REGISTERED MAIL

Canadian Lacrosse Association
2211 Riverside Drive, Suite B-4
Ottawa ON K1H 7X5

BN: 130272891

Attention: Ms. Carole Chouinard

File #:0495580

June 7, 2010

Subject: **Revocation of Registration**
Canadian Lacrosse Association

Dear Ms. Chouinard:

The purpose of this letter is to inform you that a notice revoking the registration of Canadian Lacrosse Association (the Association) was published in the *Canada Gazette* on June 5, 2010. Effective on that date, the Association ceased to be a registered Canadian amateur athletic association (RCAAA).

Consequences of Revocation:

a) The Association is no longer exempt from Part I Tax as an RCAAA and **is no longer permitted to issue official donation receipts.** This means that gifts made to the Association are no longer allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the *Income Tax Act* (the Act), respectively.

b) The *Excise Tax Act* (ETA) defines a "charity" in subsection 123(1) as "a registered charity or registered Canadian amateur athletic association within the meaning assigned to those expressions by subsection 248(1) of the Act, but does not include a public institution". Therefore, under the ETA an RCAAA is referred to as a "charity". The Association will no longer qualify as a charity for purposes of subsection 123(1) of the ETA, effective the date of revocation. As a result, it may be subject to obligations and entitlements under the ETA that apply to organizations other than charities. If you have any questions about your GST/HST obligations and entitlements, please call

GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

In accordance with *Income Tax Regulation* 5800, the Association is required to retain its books and records, including duplicate official donation receipts, for a minimum of two years after the Association's effective date of revocation.

Finally, we wish to advise that subsection 150(1) of the Act requires that every corporation (other than a corporation that was a registered charity throughout the year) file a *Return of Income* with the Minister of National Revenue (the Minister) in prescribed form, containing prescribed information, for each taxation year. The *Return of Income* must be filed without notice or demand.

If you have any questions or require further information or clarification, please do not hesitate to contact the undersigned at the numbers indicated below.

Yours sincerely,

Danie Huppé-Cranford
Director
Compliance Division
Charities Directorate
Telephone: 613-957-8682
Toll free: 1-800-267-2384

Enclosures

- Copy of the Return (form T-2046)
- Canada Gazette publication

Cc: Mr. Joey Harris, President
42 Killington Avenue
Winnipeg MB R2G 2Y5

REGISTERED MAIL

Canadian Lacrosse Association
2211 Riverside Drive, Suite B-4
Ottawa ON K1H 7X5

APR 15 2010

BN: 13027 2891RR0001
File #: 0495580

Attention: Ms. Carole Chouinard

Subject: **Notice of Intention to Revoke**
Canadian Lacrosse Association

Dear Ms. Chouinard:

I am writing further to our letter dated October 8, 2009 (copy enclosed), in which you were invited to submit representations as to why the Minister of National Revenue (the Minister) should not revoke the registration of the Canadian Lacrosse Association (the Organization) in accordance with subsection 168(1) of the *Income Tax Act* (the Act).

We have now reviewed and considered your written response dated November 18, 2009. However, notwithstanding your reply, our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a registered amateur athletic association have not been alleviated. Our position is fully described in Appendix "A" attached.

Consequently, for each of the reasons mentioned in our letter dated October 8, 2009, I wish to advise you that, pursuant to the authority granted to the Minister in subsection 168(1) of the Act, which has been delegated to me, I propose to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

> *For issuing more than $60.7 million in donation receipts for abusive transactions arising from its role as a participant in tax shelter arrangements that, in the opinion of the Minister, do not qualify as gifts, notice is hereby given, pursuant to paragraph 168(1)(d) of the* Income Tax Act, *that I propose to revoke the registration of the organization listed below. In accordance with subsection* 168(2) *of the* Income Tax Act, *the revocation of registration is effective on the date of publication of this notice.*

Business Number	Name
130272891RR0001	Canadian Lacrosse Association Ottawa ON

This notice will be published in the Canada Gazette upon the expiration of 30 days from the mailing of this letter.

Consequences of Revocation

As of the effective date of revocation, the Organization **will no longer be permitted to issue official donation receipts.** This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the Act, respectively.

I trust the foregoing fully explains our position.

Yours sincerely,

Cathy Hawara
A/Director General
Charities Directorate

Attachments:
- CRA letter dated October 8, 2009;
- Your letter dated November 18, 2009; and
- Appendix "A", Comments on representations

c.c.: Mr. Joey Harris, President
[redacted]

APPENDIX "A"

CANADIAN LACROSSE ASSOCIATION

COMMENTS ON REPRESENTATIONS OF NOVEMBER 18, 2009

Seriousness of Non-Compliance:

Based on the Canada Revenue Agency's (CRA) audit of the Canadian Lacrosse Association (the Organization), the Organization primarily operates for the purpose of furthering the registered tax shelters, EquiGenesis and Donation Program Supporting Canadian Amateur Athletics, Foundations and Charities, by agreeing, for a fee, to act as a receipting agent for these tax shelter programs. As described in the balance of this letter, and in our letter of October 8, 2009, the Organization is operating as a conduit for the tax shelters; is in serious breach of the requirements of registration under the *Income Tax Act* (the Act) and its registration should be revoked.

Our audit revealed the Organization issued official donation receipts in excess of $60.7 million yet retained a mere $608,447, or approximately 1%, of the total cash contributed. The CRA's audit has concluded that the remainder of the funds flowed through the Organization's accounts to offshore investment accounts, to give the illusion that they were received and invested by the Organization, but were in fact immediately used to repay the original lenders for the funds loaned to participants in the tax shelters. These facts demonstrate that the Organization has participated in and facilitated abusive tax shelter arrangements which in our view, is grounds for revocation in and of itself.

Issuance of Official Donation Receipts:

We have reviewed your response of November 18, 2009, and remain of the position the Organization issued official donation receipts for gifts otherwise than in accordance with the Act and its Regulations. A registered Canadian amateur athletics association (RCAAA) is entitled, under the Act, to issue receipts for gifts that it receives. However, before an RCAAA can issue a receipt, it is incumbent on the RCAAA to determine whether the transaction qualifies as a "gift" at law.

Your representations have failed to address any of the CRA's concerns that the Organization issued receipts otherwise than in accordance with the Act and its Regulations. As such, it remains our position that the Organization issued receipts for transactions that do not qualify as gifts at law and for this reason alone, it remains our position there are grounds for revocation of its registered status under paragraph 168(1)(d) of the Act.

a) No *Animus Donandi*

It remains the view of the CRA that the vast majority of the transactions involving the Organization do not qualify as gifts at law as they lack the requisite *animus donandi* – or "intent to give" – that a donor transfer property to the Organization and impoverish himself as a result. Participants in these arrangements fully intend to recoup the full amount of their

"donation" plus an additional 67-94% return through a series of pre-meditated and artificial transactions.

In your letter you state the Organization "did not knowingly issue receipts otherwise than in accordance with the Act". As stated in our previous letter, the arrangements which the Organization participated in, promised participants a positive return on investments by making donations. The arrangements promised participants the opportunity to achieve this by receiving loans that, through a series of related "investments" and the purchase of an "insurance policy", would not need to be repaid. The Organization knew, or ought to have known, that the participants were receiving receipts valued at almost four times the amount they actually contributed out-of-pocket. It is clear that the schemes in which the Organization participated were mass-marketed as an opportunity to profit from the tax system by making an out-of-pocket payment and receiving a non-repayable loan, then making a donation that includes the amount of the loan, with the Organization issuing official donation receipts for the total amounts purportedly received.

We acknowledge that the Organization's banking records show the amounts purportedly received from participants in the tax shelters flowed through its bank accounts. However, as our audit has revealed, the arrangements require that these funds be transferred offshore to conceal the ultimate use of these funds – which was to repay the original lenders. Despite the representations made by the promoters of the tax shelter arrangements, who were engaged by the Organization to fundraise on its behalf, it is clear that the loans were not repaid by the investment contracts and specialty insurance, but were repaid out of the purported donations made to the Organization. As such, we remain of the position that these transactions lack the requisite *animus donandi* to be considered gifts as the participants did not give gratuitously but knew they were to receive "loans" that they were not liable to repay.

As such, it remains our position that the Organization issued receipts for transactions that do not qualify as gifts at law. For this reason alone, it remains our view that the Organization has issued receipts other than in accordance with the Act and there are grounds for revocation of its registered status under paragraph 168(1)(d).

(b) Property Donated

We note that upon drawing the Organization's attention to the fact that the funds which are represented as belonging to it as investments were in fact repaid to the original lenders, that the Organization's response is to outline the professional opinions commissioned by and issued to the tax shelter promoters and other participants. These opinions were not commissioned by nor issued to the Organization, and while some of the assumptions and facts may be similar, the opinions did not address the Organization's specific status and position in the arrangements. Your response includes no confirmation on how the Organization did in fact maintain and have access to its offshore investments. *Per* our previous letter, the lack of care and concern the Organization has demonstrated towards the $60.7 million purportedly donated to it is alarming in and of itself.

In our view, the Organization's conduct in these arrangements are clearly unacceptable and designed to facilitate these transactions – whether or not the Organization was itself directly involved in the transfer of the funds back to the original lenders. The Organization issued receipts for over $60.7 million in donations and was entitled to

immediately retain a meagre 1% of these amounts. The Organization agreed to and did, in fact, transfer 99% of all donations purportedly received to offshore accounts in Bermuda to which it had no access. It is from these accounts that funds were returned to the original lenders.

Per our previous letter, the Organization took no steps to safeguard its property and understood it would immediately receive only 1% of the total "donated". The Organization relinquished all control and direction over the funds "invested" with offshore entities. Despite receiving a meagre 0.29% rate of return on these "investments" and a steadily eroding principal amount, the Organization continued to participate in this program. Given the lack of due diligence the Organization has demonstrated in safeguarding the $60.7 million in funds for which the Organization has issued official tax receipts, it is simply not an acceptable defence for the Organization to deny knowledge of the circular and abusive transactions in which it has participated.

As such, it is our position that the Organization issued receipts for property not actually donated to it, but designed to give the illusion that property has been donated to the Organization. For this reason alone, it remains our position that the Organization issued receipts other than in accordance with the Act and there are grounds for revocation of its registered status under paragraph 168(1)(d).

(c) Nature of Property

Although this was raised in the initial letter, we are not relying on it as grounds for revocation. We remain alarmed by the fact that the Organization would enter into arrangements whereby it was required to issue a receipt for 100% of an amount but, as part of its arrangement with the tax shelter promoters, gave up access and rights to $60.7 million in funds in return for 1% of the full amount and a small percentage of the income to be generated by the investment over a period of 20 years.

Our audit has concluded that the funds received by the Organization were actually placed in offshore investments, which in our view, is further evidence that the funds were never beneficially owned by the Organization during the period under audit. Further, the Organization's return on investments was a meagre 0.29% and the average loss on capital would have been 5.27% annually.

(d) Application of Proposed Legislation & Limited-recourse Debt

It is the position of the CRA that the Organization participated in a tax shelter arrangement, which was structured as a limited-recourse debt as defined in proposed section 143.2(6.1) as follows:

> (6.1) Limited-recourse debt in respect of a gift or monetary contribution — the limited-recourse debt in respect of a gift or monetary contribution of a taxpayer, at the time the gift or monetary contribution is made, is the total of
>
> > (a) each limited-recourse amount at that time, of the taxpayer and of all other taxpayers not dealing at arm's length with the taxpayer, that can reasonably be considered to relate to the gift or monetary contribution,

b) each limited-recourse amount at that time, determined under this section when this section is applied to each other taxpayer who deals at arm's length with and holds, directly or indirectly, an interest in the taxpayer, that can reasonably be considered to relate to the gift or monetary contribution, and

(c) each amount that is the unpaid amount at that time of any other indebtedness, of any taxpayer referred to in paragraph (a) or (b), that can reasonably be considered to relate to the gift or monetary contribution if there is a guarantee, security or similar indemnity or covenant in respect of that or any other indebtedness.

To further clarify our position, we bring to your attention proposed subsection 143.2(6.1) as defined in the 2006 Department of Finance Technical notes:

> "A limited-recourse debt includes the unpaid principal of any indebtedness for which recourse is limited, even if that limitation applies only in the future or contingently. It also includes any other indebtedness of the taxpayer, related to the gift or contribution, if there is a guarantee, security or similar indemnity or covenant in respect of that or any other indebtedness. For example, if a donor (or any other person mentioned below) enters into a contract of insurance whereby all or part of a debt will be paid upon the occurrence of either certain or contingent event, the debt is a limited-recourse debt in respect of a gift if it is in any way related to the gift. Such indebtedness is also a limited-recourse debt if it is owned by a person dealing non-arm's length with the taxpayer or by a person who holds an interest in the taxpayer."

It is our view that the purchase of the insurance policy is a guarantee, security or similar indemnity or covenant which settled the debt and effectively renders the loan a limited-recourse loan as per proposed paragraph 143.2(6.1)(c) and as such the receipt should have been reduced to reflect this benefit.

For the reasons expressed in our previous letter, the CRA remains of the position that the amounts received by the Organization are amounts which meet the definition of a limited-recourse debt. It is clear that the debts offered to the participants were, as represented by the promoters, an unpaid amount for which there was a "guarantee, security, or similar indemnity or covenant" in respect of the indebtedness. As noted above, in an example of proposed subsection 248(32), the option of a participant to satisfy or pay a loan by assigning or transferring to another person a property (including the rights under an insurance policy) that has less economic value than the amount of loan outstanding would reduce the amount of the gift.

Further, your letter states, "In our view, the board of directors of the [Organization] went beyond the call of duty and carried out extensive due diligence in trying to determine whether the Parklane and EquiGenesis donation programs complied with the Act. None of the opinions they requested or reviewed indicated that there were any areas of concern with respect to the Parklane and EquiGenesis donation programs, other than the opinion rendered

by Carole Chouinard in the fall of 2005 at the request of the [redacted]."

We do not dispute that the Organization reviewed several legal opinions; however, as indicated in our previous letter, the Organization did not obtain its own legal opinion but rather relied on the opinion of [redacted] and [redacted] prior to entering into its first contract. We would note that both of these opinions were commissioned by and issued to the promoters of the tax shelter programs. The Organization also reviewed and considered legal opinions issued by [redacted] and [redacted] regarding the EquiGenesis program and again we note that both of these opinions were also commissioned by and issued to the promoters of the tax shelter programs. The Organization's due diligence, or rather reliance upon opinions issued to entities other than itself, is a contributing factor to the non-compliance identified in our audit.

With all due respect, we disagree with your statement that none of the opinions reviewed by the Organization prior to Ms. Chouinard's opinion in 2005 indicated any concerns with the tax shelter programs. In our view, [redacted] was quite clear in his December 24, 2003 opinion that the December 5, 2003 proposed legislation would question the compliance of the Donation Program Supporting Canadian Amateur Athletics, Foundations and Charities (i.e., the Trafalgar program). His opinion states at point 4 a): "the Department of Finance has released draft legislation dated December 5, 2003 which effectively closes the loophole on many forms of these transactions including, in our opinion, the Trafalgar transactions that Conlin & McAlpin commented on in their letter of June 10, 2003". Subsequent to receiving and reviewing this opinion, the Organization signed two new Series A contracts with the tax shelter promoter. [redacted] further cautioned that the directors have a fiduciary duty to ensure that the assets are invested with reasonable care and caution. In our opinion, a rate of return less than 1% annually does not qualify as reasonable care and caution, specifically when 98.45% of the Organization's assets held for investment purposes are invested with Trafalgar.

For this reason alone it remains our position that the Organization has issued receipts other than in accordance with the Act and there are grounds for revocation of its registered status under paragraph 168(1)(d).

Books and Records

We have reviewed your explanation for the discrepancies in the books and records and have concluded that the books and records were adequate for the purposes of subsection 230(2) of the Act. We also accept the Organization's proposal to address the filing requirements under Regulation 200(1) by ensuring that it provides T4A slips to all service providers that are paid in excess of $500 *per* calendar year on a going forward basis.

Additional Submissions

The Organization raises additional submissions against the revocation of their status. Specifically, the Organization notes that it exercised due diligence in tracking the return on its investment with Trafalgar; that the Organization considers the funds invested with Trafalgar to be its funds; and makes Trafalgar accountable for its management of the funds. However it is our position, as outlined above and in our previous letter, that the Organization relinquished

control of the amounts it transferred offshore and therefore has relinquished control of how those sums are invested.

The Act provides RCAAAs with the unique privilege of issuing tax receipts, which a donor can claim on his or her tax return, on the presumption that where funds are donated, the RCAAA actually receives and actually uses an equivalent amount in their programs. As it applies to the Organization, our audit has concluded the Organization has issued in over $60.7 million in donation receipts on behalf of abusive arrangements in which leveraged donations were flowed through the accounts of the Organization, to an offshore account and immediately returned to the original lenders. The Organization was entitled to immediately retain a meagre 1% of all donations and received 0.29% *per* annum from its "investments".

The Organization also suggests that the CRA is treating the Organization inequitably as it faces revocation while another RCAAA participating in the same donation arrangement was issued a compliance agreement. The confidentiality provisions of the *Income Tax Act* (section 241) prevent the CRA from discussing the affairs of any taxpayer (including those of a registered charity) with anyone who is not an authorized representative of that taxpayer. As there is no documentation on file giving the CRA the authority to discuss the affairs of another RCAAA participating in the same donation arrangement with you, we cannot disclose the findings of any other audit.

While it is regrettable that the RCAAA has chosen to participate in an abusive program, in our view the conduct of Canadian Lacrosse Association is too serious to consider its continued registration under the Act.

CANADA REVENUE AGENCY | AGENCE DU REVENU DU CANADA

REGISTERED MAIL

Canadian Lacrosse Association
2211 Riverside Drive, Suite B-4
Ottawa ON K1H 7X5

BN: 130272891 RR0001
File #: 0495580

Attention: Mr. Joey Harris, president

October 8, 2009

Subject: Audit of the Canadian Lacrosse Association

Dear Mr. Harris:

This letter is further to the audit of the books and records of the Canadian Lacrosse Association (the Organization) by the Canada Revenue Agency (the CRA). The audit related to the operations of the registered Canadian amateur athletic association (RCAAA) for the period from April 1, 2004 to March 31, 2006.

The CRA has identified specific areas of non-compliance with the provisions of the *Income Tax Act* (the Act) or its *Regulations* in the following areas:

AREAS OF NON-COMPLIANCE:		
	Issue	**Reference**
1.	Issuing official donation receipts other than in accordance with the *Income Tax Act* or its Regulations	168(1)(d)
2.	Failure to maintain adequate books and records	230(2)
3.	Failure to file an information return as and when required by the Act and/or its Regulations	Reg. 200(1) 153(1)(g)

The purpose of this letter is to describe the areas of non-compliance identified by the CRA during the course of our audit as they relate to the legislative provisions applicable to RCAAAs and to provide the Organization with the opportunity to make additional representations or present additional information. In order for a registered RCAAA to retain its registration, legislative and common law compliance is mandatory, absent which the Minister of National Revenue (the Minister) may revoke the Organization's registration in the manner described in section 168 of the Act.

The balance of this letter describes the findings of the audit in further detail.

Summary: Participation in Various Tax Shelter Gifting Arrangements

The audit revealed that, during the periods under review, the Organization participated in the following tax shelters:

- EquiGenesis 2003 Charitable Donation Program (TS68643) - 2003
- EquiGenesis 2004 Charitable Donation Program (TS69963) - 2004
- Donation Program Supporting Canadian Amateur Athletics, Foundations and Charities (TS69260) - 2003, 2004 and 2005

While participation in tax shelter gifting arrangements is not prohibited by the Act *per se*, the CRA is extremely concerned that the Organization may be facilitating abusive arrangements with little regard to its own operations and legislative provisions applicable to RCAAAs. The Organization agreed to issue tax receipts on behalf of the arrangements for "property" the Organization flowed through its bank accounts of which it is entitled to immediately keep 1% of and failed to demonstrate its due diligence prior to entering into the agreements or its on-going review of the donation arrangements. Each of the donation arrangement programs were created by persons other than the Organization and the Organization merely accepted the terms of participating in order to receive its compensation.

Our audit revealed the Organization issued receipts totaling $60,739,473[1] while actually immediately receiving $608,447. The remainder of the funds was transferred by the Organization to off-shore "investments" purportedly held on behalf of the Organization and to pay fundraising fees to the promoters of the donation arrangements. As described below, our audit has revealed that these investments do not exist and that the funds are immediately repaid to the original lenders. Accordingly, it is our view that, through its participation in each of these programs, the Organization has issued receipts otherwise than in accordance with the Act and its Regulations.

Overview - Donation Program Supporting Canadian Amateur Athletics, Foundations and Charities (TS69260) – 2004 and 2005 – promoted by ParkLane

To illustrate our audit findings and positions, we will use Donation Program Supporting Canadian Amateur Athletics, Foundations and Charities - 2004 Series A throughout our letter. Despite minor differences in details, the principal concepts in our illustrations are applicable to each of the tax shelter donation arrangements in which the Organization participated. A more detailed analysis of the step-by-step transactions involved in the Donation Program Supporting Canadian Amateur Athletics, Foundations and Charities - 2004 Series is outlined in Appendix "A".

Using a hypothetical $10,000 "donation" as an example, a participant in this tax shelter arrangement would only be required to personally contribute $2,790. The participant would subsequently "borrow" $11,200 from a pre-arranged lender - Plaza Capital Finance Corp. (the

[1] $21,854,728 in 2004, and $38,884,745 in 2005

Lender). These amounts, $13,990, are held by an escrow agent in trust on the participants' behalf prior to orders from the Organization for disbursement[2].

The loans secured by participants bear interest at the rate of 3% and have a ten-year term. Interest must be paid within 60 days of December 31st, each year. The participant directs the escrow agent to pay $336 to the Lender in payment of the first year's interest on the loan.

Each participant directs the escrow agent to deposit $10,000 of the $13,990 held in trust in a [redacted] account in the Organization's name. For a $10,000 donation, the Organization would be required to direct the [redacted] to transfer $9,900 to Trafalgar Trading Limited (TTL) pursuant to a Royalty Agreement, which entitled the Organization to receive from 60% to 80% of any monthly profits earned based on the year and type of Royalty Agreement. Approximately $600 of the $9,900 transferred to TTL is transferred to ParkLane Financial Group for promotional expenses. Each of these transactions would occur within a 24-hour period.

The participant also directs the escrow agent to remit the remaining $3,654 to Specialty Insurance Limited (SIL) as payment on the premium for a Policy of Insurance. Pursuant to this policy, SIL agrees to pay to the participant an amount equal to the difference between the expected annual rate of growth, 6.054%, and the actual rate of growth under the investment contract agreement between SIL and TTL. The insurance is payable only if the annual rate of growth under the investment contract is less than 6.054% per year.

It is represented that the investment contract and the insurance policy together will generate a minimum of $11,200 in 10 years (thereby paying off the loan advanced to the participants). Based on the leveraged amount a rate of return of 52.96%[3] would be required to accomplish the repayment.

In the end, for each tax-receipted $10,000 "donation", the Organization immediately receives unfettered access to and use of $100 and an unknown future "revenue-stream"; reports fundraising fees paid of $600; and "investments" of $9,300. Of the "invested" funds, the majority of the funds are transferred to corporations connected to the promoters or returned to the lender (refer to Appendix "A"). For its $10,000 "donation", the participant is out of pocket $2,790 yet has an official donation receipt for which he can claim a donation tax credit of at least $4,641[4].

It is important to note that per the CRA audit, the Organization has only received $174,707 USD (0.29%) in profit payments despite issuing $60,739,473 CDN in receipts. The Organization has also incurred an average annual loss of 5.27% on the capital investment. Based on this rate of return, the Organization will receive a total of $1,050,837 USD for the investments over a 20-year period and the capital would erode to $19,425,675 USD for a net

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[2] The instructions provided by the Organization were also pre-arranged by the creators of the tax shelter programs and the Organization was found to accept the directions to transfer the funds off-shore, as presented by the creators of the programs

[3] In order for the present value of the $159.80 annuity to achieve the required $11,200 over a 10 year period, it would need to achieve an annual rate of return of 52.96%.

[4] Based on Federal and Ontario donation tax credits of 46.41%

loss of $27,233,008 USD if the investments actually exist. Refer to our discussion below o the existence of the property.

Given the facts as known by CRA, the "net loss" is substantially more due our findings that only a maximum of $159.80 per $1,000 tax-receipted donation for each of the Series A programs (see Appendix "A") is, in fact, potentially invested. Based on these figures, the actual capital after 20 years would likely only be $318,006 USD for a net loss of $46,340,676 USD.

Issuing official donation receipts other than in accordance with the *Income Tax Act* or its Regulations

Gifts:

It is our position that the Organization has contravened the *Income Tax Act* by accepting and issuing receipts for transactions that do not qualify as gifts.

No *Animus Donandi*

Under the common law, a gift is a voluntary transfer of property without consideration. However, an additional essential element of a gift is *animus donandi* - that the donor must be motivated by an intention to give. It must be clear that the donor intends to enrich the donee, by giving away property, and to generally grow poorer as a result of making the gift.

Our position is the donations received by the Organization from participants are not true gifts under section 118.1 of the Act. In our view, it is clear that the primary motivation of the participant is to profit through the tax credits so obtained through a series of artificial transactions and a minimal monetary investment. It is our view that the Organization was aware, or ought to have been aware, that it was participating in schemes designed to produce inappropriate tax benefits through an artificial manipulation of the tax incentive.

In support of this position, we note that:

- The promotional material for each of the donation arrangements promise the participant will receive a tax credit at the highest marginal tax rate for the combined value of the gifts and provides charts calculating the participants return on cash investment of at least 67% and as high as 94%. For example, the promotional material shows that for a $315 cash contribution by a donor in Ontario, coupled with a $10,000 "loan" received by and "donated by a donor in Ontario, will result in a tax credit of $464, thereby generating a positive cash flow of $149".
- Participants in this arrangement, in return for a minimal participation fee, received a "loan" with full and prior knowledge that this loan would never have to be repaid by the borrower. Due to a combination of insurance and aggressive investment strategies, participants are lead to believe it is highly unlikely or necessary they will have to repay the "loans".

- Transactions are pre-arranged, pre-determined and coordinated by the promoters and other pre-arranged third parties. The Organization has no interaction or involvement with participants seemingly whatsoever nor are the participants prior or subsequent supporters of the Organization's activities outside of the tax shelter arrangements.
- Minimal information is provided to the prospective participants as to how the "donations" would benefit the Organization or to the activities of the Organization they are supporting;
- The participant of the 2004 Donation Program Supporting Canadian Amateur Athletics, Foundations and Charities received an official donation receipt for the full amount of their purported "donation" of which they contribute out of pocket cash of 28% with the remaining 72% coming from a no-recourse loan guaranteed by an insurance policy;
- The participant of the EquiGenesis 2003 and 2004 programs received an official donation receipt for the full amount of their purported "donation" of which they contribute out of pocket cash of 11% with the remaining 89% coming from a loan from a Trust associated with the company receiving the "Investment Proceeds";
- The Organization never truly receives the funds "donated". While the funds are deposited temporarily in the Organization's bank account established solely to receive and distribute funds received these funds, as a part of its participation in the arrangements, the Organization is obligated to immediately transfer 99% of the funds deposited to a company directly connected to the promoter;
- The transactions are carefully arranged, as described in Appendix "A" to create the illusion of property being donated to the Organization and invested. In actual fact, these funds followed a circular flow and ended up back in the hands of the lender (minus applicable fees to participants). The Organization initially received a 1% fee for *its* participation;
- The Organization also received a minimal "investment stream", for its participation in the arrangements.

It is clear that the primary purpose and result of these transactions was to provide the participant a donation tax credit that exceeded the participant's cost of participation. In essence, the arrangement is one whereby the promoters, the Organization and the individual participants created the illusion of property, but in reality this involved "purchasing" receipts for a fraction of the receipt's face value (i.e., that the only property involved in the scheme was the participation fee).

As above, the participants "donated" to the Organization with the clear intent to take advantage of the tax system through an artificial series of transactions. The Organization was aware, or ought to have been aware, of the motivations of the participants as it had full access to the promotional materials and information about the schemes in which it participated. In return for a participation fee, the participants secured "loans" which they knew they would never have to repay and donated these to the Organization. The Organization, for its part, issued receipts for the full value of the funds transferred - even though it was obligated to immediately transfer 99% of these funds to an offshore company. In our view, the primary motivation of the participant in these transactions was to profit from the tax system by a combination of the tax credits available for donations and the artificial loan transaction. The Organization also participated in more than one donation arrangement, whereby the transactions and results were similar, yet continually chose to participate in arrangements

when the Organization was not benefiting or receiving the profit distributions in the amoun promoted.

In our view these transactions are not true gifts in the sense contemplated by section 118.1 of the Act. In this regard, these transactions lack the requisite *animus donandi* to be considered gifts. These transactions were, in our opinion, primarily motivated by the participant's intent to enrich him/herself rather than an intent to make a gift to the Organization. As such, it is our position the Organization was not entitled to issue receipts for the property transferred to it.

It is our view that the Organization has issued receipts for a gift otherwise than in accordance with subsection 118.1 of the Act. For this reason, it appears to us that there are grounds for revocation of the charitable status of the Canadian Lacrosse Association under paragraph 168(1)(d) of the Act.

Property donated

Existence of the property:

It is our view that the property represented as being donated is not *actually* property that has been donated to the Organization.

As above, and as detailed in Appendix "A", the Donation Program Supporting Canadian Amateur Athletics, Foundations and Charities donation arrangement involved participants themselves contributing a mere 28% of the property purportedly donated to the Organization with the remainder consisting of a loan which is highly unlikely to be repaid by the participant. The Organization receives funds in a segregate bank account to which it has no access but is obligated to transfer 99% of these to an offshore entity; 93% of which is reportedly "invested" and 6% as referral fees.

In fact, it appears that these funds are not actually held as investments on behalf of the Organization but that the majority of these funds were, in fact, immediately returned to the original lender or paid out as fees to the participant promoters and companies For the 2004, and 2005 years, our audit has concluded that of the funds (99%) transferred, the majority of the funds (77.02%) were transferred back to the same lenders granting the loan to participants Of the remaining funds, a full 6% was paid to ParkLane Financial Group for fundraising fees. This, of course, would provide a mere 15.98% for "investing". The Organization receives distributions from its Royalty Agreements, but it appears that this would be from the same remaining cash contributions and not from the purported full value of investments held.

As such, it is our view that the Organization has issued receipts for property that was not donated to it but that exists as little more than notations on paper as investments "owned" by the Organization. The Organization participated in schemes that, through a circular series of transactions, was designed to create the illusion of property being donated to the Organization while in actuality, the majority of the funds were either consumed by fees to be paid to the participants or returned to the lender.[5]

[5] See Appendix A – paragraphs 24-26 for detailed description

The Organization's part in these schemes were, as before, to receive funds from participants, issue tax receipts for the full amount of the property transferred flowed through its bank account, and to immediately transfer these amounts to a bank account off-shore. The Organization had no control over the property "donated" other than the 1% it retained and had no access to the investments. The Organization has not demonstrated it had control over or access to the remaining 99% of the funds allegedly donated to it or invested on its behalf. The Organization could not even verify, for the purposes of its own internal audit, the values associated with the offshore investment as indicated in the financial statements. Its auditors do not account for any assets on the balance sheet for the off-shore accounts. Rather than reasonably seek out prudent investments with the property donated to it, the Organization was obligated to send money to an offshore investment with uncertain and low rates of return.[6]

In our view the Organization participated in schemes designed to create the illusion of property being donated and issued receipts for property, which was not beneficially transferred to it. The Organization was either aware, or ought to have been aware, of the fact that its role in the arrangement whereby it issued receipts for property which would flow through its accounts but to which it had no present or even future ownership of. The funds that are represented as donated, owned and invested by the Organization were, in fact, circuitously returned to the lender. As such the Organization was not entitled to issue a receipt for the amounts contributed (in this case with reference to the insurance policy and loan or the trust units) and in this regard it is our view that the Organization has issued a receipt for a gift otherwise than in accordance with the Act which is cause for revocation by virtue of paragraph 168(1)(d).

Nature of the Property:

As above, it is our view that the Organization improperly issued receipts for transactions that were not gifts and for property that it was not, in fact, beneficially entitled to. We are of the view that the offshore investments that the Organization purports to have exist largely only notionally on paper. A fact seemingly confirmed by the Organization's own external auditors[7]. However, even were we to agree that the gifts were valid gifts to the Organization, and the property held in investments existed, it would still be our view that the Organization issued receipts other than in accordance with the Act.

As above, the property that was donated to the Organization was immediately transferred to an offshore investment company. Based on our review, there is no indication that the principal amount of this property will ever revert to the Organization. There is no mention in the royalty agreement that the Organization will ever be entitled to the principal amount of the investment. With regards to early redemption, the agreement stipulates the following: "If the

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[6] By way of comparison, GIC average rates from 2004 to 2007 as per http://www.bankofcanada.ca were 1 yr: 2.39%, 3yr: 2.74% and 5yr: 3.05% which would have produced a revenue of $1,451,673 at the 1 yr avg. rate or $1,276,967 more than current investment of $174,707. Also, it is interesting to note that the royalty agreements define "contracts" as the S & P 500 and other international stock index futures yet see for example www.streetauthority.com/ma-sample.asp indicates the 5 year average rate of return on the S&P 500 is 11.26% while the royalty agreement has averaged 0.29%.

[7] The Organization's financial statements show the asset written down to $1 and state "Because its valuation is uncertain, the Trafalgar investment has been valued at the nominal amount of $1."

Association provides Trafalgar with a Profit Distribution Notice, during the Trading Term, Trafalgar shall be paid: 1) a fee equal to one fifth of one percent (1/5%) of the Current Trading Facility determined as at the end of the calendar month in which Trafalgar receives from the Association the Profit Distribution Notice, multiplied by twenty-four months; and 2) the aggregate of all unpaid portions of the Monthly Trading Fee forfeited by Trafalgar pursuant to section 4.2 hereof and such fees shall be subtracted from the Profit Distribution due to the Association". Profit Distribution is defined in the Agreement as being the "amount equal to the Current Trading Facility, as at the end of the calendar month in which Trafalgar Trading receives from the Association a Profit Distribution Notice, net of the Initial Trading Facility". The audit evidence revealed that the Initial Trading Facility is consistently greater than the Current Trading Facility at the end of any given month. Therefore, the application of the formula to arrive at a profit distribution, even without taking into consideration the termination fees mentioned above, will always result in a negative amount. It is clear that although the agreement allows the Organization to request a profit distribution, the termination fees as well as the formula used to calculate the "profit" would result in no funds remaining, making it impossible for the Organization to receive any payments should it exercise its option to submit a Profit Distribution Notice to Trafalgar trading Limited. As such, it appears that the Organization is only entitled to a potential "income stream" associated with the property.

In our view, even if we were to accept that the property was validly donated to the Organization (which we do not) it is the income interest in the property, which should have been tax receipted and not the full value of the funds transferred to the Organization. While the Organization does receive certain funds from participants, other than the immediate 1% to which it is entitled, it is *required* to transfer these funds to the offshore investment company. The Organization is never entitled to the property itself but to the income from the property – if there is any. In our view, while it is being represented that the full value of the property is being donated, it is simply a limited income interest in the property that is being donated.

We acknowledge that the restriction on access to the property is a condition of the Organization's participation in the donation arrangements, and not one *explicitly* set by the participant. However, viewing the "donation" as a pre-arranged transaction, the restrictions so imposed make it clear that it is the income stream, which is donated and to which the Organization is entitled, not the full value of the property. Participants pay a fee to participate in the donation programs. The participants have no interaction with the Organization. Participants obtain a loan from a non-arm's length company knowing fully that, provided they follow the instructions, they will not have to repay the "loan". One of the instructions is that they transfer these funds to a participating organization. The participating organization is obligated through the agreement to transfer 99% of these funds to the offshore investment company. The participating organization is thereafter entitled to income from the investments (when there is any) but not the principal amount.

In our view, if the Organization was receiving a donation of an "income stream" from the property, a professional valuator should have valued this income stream and the tax receipts issued accordingly. In this regard, even if the Organization had issued a receipt for the valuation amount, it would not have been in accordance with proposed subsections 248(31), (32) and (34) regarding limited recourse debts.

It is our view that the Organization has issued a receipt for a gift otherwise than in accordance with subsection 110.1 and 118.1 of the Act, which is cause for revocation by virtue of paragraph 168(1)(d).

Application of proposed subsections 248(31), (32) and (34) regarding limited recourse debts

As above, even if we were of the opinion that the payments made by participants to the Organization constituted "gifts", which, in our view is not the case. In 2003, the Department of Finance introduced new legislation with respect to charitable donations and advantages. These rules allow a taxpayer to make a gift to a RCAAA and receive some advantage in return; however the value on the receipt must reflect the eligible amount of the gift made (i.e., the value of the receipt must reflect the gift less any advantage received by the donor). We would note that, although still proposed, once passed into law, these subsections apply retroactively to the fiscal periods currently under review.[8]

It is our view that the participants received an advantage, as defined at proposed subsection 248(32), as a result of the cash contribution to the Organization, in the form of receiving a limited-recourse, low-interest debt. A limited-recourse debt is broadly defined to include any unpaid amounts if there is a guarantee, security, or similar indemnity or covenant in respect of the debt. The value of this advantage should have been deducted from the eligible amount of the gift. As the purported value of the loans exceeded the participant's cash outlay, under the proposed legislation, the Organization was not entitled to issue receipts for these "donations". Further, even if the loans were found not to be consideration for participant's cash contributions, the proposed legislation has broad applications and also includes advantages that are "in any other way related to the gift".[9] As such, it is our view that the Organization, under the proposed legislation should not have issued tax receipts for the participant's out-of-pocket cash outlay. In our view, the Organization was aware of this loan, having been provided the promotional materials relating to the programs, and accordingly was obligated to reduce the eligible amount of each gift recorded on the tax receipt.

Under proposed subsection 248(34), the taxpayer, if we were to accept that a gift had been made to the Organization, may have been eligible for a tax receipt for payments towards the principal of the loan, but was not entitled to a tax receipt for the *entire* amount purportedly donated.[10] This subsection generally provides that the gift portion of any transaction involving a limited recourse debt is deemed to be no more than the amount of the initial cash payment. A taxpayer may, additionally, claim a gift with respect to a repayment of the principal amount of the limited-recourse debt in the year it is paid. There was no indication during our review that the Organization took these provisions into account when issuing receipts on behalf of the tax shelter arrangements.

As such the Organization was not entitled to issue a receipt associated with the limited recourse debt (in this case with reference to the promissory note) and in this regard it is our

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[8] Subsections 248(31) apply in respect of gifts made on or after December 20, 2002 and 248(32), and (34) apply in respect of gifts made on or after February 19, 2003.

[9] Ss. 248(32)

[10] Again, given the fact that the majority of out-of-pocket funds were paid out to participants and the "loans" were immediately repaid to the lender, it is our view that these transactions were not true gifts to the Organization.

view that the Organization has issued a receipt for a gift otherwise than in accordance with the Act, which is cause for revocation by virtue of paragraph 168(1)(d).

Seriousness of the Offence:

As above, the CRA is greatly concerned about the participation of the Organization in these arrangements. It is the CRA's view that these gifting arrangements provide minimal benefit for the programs of the Organization as compared to the values of tax receipts being issued. The *Income Tax Act* provides RCAAAs the privilege of issuing tax receipts to allow them to solicit donations from taxpayers for use in their programs. However, in the case at hand it appears that the Organization participated in tax shelter arrangements by lending its tax receipting privileges in return for a small percentage of the face value of the receipts so issued. It is interesting to note that since its participation in these programs, its issuance of receipts have increased from approximately $67,622 in 2003 to $22 million in 2004, and $39 million in 2005. We would note, in this regard that the effects of the Organization's participation in these programs have resulted in the Organization issuing receipts for $60,739,473 yet actually receiving only $603,134 from these donation arrangements. In our view, this represents a serious abuse of the Organization's receipting privileges.

As a result of the Organization's participation in these tax shelter programs, the following occurred:

- Gross fundraising fees (6% of receipted amounts) paid to the promoters $3,644,368;
- Gross fees paid to Trafalgar Trading Limited, which consist of monthly trading fees plus 20% of monthly profits, of $209,403 USD ($261,037 CAN)[11]; and
- Gross investment profits paid to the Organization of $174,707 US ($208,054 CAN).

At the same time, the investments have depleted in value by $1,239,895 USD ($1,577,728 CAN). These findings further point to the fact that the amounts expensed on fundraising and other costs associated with the program substantially outweigh the amounts which were made available for use by the Organization in its charitable activities.

Furthermore, issuing donation receipts for amounts that are not gifts or that contain inaccurate values or false information, is a serious offence. In light of the volume of the receipts so issued by the Organization we are of the view that this is cause for the revocation of its registered status. As above, this situation is compounded by the fact that based on our review, the majority of funds represented as "investments" exist only notionally on paper and the Organization has not sufficiently demonstrated otherwise.

Due Diligence:

We note with concern, with respect to this particular issue, that it fully appears that the Organization's directors have demonstrated a complete lack of due diligence with respect to receipting practices. While this is not a ground for revocation itself, it is our view that it is a contributing factor to the aforementioned non-compliance and is relevant to our decision on the appropriate measures CRA should take to address these compliance issues.

[11] The CAN conversion is based on the December 30 Bank of Canada (BAC) noon rates which were 1.2036 in 2004, 1.1659 in 2005 and 1.1653 in 2006.

In our view, the Organization was aware that there was considerable uncertainty as to their "investments" in the off-shore accounts but failed to take appropriate measures to safeguard its assets. This includes, but is not limited to not choosing a proper investment strategy consisting of standard investments, failure to take measures to ensure the integrity of the principal portion of the investment, and failure to take steps to verify the legitimacy of the transactions which are reported to the CRA. In this regard we would highlight the following:

- During the initial interview with [redacted], the executive director, stated: "We did nothing wrong as we receipted for the amounts that we received, for every $100 received we receipted $100." However, it is clear from an email dated July 15, 2003 from [redacted] that the Organization understood that there was no relationship between the Donor and the Organization, **that the Organization was not receiving a donation but rather receipting for a potential income stream**, and he was not prepared to approve the involvement without the Organization's own legal opinion;
- Our audit concluded that the first Royalty Agreement was signed by [redacted] on November 19, 2003, yet it would appear that the Organization did not obtain its own legal opinion prior to November 12, 2004[12];
- Review of the Board of Directors minutes of November 21-23, 2003 indicate that [redacted] "quickly explained the Trafalgar donation program"; however, no motion for approval to proceed with the program seems to be tabled or passed by the Board;
- Review of the Annual General Meeting minutes of November 26-27, 2004, reveal the Organization obtained a legal opinion to substantiate that due diligence was performed before proceeding with the program; however, there is no indication in the minutes that the legal opinion was discussed with the Board nor that it was approved;
- Furthermore, [redacted] states that the Organization has signed another agreement in the same meeting that discusses the need to amend Organization's clause 11 of the operations manual on investment policy. Clause 11.6 reads: Investment Strategy on long term investments such as but limited to the royalty stream will be reviewed by the Board prior to reinvestment;
- The audit concluded that the Organization has very little diversification in its investment portfolio. In fact, 98.45% of the Organization's assets held for investment purposes are invested with Trafalgar;
- The CRA could not locate any legal opinion obtained by the Organization prior to November 12, 2004 from [redacted]; however, it would appear that the Organization had in its possession an opinion from [redacted] dated December 24, 2003 issued to the [redacted]. This opinion states at point 4 a): "the Department of Finance has released draft legislation dated December 5, 2003 which effectively closes the loophole on many forms of these transactions including, in our opinion, the Trafalgar transactions that [redacted] commented on in their letter of June 10, 2003";

[12] We would note that our review of the legal opinion obtained indicates the opinion is concerned with the Organization's legal consequences for participating and not a legal opinion of the tax shelter's compliance with the Act.

- In addition, the Organization was in possession of the [redacted] letter whic. stated: "Ideally, we would get an advanced ruling from CCRA." We would note that during the initial interview held on November 29, 2007, the CRA asked [redacted] if the Organization ever considered contacting the CRA for our opinion to which he replied that the Organization never considered it;
- Furthermore, it is clear that the Organization was satisfied with the 1% accommodation fee given the annual rate of return below 1% when it agreed to participate in five Royalty Agreements;
- It is the opinion of the CRA based on the language of Section 3 – Trading of the Royalty Agreements that all trading is at the discretion of TTL and that the Organization has relinquished all rights and direction of the "investment portfolio";
- According to Section 7.2 of the Royalty Agreements, TTL on an annual basis, was to engage auditors (at their expense) to verify the monthly returns submitted to the Organization. It is CRA's understanding that no such audit report has ever been received by the Organization, nor has the Organization's Board of Directors requested it in order to perform yearly due diligence on "its" investments.

The CRA's position that the Organization did not perform proper due diligence is further demonstrated in reviewing the Organization's financial statements. Therein we note that the Organization with respect to its own mutual fund investments, takes a very cautious and prudent investment approach to reduce its portfolio risk.

It is our view that the Organization failed to demonstrate due diligence in verifying the authenticity of the donation program, as well as how participation in the program furthers the objects of the Organization. It appears that, as above, the Organization has willingly participated in abusive tax shelter arrangements, in effect, by being paid a small percentage fee for transactions, it knew or ought to have known, were not gifts. As above, our audit has determined that the receipts issued by the Organization are not compliant with the Act, including the proposed legislation that was introduced in 2003. Our audit has further revealed that the funds purportedly sent by the Organization to be invested off-shore were returned to the lender. In our view, the Organization has facilitated these arrangements without concern for the legitimacy of the program or the integrity of its assets as "the one percent received up front was a significant amount to our Association for the conduct of programs."

In this regard, it is our view that the Organization has issued a receipt for a gift otherwise than in accordance with subsection 110.1 and 118.1 of the Act, which is cause for revocation by virtue of paragraph 168(1)(b) and (d).

Other Compliance issues:

Books and Records:

Every registered charity and registered Canadian amateur athletic association shall keep records and books of account at an address in Canada recorded with the Minister or designated by the Minister containing

(a) information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under this Act;
(b) a duplicate of each receipt containing prescribed information for a donation received by it; and
(c) other information in such form as will enable the Minister to verify the donations to it for which a deduction or tax credit is available under this Act.

Audit Findings:

- The Organization's [redacted] bank account, which was opened solely for the purpose of participating in the tax shelter programs, is not incorporated into the Organization's general ledger. As such, the amounts flowing into and from the account, as well as the balance retained, are not reported;
- The donation receipts listings could not be matched to the bank statement or the general ledger;
- The Organization has indicated that it receipted a total of $60,739,473 for five Royalty Agreements; however, our audit concluded that $62,593,779 was deposited into the [redacted] bank account from November 2003 to March 2005; a discrepancy of $1,854,306;
- The closing amounts supplied by the Organization for the EquiGenesis 2004 program could not be traced to the [redacted] bank account;
- Although it would appear that the Royalty Agreements were discussed during the Board of Directors meetings, a review of the minutes did not have a specific resolution confirming the Board of Director approval to enter into the Agreements;
- Bylaw 16 – execution of documents states that "contracts, documents or any instruments in writing requiring the signatures of the corporation shall be signed by the Chairman of the Board or a Vice President together with the executive Director; however, our audit of the Royalty Agreements clearly shows that only Mr. Miriguay as Executive Director signed all of the Agreements.

It is our view that the Organization has failed to maintain adequate books and records otherwise than in accordance with 230(2)(a) and (c) of the Act, which is cause for revocation by virtue of paragraph 168(1)(e).

The audit revealed that the Organization provides annual payments for services for which it does not issue or file T4A Supplementaries. Regulation 200(1) of the Act states:

"Every person who makes a payment described in subsection 153(1) of the Act shall make an information return in prescribed form in respect of the payment unless an information return in respect of the payment has been made under sections 202, 214, 237 or 238."

Subsection 153(1) of the Act states: "Every person paying at any time in a taxation year

(g) fees, commissions or other amounts for services, other than amounts described in subsection 115(2.3) or 212(5.1),

shall deduct or withhold from the payment the amount determined in accordance with prescribed rules and shall, at the prescribed time, remit that amount to the Receiver General

on account of the payee's tax for the year under this Part or Part XI.3, as the case may be, and, where at that prescribed time the person is a prescribed person, the remittance shall be made to the account of the Receiver General at a designated financial institution."[13]

The Organization entered into several personal service contracts between fiscal 2004 and 2006 whereby the contracts clearly state that the individuals are employees and the terms of remuneration for services. For example:

- [redacted] received $26,894 in 2005 and $5,467 as of March 31, 2006 for services;
- [redacted] received $1,281 in 2004, $12,339 in 2005 and $435 as of March 31, 2006 for services;
- [redacted] received $1,900 in 2006 for services;
- [redacted] received $1,800 in 2005 for services;
- [redacted] received $1,785 in 2005 for services;
- [redacted] received $3,1000 in 2004 for services;
- And [redacted] received $1,930 in 2004 for services.

It is our view that the Organization has failed to comply with the proper information returns in accordance with Regulation 200 (1) of the Act, which is cause for revocation by virtue of paragraph 168(1)(c).

Conclusion:

The Organization's Options:

a) No Response

You may choose not to respond. In that case, the Director General of the Charities Directorate may give notice of its intention to revoke the registration of the Organization by issuing a Notice of Intention in the manner described in subsection 168(1) of the Act.

b) Response

Should you choose to respond, please provide your written representations and any additional information regarding the findings outlined above **within 30 days** from the date of this letter. After considering the representations submitted by the Organization, the Director General of the Charities Directorate will decide on the appropriate course of action.

[13] In 2005, the technical interpretations department concluded that persons other than federal bodies paying fees, commissions or other amounts for services listed in paragraph 153(1)(g) of the Act would have to report them on Form T4A if they were not already reported under Regulations 202, 214, 237 or 238. The above tax reporting obligation exists regardless whether those contracts payments are subject to withholding tax or not.

If you appoint a third party to represent you in this matter, please send us a written authorization naming the individual and explicitly authorizing us to discuss your file with that individual.

If you require further information, clarification, or assistance, I may be reached at (613) 957-2174 or by facsimile at (613) 946-7646.

Yours sincerely,

Neil Nicholls
Auditor
Compliance Section
Charities Directorate

cc: [redacted]

Enclosure
Appendix "A" - 2004 Donation Program Supporting Canadian Amateur Athletics Foundations and Charities

Appendix "A"

2004 Donation Program Supporting Canadian Amateur Athletics Foundations and Charities (Donation Program) (Tax Shelter #TS069260)

Registration as a Tax Shelter

1. A T5001 Application for Tax Shelter Number was submitted to Canada Revenue Agency (CRA) in respect of the above Donation Program by the promoter on Jan. 9, 2004. A tax shelter number was assigned by CRA. The promoter was named on the application form as 1602628 Ontario Inc., of Burlington, Ontario. A corporation at the same address, ParkLane Financial Group Limited (ParkLane Financial) along with another company there, Trafalgar Associates Limited, carries out the promoter functions. The shareholder of the latter two companies as of the end of 2004 was Trafalgar Securities Limited of Bermuda. The controlling shareholder of the numbered company is the Canadian president of all three companies.

2. ParkLane Financial markets the Donation Program to financial advisors and other advisors in Canada.

Signing Documents and Procedure for Signing Up

3. A donor contributed his own funds to Aylesworth Thompson Phelan O'Brien LLP, In Trust (Aylesworth) of $279 per $1,000 of donation. Per the promotional literature this $279 per thousand was "with regard to an arrangement fee and pre-payment of loan interest".

4. A donor completed a Loan Application and Power of Attorney in favour of Plaza Capital Corporation (Plaza Capital), the lender, located in Canada. The amount of the loan was $1,120 per $1,000 donation.

5. A donor completed a "Promissory Note" in favour of Plaza Capital due in 10 years in the amount of $1,120 per $1,000 donation.

6. A donor completed a Pledge, indicating an intention to make a donation in favour of a particular registered charity or charities (the charity) pledging $1,000 per $1,000 donation. (This charity could include a registered Canadian amateur athletic association.)

7. A donor completed a Direction to Aylesworth, directing $1,000 per $1,000 donation to the RCAAA, and $365.40 per $1,000 to Specialty Insurance Limited (Specialty Insurance), and $33.60 per $1,000 to Plaza Capital.

8. A donor completed a Donor Declaration Letter. Point 5 says:
I understand that the Insurance Contract (the "Insurance") issued by an insurance company (the "Insurance Company") in respect of the Program is optional and that I could have declined coverage of Insurance by sending written notice to that effect to ParkLane Financial Group Limited. I hereby confirm and agree to an allocation of the fee payable to the Insurance Company towards the purchase of Insurance.

9. The $279.00 "with regard to an arrangement fee and pre-payment of loan interest" consisted of $33.60 for one year's prepaid interest, and $245.40 as the donors' unfinanced portion of their arrangement fee. The total arrangement fee was $365.40 per $1,000 donation.

10. The donors' $279 contribution above included $33.60 of prepaid interest at 3% which was the rate prescribed by CRA.

11. The total arrangement fee of $365.40 consists of the amount to be paid to Specialty Insurance in Bermuda for:

an insurance policy	$115.00 per $1,000 donation
an investment contract	240.00 per $1,000 donation
administrative fee	10.40 per $1,000 donation
	$365.40 per $1,000 donation

12. A donor completed a Direction to Plaza Capital, directing the loan proceeds of $1,120 per $1,000 donation to be paid to Aylesworth.

Contracts Received by Donor

13. A donor received a document entitled "Policy of Insurance" in which the donor is the "Policyholder/Insured". Specialty Insurance is the sole issuer of this Policy of Insurance and is guarantor of any and all provisions contained therein. The insurance provided is described as being for the purpose of providing the donor (the Insured) with a certain rate of growth from "The Trafalgar Global Index Futures Program" (TGIFP) agreement attached to the Policy of Insurance. The donor is to receive, as insurance, a payment at the end of 10 years, representing the difference between the expected rate of growth of 6.04% and the actual rate of growth under this agreement. The amount shown as the premium paid for this policy is $115.00 per $1,000 donation.

14. The TGIFP agreement is between Trafalgar Trading and Specialty Insurance, for the donors' benefit. Specialty Insurance is to receive, on the donors' behalf, a profit distribution from Trafalgar Trading at the end of 10 years. The cost of this TGIFP investment, provided by the donor, was $240 per $1,000 donation, being part of their arrangement fee of $365.40 per $1,000 donation. A donor directed Aylesworth to pay this $365.40 to Specialty Insurance.

Source and Uses of Funds

15. The sources of funds per $1,000 donation were:

Amount borrowed from Plaza	$1,120.00
Amount contributed by donor	279.00
Total Sources of Funds	$1,399.00

16. The donors' uses of funds per $1,000 donation were:

Payment directed to RCAAA		$1,000.00
One year of prepaid loan interest		33.60
Payment directed by donor to Specialty Insurance but re-directed to Trafalgar Trading pertaining to:		
Investment Contract with Trafalgar Trading	240.00	
Loan or other amount from Specialty Insurance	115.00	
Fee charged by Specialty Insurance	.40	355.40
Payment actually received by Specialty Insurance		10.00
Total Uses of Funds		$1,399.00

Source of Funds for the Donor Loan

17. An executive of a commercial lending corporation was approached to provide funding for this donation program. A separate financing corporation (located in Canada) was set up to assemble funds from various investors.

18. Plaza Capital Finance Corporation (Plaza Capital Finance), a sister company of Plaza Capital, and also located in Canada, borrowed these funds from the financing corporation, as documented by a Promissory Note issued by Plaza Capital Finance to that corporation. These funds were transferred directly by the financing corporation to Aylesworth.

19. A donor obtained his loan from Plaza Capital, as documented by a Promissory Note issued by the donor to Plaza Capital. This Promissory Note was assigned to Plaza Capital Finance.

Flow of Funds pertaining to Donations Claimed by the Donor

20. Per Direction from the donor, Aylesworth issued a cheque to the RCAAA, which received the full amount of the funds, which the donor pledged. The RCAAA deposited these cheques into its bank account.

21. A donation receipt was issued after year-end by the RCAAA to the donors in an amount corresponding to the amount deposited by the RCAAA.

22. Per Direction from the RCAAA to its bank, the bank made an immediate payment of 99% of the total donated funds to the bank account of Trafalgar Trading in respect of the Royalty Agreement Purchase Price and Referral Fee. From this payment, Trafalgar Trading Limited directs an amount equal to approximately 6% of the amount received by the RCAAA from its account to ParkLane Financial for a donation referral fee used to pay referrers of the donors to the program. The RCAAA retained 1% of the donation amounts received by it.

23. As seen above, the RCAAA paid 93% (99% less 6%) directed to Trafalgar Trading purportedly as the purchase price of a "2004 Series A Royalty Agreement". However, as explained in more detail at Fact 24 below, Trafalgar Trading had to use these or other funds, to repay the financing corporation $1,125.60 per $1,120 of loan amount. The RCAAA's royalty agreement with Trafalgar is to earn for the RCAAA revenue over 20 years through the use of Trafalgar Trading's use of Trading Software to trade S&P 500 and other international stock futures contracts. Trafalgar Trading issued monthly statements to the RCAAA showing the investment's performance, after deduction of the monthly trading fee. Actual cheques were issued to the RCAAA for months when there was a net profit due to you. The amounts of these cheques issued to the RCAAA in calendar 2005 totaled less than 2.5% of the amount paid to Trafalgar Trading by the RCAAA for the investment in their "2004 Series A Royalty Agreement". In calendar 2006 such cheques issued to RCAAA was less than 2.0% of this amount.

Flow of Funds pertaining to Arrangement Fees

24. Per the donors' Direction at Fact 7 above, the $365.40 per $1,000, which was paid to Aylesworth, was then to be sent to Specialty Insurance. However, Specialty Insurance issued a Direction to Aylesworth directing Aylesworth to pay Specialty Insurance only 1% of the donation amount, and to pay the balance to Trafalgar Trading. Hence Trafalgar Trading received $355.40 per $1,000 donation while Specialty Insurance received $10.00 per this $1,000.

Repayment to the Financing Corporation

25. Trafalgar Trading immediately made a payment to the financing corporation equal to the funds that the financing corporation loaned earlier in the day to Plaza Capital Finance (which were provided directly to Aylesworth). This represented a repayment of $1,120 per $1,000 of donation. In addition, a fee of 0.5% to the financing corporation was included, for a repayment of $1,125.60 for each $1,120 provided earlier in the day.

26. To pay for this $1,125.60 (per 1,000 of donation) to the financing corporation, Trafalgar Trading had funds available to it from the Donation Program from two sources. These were:

Amount provided by the charities after Trafalgar Trading paid the 6% referral fee ($990 - $60)	$930.00
Amount from Specialty Insurance being $355.40 (being $365.40 less $10 retained by Specialty)	355.40
Sources of funds available to repay the financing company	1,285.40
Less: Repayment to the financing company	1,125.60
Balance of funds from the Donation Program available for both Total investments of the donor and the RCAAA	$159.80

27. ***Sources and Uses of Funds from the Donation Program***

The only funds that were injected into the Donation Program for longer than one day were the $279 cash per $1,000 of donation. This $279 could be considered to have been used as follows:

A unt of taxpayer's own funds contributed per $1,000 of donation		$279.00
Deduct: Uses of funds per $1,000 of donation:		
(a) One year's prepaid interest on taxpayer loan of $1,120 at 3%	$33.60	
(b) Amount of donation that the RCAAA was permitted to retain	10.00	
(c) Donation referral fee paid to party who referred the taxpayer	60.00	
(d) Amount that Specialty Insurance actually received for its services	10.00	
(e) Fee paid to the finance corporation for providing loan for 1 day	5.60	$119.20
Remaining portion of their contribution available for investment		$159.80

Donor Assignment of their Promissory Note and Release from their Obligations

28. The donors were to request from Plaza Capital Finance that they assign their Promissory Note to Trafalgar Trading and that Trafalgar Trading accept assignment of their insurance policy and investment contract in return for their release from their obligation under their Promissory Note. An Assignment Agreement was signed at the time of the donors' request, and the donor would have been then issued a Release by Trafalgar Trading.

The donor Promissory Note was assigned and the donor Release form was issued some time between May 2005 and June 2006.