberta DIL Class”);
  - c. a putative extra-provincial class of people resident outside of Alberta and who are members of a congregation of the Lutheran Church – Canada and who on January 2, 2015 were depositors to The Lutheran Church – Canada, Alberta and British Columbia District’s Church Extension Fund (the “Extra-provincial District Class”); and
  - d. a putative extra-provincial class of people resident outside of Alberta and who are members of a congregation of the Lutheran Church – Canada and who on January 2, 2015 were depositors to The Lutheran Church – Canada, Alberta and British Columbia District Investments Ltd. (the “Extra-provincial DIL Class”).
  - e. Corresponding Sub-classes consisting of the Classes described above, except that the depositors were not members of the Lutheran Church – Canada or a Lutheran Congregation.

#### **M. Liability of LCC and LCCFM**

##### **(a) Breach of Trust: ABC District/CEF**

125. The funds on deposit in the CEF were impressed with an express or implied trust in favour of the Plaintiffs, the putative Alberta District Class and Sub-class, and putative Extra-provincial District Class and Sub-class (the "CEF Trust"). As trustee of the CEF Trust, ABC District had a duty to utilize those monies in accordance with the terms of the CEF Trust, which required it to invest the funds in accordance with the ABC District Church Extension Program mandate, policies and procedures.

126. The ABC District failed to utilize the assets of the CEF Trust in accordance with the terms of the Trust, as follows:

- (a) Utilizing the CEF Trust funds to develop the POP Village Lands on its own account as set out in paras. 38-40 herein;
- (b) Transferring the POP Village Lands to ECHS as set out in paras. 50 – 54 herein;
- (c) Authorizing the POP Village CEF Mortgage Loan and the POP Village CEF Unsecured Loans to ECHS as set out in paras. 50 and 56 herein;
- (d) Authorizing the Prince of Peace Congregation Loan as set out in paras. 70 and 72 – 73 herein;
- (e) Entering into the POP Congregation Land Sale Proceeds Assignment Agreement as set out in paras. 74 - 76 herein;
- (f) Extinguishing the First Strathmore Loan to ECHS in exchange for title to the Strathmore Lands for its own use as set out in para. 78 herein; and
- (g) Authorizing the Shepherd's Village CEF Loans as set out in para. 88 herein.

thereby breaching the CEF Trust and causing damages to the Plaintiffs and the putative Alberta District Class and Sub-class and Extra-provincial District Class and Sub-class members.

127. As participants in the joint enterprise that is the ABC District's Church Extension program, LCC and/or LCCFM are jointly and severally liable to the Plaintiffs and putative class and Sub-class members for ABC District's breaches of the CEF Trust as set out herein.

128. In the alternative, LCC and/or LCCFM knowingly assisted ABC District to breach the CEF Trust, and are therefore jointly and severally liable to the Plaintiffs and the putative Alberta District Class and Sub-class and Extra-provincial District Class and Sub-class members for rendering knowing assistance to a breach of trust.

129. Further, or in the alternative, LCC and/or LCCFM knowingly received proceeds from the

CEF Trust as a result of ABC District's breach of trust by way of payments made by District to the LCC and/or LCCFM. Accordingly, LCC and/or LCCFM are jointly and severally liable to the Plaintiffs and class members and are constructive trustees of those monies for the benefit of the Plaintiff and the putative Alberta District Class and Extra-provincial District Class members.

**(b) Breach of Contract: ABC District/CEF**

130. In the alternative, upon receiving monies from the Plaintiffs and putative Alberta District Class Sub-class and Extra-provincial District Class and Sub-class members for the purpose of deposit to the CEF, the ABC District agreed to repay those monies to the Plaintiffs and putative Alberta District Class and Sub-class and Extra-provincial District Class and Sub-class members,

- a. With respect to savings accounts, on demand and with interest at a rate set by the ABC District from time to time; and
- b. With respect to term deposits, on the maturity date with interest at a rate set by the ABC District at the date of deposit.

131. In breach of its agreements with the Plaintiffs and putative Alberta District Class and Sub-class and Extra-provincial District Class and Sub-class members, the ABC District has failed or refused to pay to the Plaintiffs and putative Alberta District Class and Sub-class and Extra-provincial District Class and Sub-class members their monies held on deposit with the CEF plus accrued interest,

- a. With respect to term deposits, on the maturity date(s); and
- b. With respect to savings accounts, at all.

132. On January 2, 2015 ABC District breached its agreements with the Plaintiffs and putative Alberta District Class and Sub-class and Extra-provincial District Class and Sub-class members when it notified them that withdrawals from the CEF had been suspended, and sought protection from its creditors in the *CCAA* proceedings.

133. As participants in the joint enterprise that was the ABC District Church Extension Program, LCC and LCCFM are jointly and severally liable to the Plaintiffs and putative Alberta District Class and Sub-class and Extra-provincial District Class and Sub-class members for ABC District's breach of contract.

**(c) Breach of Fiduciary Duty: ABC District/CEF**

134. Further, by virtue of its position as trustee of the CEF Trust, the ABC District was in a position to unilaterally exercise power or discretion over the monies of the Plaintiffs and putative Alberta District Class and Sub-Class and Extra-provincial District Class and Sub-Class members invested in the CEF Trust so as to significantly affect their interests.

135. Further, the Plaintiffs and putative Alberta District Class and Extra-provincial District Class members were particularly vulnerable to ABC District's exercise of power or discretion by virtue of the ABC District's position of religious leadership and moral authority. Accordingly, and by its own admission, the ABC District owed fiduciary duties to the Plaintiffs and putative Alberta District Class and Extra-provincial District Class members in respect of their deposits to the CEF Trust, including duties of loyalty, honesty, good faith, and avoidance of any conflict between its duty to the Plaintiffs and putative class members and its own self-interest.

136. The ABC District breached its fiduciary duties to the Plaintiffs and putative Alberta District Class and Sub-Class and Extra-provincial District Class and Sub-Class members in respect of the CEF Trust by:

- a. Using funds on deposit to the CEF Trust and the DIL Trust for purposes of speculative real estate development of the POP Village on its own account, and not for the purposes of investment in accordance with the ABC District Church Extension Program mandate as set out in paras. 38 - 40 herein;
- b. Failing to repay the CEF POP Village Advances to the CEF from the proceeds of sale of life leases in the POP Village as set out in para. 47 herein;
- c. Authorizing the POP Village CEF Mortgage Loan and the POP Village CEF Unsecured Loans to ECHS, a company under common control with ABC District, for purposes of speculative real estate development contrary to the ABC District Church Extension Program mandate, policies and procedures as set out in paras. 46 and 50, 58 and 67 herein;
- d. Transferring the POP Village Lands to ECHS and authorizing the POP Village CEF Mortgage Loan and the POP Village CEF Unsecured Loans for the sole purpose of avoiding disclosure of the POP Village development's finances to the Plaintiffs and putative ALBERTA District Class and Extra-provincial District Class members as set out in para. 54 herein;
- e. Preferring the interests of the POP Congregation to those of its depositors and the beneficiaries to the CEF Trust, including the Plaintiffs and putative ALBERTA District Class and Extra-provincial District Class members, by entering into the POP Congregation Land Sale Proceeds Assignment Agreement as set out in para. 74 herein;
- f. Acquiring the Strathmore Lands from ECHS for its own use by "extinguishing" \$6,000,000.00 of mortgage debt payable by ECHS to the CEF as set out in para. 78 herein;
- g. Authorizing the Shepherd's Village CEF Loans as set out in para. 80 herein;

- h. Forgiving \$12,575,685.00 of the Shepherd's Village CEF Loans as set out in para. 94 herein;
- i. Continuing to solicit and accept deposits to the CEF when ABC District knew or should have known that it was insolvent and unable to meet its obligations to depositors to the CEF and/or DIL as set out in para. 98 herein

all of which caused damages and loss to the Plaintiffs and putative ALBERTA District Class and Sub-Class and Extra-provincial District Class and Sub-Class members.

137. As participants in the joint enterprise that was the ABC District Church Extension Program, LCC and/or LCCFM are jointly and severally liable to the Plaintiffs and putative Alberta District Class and Sub-Class and Extra-provincial District Class and Sub-Class members for ABC District's breaches of fiduciary duty as set out herein.

138. Further, or in the alternative, LCC and/or LCCFM knowingly assisted ABC District to breach its fiduciary duty to the Plaintiffs and putative Alberta District Class and Sub-Class and Extra-provincial District Class and Sub-Class members and accordingly are jointly and/or severally liable for that breach.

**(d) Negligence: ABC District/CEF**

139. Further, it was reasonably foreseeable to the ABC District that failure to take reasonable care in the investment of the monies received from the Plaintiffs and putative Alberta District Class and Sub-class and Extra-provincial District Class and Sub-class members for deposit into the CEF would result in the loss of those monies and damage to the Plaintiff and putative Alberta District Class and Extra-provincial District Class members.

140. Accordingly, the ABC District had a duty of care to the Plaintiffs and putative Alberta District Class and Sub-class and Extra-provincial District Class and Sub-class members to take reasonable care in the investment of the monies received from the Plaintiffs and putative Alberta District Class and Sub-class and Extra-provincial District Class and Sub-class members for deposit into the CEF.

141. The ABC District breached its duty of care to the Plaintiffs and putative Alberta District Class and Sub-class and Extra-provincial District Class and Sub-class members by way of conduct including but not limited to:

- a. With respect to the POP Village Loans, by way of the conduct set out in paras. 38-42, 44-45, 47-51, 53-56, and 58-67 herein;
- b. With respect to the Prince of Peace Congregation Loan, by way of the conduct set out in paras. 69-76 herein;

- c. With respect to the First and Second Strathmore Loans, by way of the conduct set out in paras. 71 and 72 herein;
- d. With respect to the Shepherd's Village CEF Loans, by way of the conduct set out in paras. 88-94 herein

thereby causing damages and loss to the Plaintiffs and putative Alberta District Class and Sub-class and Extra-provincial District Class and Sub-class members.

142. As participants in the joint enterprise that was the ABC District's Church Extension Program, LCC and LCCFM are jointly and severally liable to the Plaintiffs and putative Alberta District Class and Sub-class and Extra-provincial District Class and Sub-class members for ABC District's negligence in the operation of the Church Extension Program.

**(e) Breach of Fiduciary Duty: District/DIL**

143. At all times material to these proceedings, District was the manager of the DIL Trust and therefore had fiduciary duties to the beneficiaries of that Trust, including the Plaintiffs and the putative members of the Alberta DIL Class and Sub-class and the Extra-provincial DIL Class and Sub-class, to serve the interests of the beneficiaries of the Trust.

144. In breach of that duty, in in order to prefer its own interests under the POP Village CEF Mortgage Loans to the interests of the beneficiaries of the DIL Trust under the POP Village DIL Mortgage Loans, ABC District failed to register the ABC District – DIL Priority Agreement against the title to the POP Village Lands concurrently with the POP Village DIL Mortgage Loans, thereby depriving the DIL Trust of adequate security for the POP Village DIL Mortgage Loans and causing damages and loss to the Plaintiffs and putative members of the Alberta DIL Class and Sub-class and the Extra-provincial DIL Class and Sub-class.

**(f) Vicarious Liability of LCC**

145. In the alternative, at all times material to these proceedings the ABC District acted as the agent of LCC and/or LCCFM in the operation and administration of the ABC District's Church Extension Program. The acts, omissions and breaches of duty of ABC District as set out herein occurred within the normal course of the business of LCC and/or LCCFM, and were within the actual or ostensible authority granted to ABC District by LCC and/or LCCFM. Accordingly, LCC and/or LCCFM are vicariously liable for the acts, omissions and breaches of duty of ABC District set out herein.

**N. Liability of Shepherd's Village Ministries Ltd.**

146. SVM knew or ought to have known that the Shepherd's Village Lands had been purchased with monies obtained from the CEF Trust, that the proceeds of the SVM CEF Loans originated in the CEF Trust, and that the Lands had been transferred and the Loans made to it by ABC District in breach of the CEF Trust.

147. Accordingly, SVM is liable to the Plaintiffs and putative Alberta District Class and Sub-class and Extra-provincial District Class and Sub-class members for knowing receipt of the Shepherd's Village Lands and the proceeds of the SVM CEF Loans acquired in breach of trust, and is a constructive trustee of the Shepherd's Village Lands and the proceeds of the SVM CEF Loans for the benefit of the Plaintiffs and putative Alberta District Class and Sub-class and Extra-provincial District Class and Sub-class members.

#### **O. Liability of Taman and Bishop & McKenzie LLP**

148. At all times material to these proceedings Taman was a member of the POP Congregation, the Chairman of the POP Congregation's Housing Committee, and counsel for both ABC District and ECHS.

149. Taman knew or ought to have known that the use of CEF monies to finance the purchase and development of the POP Village Lands contravened the intent and purpose of the ABC District Church Extension Program and the terms of the CEF Trust.

150. Taman advised ABC District with respect to, and knowingly facilitated, the following breaches of duty by ABC District for his own direct and/or indirect personal financial and other benefit:

a. The ABC District's breaches of the CEF Trust as set out in paras. 125-126 herein; and

b. The ABC District's breaches of fiduciary duty as set out in para. 134-136 herein

which caused the Plaintiffs and putative Alberta District Class and Sub-class and Extra-provincial District Class and Sub-class members to suffer damages and loss.

151. Accordingly, Taman is jointly and severally liable along with the ABC District for the damages and loss caused to the Plaintiffs and putative Alberta District Class and Sub-class and Extra-provincial District Class and Sub-class members as a result of those breaches of duty.

152. Further, Taman advised SVM with respect to, and knowingly facilitated, SVM's receipt of the Shepherd's Village Lands and the proceeds of the SVM CEF Loans in breach of the CEF Trust.



153. Taman knew or ought to have known that the use of CEF monies to finance the purchase and development of the Shepherd's Village Lands contravened the intent and purpose of the ABC District Church Extension Program and the terms of the CEF Trust.
154. Accordingly, Taman is jointly and severally liable with SVM to the Plaintiffs and the members of the putative Alberta District Class and Sub-class and the Extra-provincial District Class and Sub-class for breach of trust, rendering knowing assistance to the breach of the CEF Trust and/or knowing receipt of the Shepherd's Village Lands and the proceeds of the SVM CEF Loans in breach of the CEF Trust.
155. Further, at all times material to this proceeding Taman was acting in the ordinary course of the business of Bishop & McKenzie LLP or with the authority of his partners therein. Accordingly, Bishop & McKenzie LLP is vicariously liable for Taman's breaches of duty and wrongful acts as set out in paras. 149 - 155 herein.
156. In the alternative, Bishop & McKenzie LLP had actual knowledge of the wrongful conduct of Taman as set out herein, or was reckless or willfully blind thereto. Therefore, Bishop & McKenzie LLP is liable to the Plaintiffs and putative Alberta District Class and Extra-provincial District Class members for the wrongful conduct of Taman as set out in paras. 149 - 155 herein.
157. Further, Taman and Bishop & McKenzie have been unjustly enriched by way of the conduct described in paras. 100 - 101 herein, in that:
- a. Taman and Bishop & McKenzie have been enriched by reason of their receipt of legal fees earned in the CCAA Proceedings;
  - b. The Plaintiffs and the members of the Alberta District Class and Sub-Class, the Extra-provincial District Class and Sub-Class, the Alberta DIL Class and Sub-Class, and the Extra-provincial DIL Class and Sub-Class, have suffered a corresponding detriment, as those legal fees have been paid from the proceeds of the CEF and DIL Trusts; and
  - c. There is no juridical reason for Taman and Bishop & McKenzie to retain their enrichment.

## **P. Liability of Concentra**

### **(a) The POP Village DIL Mortgages**

158. As trustee of the DIL Trust, Concentra owed trust duties and fiduciary duties to the beneficiaries of that Trust, including the Plaintiffs and putative ALBERTA DIL Class and Sub-Class and Extra-provincial DIL Class and Sub-class members, to:

- a. abide by the terms of the Trust;
- b. exercise the degree of care, skill and diligence that a reasonable trustee would exercise in the investment of trust monies and the administration of a trust;
- c. at all times observe duties of loyalty, honesty, good faith, and avoid any conflict between its duty to the beneficiaries of the DIL Trust, including the Plaintiffs and putative DIL Class Sub-Class and Extra-provincial DIL Class and Sub-class members, and its own self-interest; and
- d. supervise its agent DIL to ensure that DIL also abided by the terms of the Trust and exercised the same degree of care, skill and diligence in the performance of its duties as Concentra was obliged to exercise.

159. In breach of those duties, Concentra:

- (a) Authorized, or permitted DIL to authorize, the POP Village DIL Mortgages, which were:
  - a. contrary to the terms of the DIL Trust in that the monies were not to be used for investment purposes in accordance with the mandate of ABC District's Church Extension Program; and
  - b. advanced to ECHS, a company under common control with its agent DIL and its manager ABC District, without requiring ECHS to produce its audited financial statements on an annual basis in order to assess the degree of risk to which the POP Village DIL Mortgages were exposed;
- (b) Failed to ensure, or alternatively failed to discover that DIL had failed to ensure, that the POP Village DIL Mortgages were secured, or adequately secured;
- (c) Failed to adequately supervise DIL; and
- (d) Permitted DIL to engage ABC District to provide management services to DIL, despite the fact that:
  - a. ABC District was a borrower from DIL and was under common control with DIL; and
  - b. ECHS was a borrower from DIL and under common control with ABC District

all of which caused the Plaintiffs and putative Alberta DIL Class and Sub-class and Extra-provincial DIL Class and Sub-class members to suffer damages and loss.

**(b) The Second Strathmore Loan and the DIL Strathmore Mortgage**

160. In further breach of its duties set out in para. 159 herein, Concentra:

(a) Authorized, or permitted DIL to authorize, the Second Strathmore Loan to ABC District, despite the fact that ABC District was the manager of the DIL Trust and under common control with DIL; and

(b) Failed to ensure, or to cause DIL to ensure, that the Second Strathmore Loan was secured, or adequately secured

all of which caused the Plaintiffs and putative Alberta DIL Class and Sub-Class and Extra-provincial DIL Class and Sub-class members to suffer damages and loss.

**Q. Chowne, Williams and Prowse Chowne**

161. In January 2006, Ronald Chowne, Q.C. of Prowse Chowne was counsel to ABC District in respect of the POP Village CEF Mortgage Loan.

162. In November 2011, John Williams of Prowse Chowne was counsel to DIL in respect of the POP Village DIL Loans and the ABC District – DIL Priority Agreement.

163. Chowne, Williams and Prowse Chowne knew or ought to have known that:

a. ABC District was the manager of the DIL Trust;

b. ABC District held the POP Village CEF Mortgage Loan over the POP Village Lands, in the amount of \$45,000,000.00; and

c. That ABC District was a party adverse in interest to DIL by way of the priority of the POP Village CEF Mortgage Loan over any subsequent secured loans granted to ECHS by DIL.

164. Chowne and Williams facilitated ABC District and DIL's breach of their fiduciary duties to the beneficiaries of the DIL Trust, including the Plaintiffs and the putative members of the Alberta DIL Class and Sub-class and the Extra-provincial DIL Class and Sub-class, by failing to ensure that the ABC District – DIL Priority Agreement was registered against the title to the POP Village Lands concurrently with the POP Village DIL Mortgage Loans, which caused damages and loss to the Plaintiffs and the putative members of the Alberta DIL Class and Sub-Class and the Extra-provincial DIL Class and Sub-class.

165. Accordingly, Chowne, Williams and Prowse Chowne are jointly and severally liable along with the ABC District for the damages and loss caused to the Plaintiffs and putative Alberta District Class and Sub-class and Extra-provincial District Class and Sub-class members as a result of those breaches of duty.
166. Further, between 2002 and 2005 Chowne advised SVM with respect to, and knowingly facilitated, SVM's receipt of the Shepherd's Village Lands and the proceeds of the SVM CEF Loans from ABC District in breach of the CEF Trust.
167. As the solicitors for the ABC District, Chowne knew or ought to have known that the use of CEF monies to finance the purchase and development of the Shepherd's Village Lands contravened the intent and purpose of the ABC District Church Extension Program and the terms of the CEF Trust.
168. Accordingly, Chowne and Prowse Chowne are jointly and severally liable with SVM and the ABC District to the Plaintiffs and the members of the putative Alberta District Class and Sub-class and the Extra-provincial District Class and Sub-class for breach of trust, rendering knowing assistance to the breach of the CEF Trust and/or knowing receipt of the Shepherd's Village Lands and the proceeds of the SVM CEF Loans in breach of the CEF Trust.
169. Further, at all times material to this proceeding Chowne and Williams were acting in the ordinary course of the business of Prowse Chowne LLP and/or with the authority of their partners therein. Accordingly, Prowse Chowne LLP is vicariously liable for Chowne's and Williams' breaches of duty and wrongful acts as set out in paras. 161-168 herein.
170. In the alternative, Prowse Chowne LLP had actual knowledge of the wrongful conduct of Williams and Chowne as set out herein, or was reckless or willfully blind thereto. Therefore, Prowse Chowne is liable to the Plaintiffs and putative Alberta District Class and Sub-class and Extra-provincial District Class and Sub-class members for the conduct of Chowne and Williams as set out in paras. 161 – 168 herein.

#### **R. Punitive Damages**

171. The LCC, LCCFM, Taman and Bishop & McKenzie knew or ought to have known that the Plaintiffs and putative Alberta District Class and Sub-class, Extra-provincial District Class and Sub-class, Alberta DIL Class and Sub-class and Extra-provincial DIL Class and Sub-class members are in large part elderly people who are dependent upon their deposits in the CEF Trust and the DIL Trust for their future financial security.
172. Further, the Plaintiffs and putative class members are people to whom the LCC and LCCFM stood in a position of religious leadership, authority and trust.

173. Between 1993 and December 31, 2014, LCC and LCCFM knowingly caused or permitted ABC District to solicit and receive deposits to the CEF Trust and the DIL Trust from the Plaintiffs and putative class members when they knew or ought to have known that:

- a. the ABC District was in breach of the CEF Trust;
- b. Concentra and DIL were in breach of the DIL Trust;
- c. ABC District and DIL were insolvent or on the eve of insolvency; and
- d. ABC District and DIL were preparing to commence the *CCAA* Proceedings.

174. The conduct of LCC and LCCFM as set out herein has been arrogant, high-handed, callous and reprehensible. It offends ordinary standards of morality and is deserving of condemnation and punishment through an award of punitive damages.

175. The conduct of Taman and Bishop & McKenzie as set out in paras. 100 – 101 herein has been arrogant, high-handed, callous and reprehensible. It offends ordinary standards of morality and is deserving of condemnation and punishment through an award of punitive damages.

176. The Plaintiffs propose that that trial of this action take place in Edmonton, Alberta.

**Remedy sought:**

177. The Plaintiffs claim on their own behalf and on behalf of the Alberta District Class and Sub-Class, the Extra-provincial District Class and Sub-Class, the Alberta DIL Class and Sub-Class, and the Extra-provincial DIL Class and Sub-Class, the following relief:

a. as against the Defendants LCC and LCCFM, jointly and severally:

- (i) Damages for breach of contract;
- (ii) Damages for breach of trust;
- (iii) Damages for breach of fiduciary duty;
- (iv) General damages;
- (v) Damages for rendering knowing assistance to breach of trust;
- (vi) Damages for knowing receipt of trust property;
- (vii) A constructive trust;
- (viii) Special damages;
- (ix) Punitive damages;
- (x) Pre-judgment interest in accordance with the *Judgment Interest Act*;
- (xi) Costs of this proceeding;
- (xii) Such further and other relief as this Court deems just.

b. As against Taman and Bishop & McKenzie LLP, jointly and severally:

- (i) A declaration that Taman and Bishop & McKenzie have been unjustly enriched;
- (ii) An accounting of the legal fees paid to Taman and Bishop & McKenzie in the CCAA proceedings;
- (iii) an order of restitution or alternatively an award of damages in such amount as may be proven at trial;
- (iv) Pre-judgment interest in accordance with the *Judgment Interest Act*;
- (v) Costs of this proceeding; and
- (vi) Such further and other relief as this Court deems just.

178. The Plaintiffs claim on their own behalf, and on behalf of the Alberta District Class and Sub-Class, the Extra-provincial District Class and Sub-Class, the following relief:

a. As against Taman and Bishop & McKenzie, jointly and severally:

- (i) Damages for breach of trust;
- (ii) Damages for breach of fiduciary duty;
- (iii) Damages for rendering knowing assistance to breach of the CEF Trust and/or the DIL Trust;
- (iv) Punitive damages;
- (v) Pre-judgment interest in accordance with the *Judgment Interest Act*;
- (vi) Costs of this proceeding; and
- (vii) Such further and other relief as this Court deems just.

b. As against Shepherd's Village Ministries Ltd.:

- (i) Damages for knowing receipt of trust funds acquired in breach of the CEF Trust and/or the DIL Trust;
- (ii) A constructive trust;
- (iii) Pre-judgment interest in accordance with the *Court Order Interest Act*;
- (iv) Costs of this proceeding; and
- (v) Such further and other relief as this Court deems just.

c. As against Shepherd's Village Ministries Ltd., Taman and Bishop & McKenzie, jointly and severally:

- (i) Damages for knowing receipt of the SVM Lands and the proceeds of the SVM CEF Loans in breach of the CEF Trust;
- (ii) Pre-judgment interest in accordance with the *Court Order Interest Act*;
- (iii) Costs of this proceeding; and
- (iv) Such further and other relief as this Court deems just.

179. The Plaintiffs claim on their own behalf and on behalf of the Alberta DIL Class and Sub-Class and the Extra-provincial DIL Class and Sub-Class as against Concentra Trust:

- (a) Damages for breach of fiduciary duty;
- (b) Damages for breach of trust;

- (c) Pre-judgment interest in accordance with the *Judgment Interest Act*;
- (d) Costs of this proceeding; and
- (e) Such further and other relief as this Court deems just.

### **NOTICE TO THE DEFENDANTS**

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Edmonton, Alberta, AND serving your statement of defence or a demand for notice on the plaintiffs' address for service.

### **WARNING**

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.



CHURCH  
EXTENSION  
FUND

ALBERTA | BRITISH COLUMBIA DISTRICT

*"Building HIS church, together."*

Dec 1, 2014

MARILYN HUBER  
18164 - 96 AVENUE  
EDMONTON, AB  
T5T 3N3

Re: Investment #306453162 / 202  
Associate(s):

This is Exhibit "B" referred to in the  
Affidavit of  
Marilyn Huber  
Sworn before me this 24 day  
of February A.D., 2016  
A. Dyer  
A Notary Public, A Commissioner for Oaths  
in and for the Province of Alberta

Dear Friend in Christ,

Your term investment in Church Extension will mature on Jan 29, 2015. The projected balance of your term investment on that date will be \$14,080.94.

Unless we receive other instructions from you, we will renew this investment for a 60 month term at 2.2500 % interest. The renewed investment will mature on Jan 29, 2020. 14,450

Church Extension is a great blessing of God to the work of our District. I commend you for being part of it! God continues to provide many opportunities to reach out with His love. Please remember the Church Extension ministry in your prayers, with your invested dollars and by encouraging others to do the same.

May our gracious God bless you, keep you in His care and continue to make you a blessing to others for Jesus' sake!

In His Service,

Candace Rivet  
Church Extension Administrator

*"This service that you perform is not only supplying the needs of God's people but is also overflowing in many expressions of thanks to God." 2 Corinthians 9:12.*

Lutheran Church-Canada  
THE ALBERTA-BRITISH COLUMBIA DISTRICT  
7100 Ada Blvd Edmonton, AB T5B 4E4

cef@lccabc.ca

Edmonton 780/474-0069 Toll Free 1-888-474-0069 Fax 780/477-9629





January 5, 2015

Marilyn Huber  
18164 - 96 Avenue  
Edmonton, AB T5T 3N3

This is Exhibit " C " referred to in  
Affidavit of  
Marilyn Huber  
Sworn before me this 24  
of February A.D., 2015  
A. Huber  
A Notary Public, A Commissioner for Oaths  
in and for the Province of Alberta

Dear Investor,

The purpose of this letter is to inform you that the District's Church Extension Fund (CEF) is facing some hardships. We ask that you take the time to read this letter in preparation for discussing the future of the CEF in the ABC District.

At the heart of our faith is God's love. Motivated by that love, we are called to go forth and proclaim the Gospel, to bear one another's burdens and to care for those in need. It was in this spirit, in 1921, that the CEF was created. Since then we have worked across our two provinces to provide financial support for congregations and organizations to pursue their ministry goals.

While we have all seen the benefits of CEF, personally or through others, the processes that governed our decision making have not kept up with the increasing complexity of what is involved in constructing and developing land and buildings. A number of congregations and other ministries have been unable to pay their mortgages, leaving us in a difficult situation.

As of spring 2015, the CEF will be facing a cash flow shortage, meaning we are unable to continue honouring withdrawals. As of January 2, 2015, we have placed a moratorium on withdrawals and deposits to enable us, in partnership with you and your fellow investors, to review our options and determine our way forward.

We recognize that some of our investors rely on CEF interest payments to meet basic living expenses. We have set up an Emergency Fund for those in this situation. This Fund will provide payments to those in need, on a monthly basis, as an advance on the payments that would be received as part of the plan. If you are in this situation, please contact 1-888-295-0683 or talk to your pastor.

For those of you who have invested in the registered accounts (TFSA's, RRIF's and RRSP's), they are in a separate situation, and we will address that situation in a note to follow shortly.

The foundation of our options is clear – we will need to begin selling District assets to pay back our investors. We have two ways we can approach this sale, and this is where we need your help in making our decision:

### **Option 1: Liquidation**

We would immediately start to sell District assets in an attempt to repay as much of the amount owing to the investors in a short time frame. The exact timing of this would be dependent on how long it would take us to sell the various properties, but under this first option, you will see a portion of your funds returned in the fairly near future. Additional payments would be made as the various properties were sold. The total amount returned could be as high as \$0.50 on the dollar, although that amount may be less. As part of this approach, the District administrative operations would cease to operate.

#### *Considerations:*

- Based on property values, investors could see as much as \$0.50 returned on each dollar
- Funds will be returned as assets are sold
- District properties will be sold and District services to church workers, congregations and schools as well as home mission support and development would all but cease
- The return of funds depends on the sale of assets – which means it's not possible to determine a precise timeline

### **Option 2: Restructuring**

In this option, a portion of the District assets would be sold to partially repay the investors. One of the District's assets – the Prince of Peace Manor and Harbour – would continue to operate in order to generate additional payments for the investors. Operations at the Manor and the Harbour would be taken over by an experienced seniors housing company and steps would be taken to maximize the value of the Manor and Harbour. Income generated from the Manor and Harbour would be paid to you as it is received until the building and operations were sold. Additionally, the property would be subdivided and portions would be sold off at the highest possible price over time. The objective would be to continue to pay the income from the Manor and Harbour to you until it made sense to sell the Manor and Harbour. Our initial projections suggest it may be possible to fully repay the investors using this method, though the timeframes will be longer than liquidating and other risks may be involved. Even if a full recovery does not happen, the returns have the potential to be better than Option 1 due to the fact that operations can be made more efficient and redevelopment and expansion options can be considered. The District could continue to operate under this approach.

#### *Considerations*

- Initial projections suggest it could be possible to fully repay investors
- New management has been hired for the Harbour and Manor. Diversicare, an experienced retirement home and senior care operator, was signed on in December and began to manage operations as of January. Under Diversicare's guidance, projections

show the potential for cash flow growth which could accelerate the timeline for paying back our investors.

- We could protect ministry and some District administrative functions.
- While this option has the potential for a greater payback, it may have a higher risk, as the return on investment depends on both the sale of assets and future operations at the Manor and Harbour.
- Restructuring will take longer to return funds to investors

While neither option is perfect, we ask you to prayerfully consider them and determine your preferences and priorities for the way forward.

Please join us to discuss the situation and our plans in person at one of our investor information meetings. A comprehensive list of meeting times and locations has been included here. We hope you can attend.

In the meantime, please don't hesitate to reach out to us via phone (a free call on 1-888-295-0683) or on our website ([www.abcdistrict.ca](http://www.abcdistrict.ca)). To access the website, please use the login information for your province as listed below:

**Username: Alberta**

Password: 3exKfjzC

**Username: British Columbia**

Password: L6XusXDK

Yours in prayer,

Rev. Donald Schiemann, President  
Alberta-British Columbia District  
Lutheran Church-Canada

## Summary of the Situation and Options

### *The Situation:*

---

The CEF is currently holding deposits valued at \$95.89M, with estimated redemptions of \$929,000 per month. CEF's current cash and marketable securities total \$7.8M. The rest of the Fund is invested in assets whose collective value falls below the total deposits of \$95.89.

Should withdrawals remain the same, the CEF will have a cash flow shortage in the spring of 2015.

### *Where we are:*

---

We have placed a moratorium on withdrawals.

We have assessed our options and need your help on where we go next.

No option is perfect, but we were thinking of the best possible ways to provide you with the best ways to reclaim as much as possible of your initial investment.

### *Our options:*

---

#### Option 1

Immediate liquidation: we would sell off District assets as quickly as reasonably possible to return what is left of the cash back to all of you. The amount and timeline would be dependent on how long it would take us to sell the properties. The total amount returned could be as high as \$0.50 on the dollar, although that amount may be less.

#### Option 2

Restructuring: In this case, we are considering options that would allow our investors to see payments from ongoing operations at one of the District's entities, Prince of Peace Manor and Harbour, while continuing to sell off other assets for the best achievable price. Investors would receive payments from income generated at Prince of Peace and as properties are sold. Full payment could be received, but the timeline for recovery could be longer than liquidation.

During this time, we will not be issuing interest payments or redemptions.

### *Next steps:*

---

We will be hosting meetings in each region to hear your opinions and determine our way forward. See meeting details below.

We encourage you to get in touch with any questions, concerns or comments either through our call centre (1-888-295-0683) or our website ([www.abcdistrict.ca](http://www.abcdistrict.ca))



*"Building HIS church, together."*

January 7, 2015

Dear Investor,

You are likely aware by this point that the District's Church Extension Fund (CEF) is facing some hardships. Our records show that you are an investor in the RRSP, RRIF or TFSA accounts. These accounts have been held in a fund which is separate from CEF, known internally as District Investments. For clarity, we will be using the term "District Investments" to refer to the RRSP, RRIF and TFSA accounts. This means the loans granted by District Investments are different from those granted by CEF. We ask that you take the time to read this letter to better understand how the hardships CEF is facing will affect your investment with District Investments.

District Investments was founded to provide an alternative investment option for our congregations. Its mission and vision is the same as CEF: to provide financial support for congregations and organizations to pursue their ministry goals. Currently all of District Investments loans are in good standing and payments are being received on time from our investment projects.

We are continuing to evaluate the impact of the CEF situation on the District and District Investments. We are also reviewing the holdings in District Investments. More details will become clearer after our meeting with CEF investors on January 15 and 16.

Meetings will be set up for investors with registered accounts and the time and locations of those meeting will be posted on the website at [www.abcdistrict.ca](http://www.abcdistrict.ca). Or you may get the meeting information by leaving a message at the call center at 1-888-295-0638.

In the meantime, please don't hesitate to reach out to us via phone (a free call on 1-888-295-0638) or on our website ([www.abcdistrict.ca](http://www.abcdistrict.ca)). To access the website, please use the login information for your province as listed below:

**Username: Alberta**

**Password: 3exKfjzC**

**Username: British Columbia**

**Password: L6XusXDK**

Yours in prayer,

Kurt Robinson

This is Exhibit "D" referred to in the  
Affidavit of  
Marilyn Huber  
Sworn before me this 24 day  
of February A.D., 2016  
A. Mante  
A Notary Public, A Commissioner for Oaths  
in and for the Province of Alberta

---

**Depositor Preference Card**

Name: \_\_\_\_\_

Phone: \_\_\_\_\_

*Please number the options below in order of preference:*

- Liquidation (selling off District assets in the short-term)
- Restructuring (District would operate in a modified form and payments made from operations at Prince of Peace Manor and Harbour)

*If you have an alternate idea, please write below. We will work with our team to investigate and will liaise with you as appropriate.*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

We thank you for your time and attention to this matter, and hope you will keep District and others in your prayers as we go through this difficult time.

This is Exhibit "E" referred to in the  
Affidavit of  
Marilyn Huber  
Sworn before me this 24 day  
of February A.D., 2016  
J. Bartel  
A Notary Public, A Commissioner for Oaths  
in and for the Province of Alberta



Deloitte Restructuring Inc.  
700, 850 – 2<sup>nd</sup> Street S.W.  
Calgary AB T2P 0R8  
Canada

Tel: 403-267-1899  
Fax: 403-718-3681  
www.deloitte.ca

January 26, 2015

**Notice to the Creditors and Depositors of:**

**Lutheran Church – Canada, the Alberta – British Columbia District, Lutheran Church – Canada, the Alberta – British Columbia District Investments Ltd., Encharis Community Housing and Services and Encharis Management and Support Services (collectively the “District Group”)**

Please be informed that, on January 23, 2015, the District Group obtained an initial order (the “Initial Order”) from the Court of Queen’s Bench of Alberta (the “Court”) under the *Companies’ Creditors Arrangement Act (Canada)* (the “CCAA”). The Initial Order provides for a stay of proceeding until February 20, 2015 (the “Stay”), pursuant to which creditors are restrained from enforcing or exercising any rights or remedies against the District Group. The Stay has been granted to give the District Group time to determine if it can formulate a plan of arrangement (a “Plan”) to present to its creditors. Under the CCAA, the stay may be extended on such terms and with such modifications as the Court considers appropriate.

Deloitte Restructuring Inc. was appointed by the Court as the Monitor in the CCAA proceedings. The Monitor will notify creditors of any claims process to be undertaken and any meeting to be held to vote on the proposed Plan. The Monitor may also prepare progress reports to the Court, copies of which will be available to the creditors and depositors.

The Initial Order, a listing of creditors and depositors as represented by the District Group, and other publicly available documents, can be accessed via the Monitor’s website at [www.insolvencies.deloitte.ca](http://www.insolvencies.deloitte.ca) under the “Lutheran Church – Canada, the Alberta – British Columbia District et. al.” link (the “Deloitte Website”).

Interested parties are encouraged to check the Deloitte Website frequently for updates as to the status of CCAA proceedings. For further information, you may also contact the Monitor at the address above or as follows:


Via Telephone: (403) 267-1899

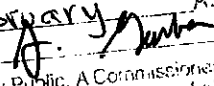
Via Email: [calgaryrestructuring@deloitte.ca](mailto:calgaryrestructuring@deloitte.ca)

Yours truly,

**DELOITTE RESTRUCTURING INC.**

In its capacity as the Court-appointed Monitor of Lutheran Church – Canada, the Alberta – British Columbia District, Lutheran Church – Canada, the Alberta – British Columbia District Investments Ltd., Encharis Community Housing and Services and Encharis Management and Support Services and not in its personal or corporate capacity

  
Per: Jeff Keeble CA, CIRP, CBV  
Senior Vice-President

This is Exhibit "F" referred to in the  
Affidavit of  
Marilyn Huber  
Sworn before me this 24 day  
of February, A.D., 2016  
  
A Notary Public, A Commissioner for Oaths  
in and for the Province of Alberta



"Building HIS church, together."

February 27, 2015

MARILYN HUBER  
18164 - 96 AVENUE  
EDMONTON, AB, T5T 3N3

This is Exhibit G referred to in the  
Affidavit of  
Marilyn Huber  
Sworn before me this 24 day  
of February A.D., 2016  
A. Huber  
A Notary Public, A Commissioner for Oaths  
in and for the Province of Alberta

Portfolio Number:

Account Type:

606453162

Registered Ret. Savings Plan

### ABC District Investments Ltd. Account Summary

Estimated Book Value  
as of December 31, 2014

Estimated Write Down Balance  
as of January 23, 2015

\$ 72,179.36

\$ 54,882.20

***On January 23, 2015, the Lutheran Church – Canada, the Alberta – British Columbia District Investments Limited ("DIL") obtained an Initial Order under the Companies' Creditors Arrangement Act with the intention of presenting a plan of arrangement to its creditors and restructuring its affairs. The values on this statement indicate the book value of your claim prior to and after a write down of 24% in its face value (as further described in the Notice to holders of RRIFs issued on February 2, 2015). Through issuing this statement, DIL does not represent or warrant the amount that will ultimately be payable to you pursuant to any plan of arrangement.***

We recognize that the statement provided above may not provide you with the detail that you are accustomed to receiving regarding your RRSP/ LIRA/ RRIF/ LIF/TFSA account(s). If you wish to receive a detailed statement of your account(s) for January 1 – December 31, 2014, please call 780-474-0063 ext. 0 or email [cef@lccabc.ca](mailto:cef@lccabc.ca).