

Federal Court



Cour fédérale

**Date: 20220104**

**Docket: T-463-07**

**Ottawa, Ontario, January 4, 2022**

**PRESENT: The Honourable Madam Justice Kane**

**BETWEEN:**

**DENNIS MANUGE**

**Plaintiff**

**and**

**HER MAJESTY THE QUEEN**

**Defendant**

**ORDER**

**UPON** considering the informal motion brought jointly by the parties and upon agreeing that a formal motion is not required, the Court orders that an amendment be made, as described below, to the governance and administration of the Bursary Fund established by this Court's Order dated October 16, 2013 ("Original Order") in *Manuge v. Her Majesty the Queen*, T-463-07 ("*Manuge*") for the benefit of Canadian Armed Forces veterans ("Veterans") and their families;

**WHEREAS** the Original Order provided that as of October 2020 the Bursary Fund shall award bursaries annually to eligible Veterans ("Expanded ELB/CFIS Beneficiaries"), or certain family members, whose Earnings Loss Benefit or Canadian Forces Income Support benefit were

affected by the disability pension offset under the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*;

**AND WHEREAS** the Expanded ELB/CFIS Beneficiaries includes class members in the certified class proceeding, *Raymond Michael Toth v. Her Majesty the Queen*, T-1068-14 (“*Toth*”), which was settled under approval of the Court’s Order dated January 30, 2019;

**AND WHEREAS** the Court granted a further order on January 6, 2021 providing for distribution of unpaid residual amounts from the *Toth* settlement to certain charities, including the Bursary Fund;

**AND WHEREAS** the parties in *Manuge* and *Toth*, in consultation with Universities Canada (“UC”) as the administrator of the Bursary Fund, agreed to amend the terms of the Bursary Fund to include all *Toth* class members, or certain descendants of *Toth* class members, and to enhance the benefits available to all beneficiaries;

**AND WHEREAS** the parties in *Manuge* and *Toth* have requested, on consent, that the Court issue a further order or direction regarding the governance and administration of the Bursary Fund by UC;

**THIS COURT ORDERS that:**

[1] Section 1 The Bursary Fund shall be continued on the following amended terms:

- (a) The Defendant has paid an additional \$2,813,876.82 into the Bursary Fund to be used with existing amounts in the Bursary Fund to fund bursaries for eligible beneficiaries as follows:

- (i) The Bursary Fund shall continue to award bursaries to individual *Manuge* Class Members, or a *Manuge* Class Member's spouse, child, grandchild, nephew, niece, son-in-law, or daughter-in-law. The Class Member's spouse, child, grandchild, nephew, niece, son-in-law, or daughter-in-law shall provide a declaration of their relationship to the Class Member in a form satisfactory to UC. The declaration shall be determinative of an applicant's eligibility and UC shall be entitled to rely on the declaration without recourse.
- (ii) As of October 2020, and for such time thereafter until UC completely expends the Bursary Fund, the Bursary Fund shall also award bursaries annually to persons who are members of the *Toth* Earnings Loss Benefit or Canadian Forces Income Support [ELB/CFIS] class, or a *Toth* ELB/CFIS class member's spouse, child, grandchild, nephew, niece, son-in-law, or daughter-in-law. The *Toth* ELB/CFIS class member's spouse, child, grandchild, nephew, niece, son-in-law, or daughter-in-law shall provide a declaration of their relationship to the *Toth* ELB/CFIS class member in a form satisfactory to UC. The declaration shall be determinative of an applicant's eligibility and UC shall be entitled to rely on the declaration without recourse.

- (iii) As of January 2021, and for such time thereafter until UC completely expends the Bursary Fund, the Bursary Fund shall also award bursaries annually to persons who are members of the *Toth War Veterans Allowance* [WVA] class, or a *Toth* WVA class member's spouse, child, grandchild, or great-grandchild. The WVA class member's spouse, child, grandchild, or great-grandchild shall provide a declaration of their relationship to the *Toth* WVA class member satisfactory to UC. The declaration shall be determinative of an applicant's eligibility and UC shall be entitled to rely on the declaration without recourse.
  
- (iv) UC may award bursaries for University, Community College, CÉGEP, or trade school expenses incurred while enrolled at the post-secondary institution, if the Canadian Information Centre for International Credentials lists the post-secondary institution in the *Directory of Universities, Colleges and Schools in the Provinces and Territories of Canada*.
  
- (v) To qualify for a bursary award, Class Members and eligible individuals must submit an application to UC. UC shall develop and make available the application to eligible applicants in accordance with the terms of this Direction. An

eligible applicant may request a bursary award for eligible expenses incurred by the applicant for up to 5 years before submission of an application.

- (vi) The Bursary Fund shall continue to use any interest or income earned to fund bursaries.
- (vii) For the first 7.5 years of the existence of the Bursary Fund, or until October 2020, UC shall award bursaries of \$1,300 each to a limit of the first 4,000 applicants. In addition, UC may award further bursaries of the same dollar value with the interest accrued during this 7.5-year period.
- (viii) As of October 2020, the Bursary Fund may award any number of bursaries of \$2,500 in each calendar year until UC fully expends the Bursary Fund.
- (ix) UC shall make best efforts to communicate to all recipients of a bursary of \$1,300 an offer to provide up to \$1,200 in additional compensation from the Bursary Fund to account for the increase in the bursary amount to \$2,500. Such additional payment shall be payable only to the original recipient.

(x) There will be no more than one bursary available in respect of each *Manuge* or *Toth* class member. For greater certainty, an individual who is a class member under both the *Manuge* and *Toth* settlements shall be entitled to only one bursary in total in respect of both settlements.

(xi) UC, formerly known as Association of Universities and Colleges of Canada, shall hold the Bursary Fund and be paid any management fee from the corpus of the fund.

[2] Section 2 The Court directs continuation of the Bursary Fund on the payment by the Defendant to UC of an additional \$2,813,876.82 that UC shall hold and administer in accordance with these Directions.

[3] Section 3 The Bursary Fund shall be held by UC in separate accounts from UC's other assets and third party funds and be dealt with in accordance with the provisions of these Directions. At no time shall any part of the corpus or income of the Bursary Fund be used for, or diverted to, purposes other than the exclusive benefit of the Class Members and eligible individuals provided for in the Original Order and these Directions.

[4] Section 4 For purposes of awarding bursaries under the Bursary Fund, the Court authorizes the sharing of personal information of and relating to Class Members and eligible individuals, (as defined by the *Privacy Act*, RSC 1985, C p-21 or the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5). The sharing of personal information, as appropriate, may take place among: UC; Defendant (including the Department of National Defence); administrators of the Service Income Security Insurance Plan; Veterans Affairs Canada; Manulife Financial; and Plaintiffs' counsel in *Manuge* and *Toth*.

[5] Section 5 The duties of UC shall include:

- (a) holding and administering the Bursary Fund;
- (b) investing and re-investing the Bursary Fund as per Section 6 below;  
and
- (c) awarding bursaries to Class Members and eligible individuals provided for in the Original Order and in these Directions.

[6] Section 6 Any moneys held by UC which under the Original Order and these Directions may or ought to be invested, shall be invested or re-invested by UC exclusively for the benefit of Class Members and eligible individuals, in accordance with investment advice provided by their investment managers and counsel. UC shall be entitled to deduct fees to cover the cost of the administration of the Bursary Fund.

All investment and re-investment of the moneys held by UC under the Original Order and these Directions shall be in shares, securities, mortgages and other legal investment instruments in accordance with relevant legislation.

UC may keep such portion of the Bursary Fund as may from time to time be deemed by them to be in the best interests of the Bursary Fund, on deposit at the current interest rate in a chartered bank, in a government-approved savings company in Canada or on demand deposit with a Trust Company, at an agreed interest rate.

[7] Section 7 Subject to further direction from this Court, UC maintains the following powers:

(a) To hold, purchase, or otherwise acquire any property or assets and to sell, exchange, convey, transfer, or otherwise dispose of any property or other assets held by UC, either by private contract or at public auction, and to receive the consideration or price therefore



and grant good discharge. For clarity, no person dealing with UC shall be entitled to see to the application of the purchase money or to enquire into the validity, expediency, or propriety of any such sale, discharge, or other disposition.

- (b) To vote upon any stocks, bonds or other securities; give general or special proxies or powers of attorney with or without power of substitution; exercise any conversion privileges, subscription rights or other options and to make any payments incidental thereto; consent to or otherwise participate in corporate reorganizations or other changes affecting corporate shares and securities and to pay any assessments or charges, in connection herewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities, or other property held in the Bursary Fund.
- (c) To make, execute, acknowledge and deliver any documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted.
- (d) To register any investment held in the Bursary Fund in its own name or in the name of a nominee and to hold any investment in bearer form, but the books and records of the Bursary Fund shall at all times show that all such investments are part of the Bursary Fund.

- (e) To employ, and to pay reasonable expenses and compensation to, suitable agents and counsel including, but not limited to, investment managers, custodians, and consultants.
- (f) To pay the costs, expenses, and other payments authorized by the Original Order and these Directions out of the Bursary Fund.
- (g) To borrow money in furtherance of the orderly acquisition, or liquidation, of investments, provided that such borrowings are clearly temporary in nature.
- (h) To retain all securities, moneys and other assets at any time forming part of the Bursary Fund under its control and keep all books and records incidental to the administration and execution of the Bursary Fund.

[8] Section 8 UC shall be entitled to pay itself administration fees as set out in Schedule A of these Directions. The fees will include reimbursement of investment advisor fees, program costs, and contingency fees that are reasonable and consistent with fees payable to UC for administering third party funds of a similar nature notwithstanding any other provision of these Directions or the Original Order. Within 30 days of the fiscal year end of the operation of the Bursary Fund, UC shall forward to Counsel a statement of all administration fees paid from the Bursary Fund to UC.

- [9] Section 9 UC shall not be liable for the making, retention, or sale of an investment or re-investment made by UC as herein provided or for any loss to or diminution of the Bursary Fund, except due to their own negligence, willful misconduct or for lack of good faith. UC may from time to time consult with Counsel for the Plaintiffs and the Defendant, but will not be bound to act upon such opinion or advice and shall not be responsible for any loss occasioned by so acting, or by not acting, as the case may be.
- [10] Section 10 UC shall keep accurate and detailed account of all investments, receipts, disbursements, and other transactions hereunder, and all accounts, books and records relating thereto shall be open to inspection and audit at all reasonable times by Counsel to the Plaintiffs, Counsel to the Defendant, and the Court. Within ninety (90) days following October 31 of each year, UC shall file with Counsel to the Plaintiffs, Counsel to the Defendant, and the Court, a written account setting forth all investments, receipts, disbursements and other transactions effected by them during such fiscal year.
- [11] Section 11 If, after 10 years from the date of issue of these Directions, the parties agree that the number of claims has reduced to an extent that maintenance of the Bursary Fund is no longer justified, the parties can seek direction from the Court on whether the Bursary Fund should be wound up and the remaining funds distributed as directed.

[12] Section 12 UC shall administer the Bursary Fund provided in accordance with the following directions:

- (a) UC shall direct the application process that class members and eligible individuals must follow. All decisions of UC with respect to the administration of the Bursary Fund shall be final.
- (b) UC shall award bursaries on a first come, first served, basis using the administrative process set out by UC, and subject to the conditions and restrictions established by UC in the timelines prescribed by UC.
- (c) A class member or eligible individual must be enrolled in a qualifying educational program as provided for in the *Income Tax Act* at an institution that is a university, college, CÉGEP or trade school listed in the *Directory of Universities, Colleges and Schools in the Provinces and Territories of Canada* of the Canadian Information Centre for International Credentials. UC will provide a link to this directory.
- (d) UC may draw up to \$10,000 annually from the Bursary Fund that UC may use exclusively for promoting and advertising the Bursary Fund to encourage additional new applications from class members or eligible individuals.

[13] Section 13 UC, Counsel to the Plaintiffs and Counsel to the Defendant, reserve the right to seek further directions from the Court by delivering a notice in writing to Counsel to the Plaintiffs, Counsel to the Defendant, Universities Canada, and the Court as follows:

**Daniel Wallace**

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"Catherine M. Kane"

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Judge

**Schedule A**  
**Veterans Bursary Program**  
**Fees**

UC will draw fees for implementation and ongoing management of the Bursary Fund from the fund annually based on the following service fee structure:

PROPOSED PRICING STRUCTURE					
Item Description	Price Period 1 (January 1st 2022 to December 31st 2023)	Price Period 2 (2024-25)	Price Period 3 (2026-27)	Price Period 4 (2028-29)	Price Period 5 (2030-2031)
	Unit Price	Unit Price	Unit Price	Unit Price	Unit Price
Applications Processed (include ineligibles)	\$115.00	\$125.00	\$135.00	\$145.00	\$155.00
Program and Fund Management	\$29,128.00	\$30,712.00	\$32,296.00	\$33,880.00	\$35,464.00
Award Distribution	\$15.00	\$17.50	\$20.00	\$22.50	\$25.00

**Note:** UC will obtain approval from the Federal Court for any proposed changes to the fee schedule on written notice to counsel for the Plaintiffs and the Defendant.