**REGISTERED MAIL**

Corban Foundation
1030 Upper James Street #201
Hamilton, Ontario
L9C 6X6

93277
Tel.: (613) 954-0939

Attention: Mr. Henry R. DeBolster
Chairman

December 19, 1996

Dear Sir:

**Re: CHARITY TAX AUDIT**

In November, 1993, we audited the Corban Foundation (the "Foundation") for its initial five (5) month period of operation ended December 31, 1992. Several items of non-compliance were discussed during a debriefing meeting between the auditor and Mr. Dick Kranendonk, in his capacity as administrator for the Foundation, at the end of this audit. However, the results from this audit were not formally communicated to you because of workload demands in the Charities Division. Consequently, another audit was undertaken by the Charities Division in the Spring of 1996 to review the 1993 and 1994 fiscal years. As the 1995 Information Return had not yet been filed at time of this audit, an extensive review of the 1995 Information Return was conducted later. This letter addresses issues identified during those audits and review, as well as the results of a review of the 1993 and 1994 fiscal years of the charity conducted by the Audit Division of the Hamilton Tax Services office.

Our audit findings suggest continuing serious contraventions of the *Income Tax Act* (the *"Act"*), and we are therefore considering whether the registration of the Foundation should be revoked. Our concerns relate to the nature of the Foundation's programs, its receipting practices, its failure to properly complete prescribed information returns and to comply with the *Act's* disbursement quota requirements, and the role played by the Foundation in relation to the business interests of individuals connected to the Foundation.

## Corban's Application for Registration

Copies of the documentation submitted in support of the Application for Registration filed on behalf of Corban Foundation are attached in Appendix A. The primary object of the Foundation, as set out in Article III of the trust document submitted, was:

> (b) to disburse grants to such charitable organizations in Canada which have in their objects the power to assist the **financially needy** persons in their communities,
>
> (emphasis added)

The application was submitted on the Foundation's behalf by the Canadian Council of Christian Charities (the "Council"), under cover of a letter signed by [redacted] Senior Advisor to the Council. This letter contained the statement that the Foundation was being established "...to provide assistance for individuals who find themselves in a personal, financial crisis". In the absence of any information to indicate otherwise, it was assumed that this statement was intended to amplify the above-referenced objective, and that the Foundation had been established to relieve poverty. The statement of activities provided indicated that the Foundation would accomplish its objectives by means of grants made to other registered charities for the assistance of persons meeting certain criteria. Again, it was assumed that this information merely amplified the requirement set by the trust provisions that the assets of the Foundation were to be applied to the assistance of people in need.

## Meaning of the Term "Gift"

The *Income Tax Act* provides a tax credit or deduction for gifts made to registered charities. A "gift", at law, is a voluntary transfer of property, made out of detached and disinterested generosity, without consideration or expectation of benefit in return. Where, for example, the donor is receiving in exchange for his donation a benefit that he would otherwise have to pay for, or makes a contribution voluntarily but on the understanding or with the expectation that a family member will benefit as a result, the donation does not meet the tests the Courts have set in interpreting what constitutes a charitable gift.

Departmental policy in this regard is set out in Interpretation Bulletin IT-110R2. Paragraph 3 of the Bulletin states that the Department considers a gift to have been made for the purposes of the charitable tax credit in any circumstance where property - usually cash - is transferred by a donor to a registered charity, the transfer is voluntary (i.e. any legal obligation on the payer would cause the transfer to lose its

status as a gift), and the transfer is made without expectation of return. The Bulletin specifies that no valuable consideration - no benefit of any kind - to the donor or to anyone designated by the donor may result from the payment. The issue of directed gifts is expressly addressed in paragraph 16(f):

> "Gifts directed to a person designated by a donor. A charity may not issue an official receipt for income tax purposes if the donor has directed the charity to give the funds to a specified person or family as opposed to a program. In reality, such a gift is made to the person or family and not to the charity. Donations made to charities can be subject to a general direction but decisions regarding specific beneficiaries of one of its established programs must be the exclusive responsibility of the charity."

Canadian courts have generally been inclined to interpret specific provisions of the Income Tax Act in light of the policy of the statute as a whole, and this is the perspective the Department brings to the question of whether, on particular facts, a gift has been made to a registered charity. It is a question of substance over form, since obviously the Department must be concerned with ensuring that the way transactions are arranged does not come to be seen simply as a way of manipulating the *Act* to achieve a result not intended by Parliament.

**The Foundation's Programs and the Nature of Payments Receipted**

The audits identified three main programs being carried on under the auspices of the Corban Foundation: Education Grants, Debt Assistance Grants (also referred to as Social Assistance Grants) and Charitable Gifts Coupons. Corban has published various brochures outlining these programs. Because of their materiality to the audit findings, relevant extracts from the following publications are contained in Appendix B:

- REDUCE COLLEGE OR UNIVERSITY EDUCATION COSTS BY UP TO 44% WITH THE CORBAN STUDENT ASSISTANCE PROGRAM
- CHRISTIAN SCHOOL STUDENT ASSISTANCE PROGRAM
- HOW TO REDUCE RELIGIOUS SCHOOL EDUCATION COSTS BY UP TO 40%
- FINANCIAL ASSISTANCE REDUCES COLLEGE OR UNIVERSITY DEBTS BY UP TO 44% WITH CORBAN FOUNDATION DEBT ASSISTANCE

- REDUCE ELEMENTARY OR SECONDARY SCHOOL EDUCATION COSTS BY UP TO 44% USING CORBAN FOUNDATION STUDENT ASSISTANCE

- CORBAN FOUNDATION REPORT NUMBER 1: "FOCUS ON PERSONAL INDEBTEDNESS"

- CHARITABLE GIFT COUPONS FOR RELIGIOUS SCHOOLS

Grant Programs

Based on the audit evidence, it appears that, typically, someone seeking financial assistance through any of the grant programs offered by the Corban Foundation is aware that he or she must make, or arrange for someone else to make, a contribution to Corban to cover the amount of the grant to be received from the Foundation. The Foundation retains 10% of the amount contributed and returns the rest back as a grant to the contributor or to the grant recipient being sponsored by that contributor. The prospective grant recipient is aware that 90% of the funds directed to Corban as a result of his or her fund-raising efforts will be allocated by Corban to the approved grant payout. This sequence of transactions clearly indicates that the contributor makes a contribution with the expectation that a particular individual, usually the contributor himself or a dependent family member, will receive a pre-determined grant amount.

In its first five months of operation, Corban awarded $329,269 in Debt Reduction grants. Of this total, $322,344 were grants linked to corresponding "donations". During this same period, Corban awarded a total of $78,913 in Education grants. All of these grants were tied to corresponding "donations". Our audit analysis of receipted donations for Corban's 1993 and 1994 years shows that a direct link can be made between "donations" received and grants paid out the same day, or within one or two days, in 279 cases totalling $2,001,931 in receipted donations. In most of these cases, the grant amount is exactly 90% of the "donation" made to the Foundation.

The attempt made in Corban Foundation publications to break the link between gifts made to the Foundation and grants to designated individuals by stating that gifts made to the foundation are unrestricted in nature is, in our view, contradicted by the overwhelming number of cases where a direct connection can be made.

For example, we discovered that most of those who have received education grants from the Foundation are minor children of donors to the Foundation. A scenario has a payment being made by a parent at the same time that a grant cheque for exactly

90% of this payment is paid out to the child. The grant cheque is endorsed by both the child and the parent. Essentially, in return for a 10% commission, the Foundation's education grant and student assistance programs appear to be a vehicle for parents to convert non-deductible education expenses into deductible charitable donations. The criteria used to determine eligibility for these forms of financial assistance do not take into account the income or assets of an applicant's parents, even when the applicant is a dependent child.

Following is one example of an education grant transaction examined during our audit.

> A taxpayer's child made an application for an education grant to attend an educational institution. Five months later, the child signed a grant agreement. The same day, the taxpayer (parent) transferred $10,000 from his line of credit to his personal chequing account and wrote a certified cheque to Corban Foundation for $10,000. The Foundation deposited the cheque on the same day and later issued an official receipt for income tax purposes to the taxpayer for a $10,000 donation. Again the same day, the Foundation wrote a cheque to the taxpayer's child for $9,000. The cheque, which was endorsed by the child and the taxpayer, was then deposited to the taxpayer's bank account on the same day. This amount was then used to pay down the taxpayer's line of credit.

These transactions indicate that no gift was made to Corban. It appears that the taxpayer financed a payment to Corban from his line of credit solely to obtain a tax receipt, with the full knowledge that he would be able to repay 90% to his line of credit immediately and that the 10% shortfall would be more than offset by the charitable tax credit.

They also indicate that Corban used its authority as a registered charity to issue official donation receipts to provide the taxpayer with a better tax advantage than permitted under the *Income Tax Act* provisions governing the deductibility and transfer to a supporting person of tuition payments and related education expenses (see s.118.5(1), s.118.6(1)&(2), and s.118.9(1)&(2)).

Similarly, in most instances when a debt assistance grant has been given, the person receiving the grant has made a concurrent contribution to Corban or is related to someone who has made a contribution to Corban which coincides in timing and amount with the grant paid out. As with the education grants, it appears that these are arrangements where the donor anticipates consideration in the form of a debt assistance grant being provided, either to themselves or to a relative, in return for a payment to the charity acknowledged with an official donation receipt for tax purposes. Since the contributor in these situations is almost always the same person

receiving the grant, or is an immediate family member, it appears that there is, in effect, a circular flow of funds with the Foundation interposed simply to provide a tax benefit. Except for the 10% surcharge, no property is actually transferred for the benefit of the charity.

We note, in fact, that during 1992, debt assistance grants were made to spouses or other family members of three of the five trustees of the charity. (Details of our audit findings in this regard are set out below under the heading "Benefit to Directors and Non-Charitable Use of Resources".)

From the portions of the Corban Foundation Report Number 1 extracted in Appendix B, we now understand that the Debt Assistance or Reduction program is not directed to the relief of poverty. As with education grants, income and assets are considered to be irrelevant in determining eligibility for debt reduction assistance: the only measure of financial need considered is the ratio of debt obligations to gross income.

While we would accept the provision of credit counselling to the community at large as a fourth-head charitable activity, we do not consider the payment of grants to relieve debt to be the devotion of resources to a charitable purpose other than in the context of relieving poverty.

In summary, based on Corban's own publicity materials and on our audit findings, it does not appear credible to us for the Foundation to suggest that contributors to Corban's grant programs do not expect consideration in return. The very wording of the various brochures outlining these programs itself indicates that these programs are used merely to break the direct link between the payment being made and the consideration expected. It appears to us that the conditions of the grant agreements referred to in these brochures, as well as Corban's advertised commitment to pay out "...90% of the funds raised to the fund-raiser...", inextricably link the contributor with the grant and inherently refute the claim that the use of funds contributed under these programs is unrestricted. Not only is a grant assured by the contribution, but a tax benefit is anticipated to cover the difference between the amount contributed and the grant obtained.

The audit results strongly suggest that these contributions are not gifts to the Foundation, and that amounts returned to contributors under the Foundation's grant programs are not expenditures by the Foundation on charitable programs and activities.

We also wish to put the record straight with respect to misleading statements made in the Foundation's publications regarding the Department's position on donations made by parents to student assistance funds. Corban publications claim that payments made

by parents to student assistance programs are fully creditable as charitable donations, even where their own children receive bursaries or grants from the fund, "...provided the donor does not influence the assistance decision". In fact, the Department's position on this matter is that a parent's payment to a pooled fund from which bursaries or other forms of financial assistance are paid to discharge the liability of a student for educational services to be provided to the student are not "gifts" to the fund at least to the extent of the applicable fees charged by the school.

Charitable Gifts Coupons

In each of the years under review, the Foundation issued Charitable Gift Coupons. Under this program, taxpayers made contributions to the Foundation and, in return, the Foundation issued both a charitable donation receipt for the donated amount and Charitable Gift Coupons for 90% of the amount contributed. The contributor then used the coupons to make payments to other registered charities, mainly private Christian schools. These organizations then redeemed the coupons with Corban Foundation for their full face value, in effect routing the payment through Corban rather than making them directly to the intended recipient.

The Foundation has stated that one of the reasons for using the gift coupons is that it permits a certain amount of anonymity which is desired by some donors. However, our audits uncovered a file kept by the foundation which contains written requests for coupon redemptions. It substantiates that the vast majority of coupons redeemed during the Foundation's 1993 and 1994 years were used as payments for school tuition fees, predominately for private, religious elementary and secondary schools.

It would appear that the redemption of Charitable Gift Coupons by other organizations is represented in the financial statements filed with the Foundation's annual returns as gifts made to qualified donees. We have analyzed the "Summary of Gifts to Qualified Donees" attached to the Foundations 1993, 1994, and 1995 annual returns. According to these summaries, Corban Foundation made grants to qualified donees totalling $208,889 in 1993, $306,548 in 1994, and $509,637 in 1995. The percentage of these amounts that represents funds transferred from Corban to organizations that operate religiously-based schools is 98% in 1993, 96% in 1994, and 92% in 1995.

Based on the audit findings, it appears that the primary purpose of Corban's charitable gifts coupons program is, in fact, to circumvent the restrictions placed under the Department's Information Circular 75-23 on the portion of a parent's payment for tuition that may be receipted as a charitable donation to a private religious school. This intention also appears to be evident from the promotional brochures and newsletters for this program outlined in Appendix B. We also found a letter from Dick L. Kranendonk on Corban Foundation letterhead which contains the following

explanation of the charitable gift coupons program:

> "These coupons can be used to pay for the religious education costs of children attending religious schools. Typically, OACS member religious schools have a religious cost-per-pupil of between 40% and 50% of total fees paid to the school. For parents with more than one child in a religious school, this program can result in making full payments to the school by means of these coupons. The result is that 100% of donations made to Corban are acknowledged with official charitable donation receipts which can be used to claim your charitable donation tax credit when filing your income tax return."

Paragraphs 7 and 9 of Information Circular 75-23 specify the formula that is to be used to calculate a school's operating cost-per-pupil. No other method of calculating the portion of a parent's payment to a school that may be treated as a charitable donation under the administrative policy described in the Circular is acceptable to the Department.

Corban's brochure, "How To Reduce Religious School Education Costs By Up To 40%", ties the calculation to be used by a parent to determine the amount of Charitable Gift Coupons needed to maximize the tax benefit from paying tuition fees through this program to an amount Corban, using its own formula, has deemed to be the religious education cost for the school. The brochure emphasises that use of Charitable Gift Coupons to make tuition payments that would otherwise be ma de directly to the school will result in a significantly larger tax credit.

We note, moreover, that payments made in this way are characterized by the Foundation as grants to the schools involved. We understand that these amounts are being treated as third-party funding in calculating the recipient school's cost-per-pupil under IC 75-23. This has the effect of artificially increasing the "gift" portion of tuition fee payments made directly to these schools, resulting in significant misrepresentation of tax payable by parents making charitable donation claims under this policy.

We would add that Corban's publications contain two important misstatements of fact regarding the administrative policy described in Information Circular 75-23.

The first is the assertion that "...voluntary gifts made to Corban by parents of students receiving assistance to pay for Christian education do not offend the legal principle that a gift must be transferred without valuable consideration". This statement ignores the Federal Court of Appeal's reasoning in The Queen v. McBurney. In confirming that no part of a payment by a parent for his child's

education is a "gift", even when it is paid in order to secure an education that provides religious training, the court commented as follows:

> "... there can be little doubt that...the respondent saw it as his Christian duty to ensure that his children receive the kind of education these schools provide. The payments were made in pursuance of that duty...The securing of the kind of education he desired for his children and the making of the payments went hand-in-hand. Both grew out of the same sense of personal obligation on the part of the respondent as a Christian parent to ensure for his children a Christian education and, in return, to pay money to the operating organizations according to their expectations and his means. In my judgement the Minister was correct in refusing to treat these payments as "gifts" under section 110(1)(a)(i) of the Income Tax Act."[1]

In our view, this reasoning is directly applicable to the facts in Corban's case. Parents who feel it is their duty to obtain a certain type of schooling for their children are making payments to secure the kind of education they desire. The fact that the payments are converted to Charitable Gift Coupons does not alter the fact that, in substance, payments are being made by these parents with the intention of discharging the financial obligations they have incurred in order to obtain the particular kind of education they wish to provide for their children.

Corban publications also contain the statement that "Revenue Canada's administrative policy means that religious schools cannot provide parents with charitable donation receipts that would be allowed on the basis of common law". In fact, exactly the opposite is true. Canadian courts have repeatedly held that no part of a parent's payment for the education or training of his or her child is a gift at common law. In addition to the McBurney case, I would refer you to Homa v. M.N.R.[2], The Queen v. Zandstra[3], Her Majesty the Queen v. Dr. F. Bruce Burns[4], and Irving Heisler v. Deputy Minister, Quebec Ministry of Revenue[5].

What Information Circular 75-23 represents is the Department's agreement - as a

---

1 85 D.T.C. 5433, at 5436.

2 69 D.T.C. 673.

3 (1974) D.T.C. 6416.

4 [1988] 1 C.T.C. 201.

5 (1987) P.C., c. I-3 p. 200-052.

matter of administrative practice - to deem payments for religious instruction to have been made "without consideration" for purposes of the definition of a charitable "gift" under the Act. Consequently, private schools offering both religious and secular instruction have been permitted to treat a portion of the tuition paid by a parent as a gift to a charity. It should be clearly understood, however, that the courts are free, as in the Irving Heisler case, to ignore the Department's administrative policy and follow the law. As such, the Department is under no obligation to extend this policy concession to any portion of parents' payments made to foundations or other supporting organizations.

It is, we believe, quite apparent that the Foundation was completely aware of the Department's position on the deduction of parent's payments for the education of their children at religiously-based private schools, and that it purposely attempted to obtain a more generous tax treatment than Information Circular 75-23 allows by characterizing payments made for this purpose as donations to Corban under its charitable gift coupon program.

**Benefits to Directors and Non-Charitable Use of Resources**

For the purposes of this discussion, it is useful to set out the following facts regarding control and administration of the Foundation.

Corban Foundation was created by trust agreement dated August 7, 1992. The trust agreement was signed by three trustees: Juliet Benner, Faye Grinberg, and Hendrika Kranendonk. It was witnessed by Dick L. Kranendonk. The application for registration completed the same day indicated the officers of the trust as being Juliet Benner (Trustee and Chairman) and Hendrika Kranendonk (Trustee and Treasurer).

The prescribed information returns filed by the Foundation for its fiscal years ended December 31, 1992, 1993, and 1994 list Juliet Benner as Trustee and Chairman, Hendrika Kranendonk as Trustee and Secretary-Treasurer, Faye Grinberg as Trustee and Vice-Chairman, and Bonne Sigston and Grace Hunse as Trustees. Dick L. Kranendonk is listed as Administrator.

A meeting of the Trustees of Corban Foundation was held on June 28, 1995. Present at the meeting were the following trustees: Juliet Benner, Bonne Sigston, Faye J. Grinberg and Hendrika Kranendonk. Also present as guests were Henry R. DeBolster, Wayne D. Norman, David G. Benner, and Dick L. Kranendonk. During this meeting, it was resolved that the trust would seek incorporation as a Federal Corporation under the name Corban Charitable Trust. Hendrika Kranendonk and Juliet Benner tendered their resignations as trustees and were replaced by Henry R.

DeBolster and Wayne D. Norman. Henry R. DeBolster was appointed interim Chairperson of the Trust and it was agreed that Henry R. DeBolster, Juliet Benner and Hendrika Kranendonk would be the Chairperson, Secretary and Treasurer, respectively, of the new corporation.

Corban Charitable Trust was incorporated September 19, 1995, as a continuation of Corban Foundation, by: Henry R. DeBolster, Juliet Benner, Hendrika Kranendonk, Dick Kranendonk, and David Benner.

According to its public information return for the year ended December 31, 1995, Corban Charitable Trust's directors and officers were: Henry R. DeBolster, Director and Chairman; Dini Hulst, Director; Wayne D. Norman, Director; Gilbert Langerak, Director; Grace Hunse, Director; Juliet Benner, Secretary; and Hendrika Kranendonk, Treasurer.

It is our understanding that Juliet Benner is married to David Benner, and that Hendrika Kranendonk is married to Dick L. Kranendonk.

Our audit established that Corban Foundation shares premises at 1030 Upper James St., Suite 200, Hamilton, Ontario with two companies, Kraben Consulting Inc.(KCI) and 869248 Ontario Ltd. (operating as Vista Financial Services). It is our understanding that these premises consist of three private offices occupied by the personnel of KCI, a boardroom, and a reception area, and that Corban presently contributes $4,620 per year toward the cost of these premises.

According to an advertising brochure obtained during our audit review, Kraben Consulting Inc. provides customized financial, psychological, and organizational consulting services to individuals and organizations, with specialization in services to charitable organizations. The brochure states that KCI "...has two major resources, its personnel and the financial assistance which it can provide to its clients by means of Corban Foundation...". It goes on to say that "(t)he combined resources of Corban Foundation and KCI are made available to all KCI clients, this enabling KCI to uniquely serve both organizations and their staff."

The brochure advertises the following services:

- Debt counselling, debt consolidation and debt reduction services to persons experiencing financial hardship
- Education grants and other forms of financial assistance for persons paying tuition for students attending college or university or private elementary or secondary schools

It identifies the following individuals as KCI's personnel:

- David G. Benner, President
- Dick L. Kranendonk, Executive Vice-President
- Gregory J. Hatton, Vice-President (Program Services)

It is our understanding that ownership of Kraben Consulting Inc. is shared equally by Dick L. Kranendonk and David G. Benner.

Kraben Consulting Inc. holds exclusive advertising rights for Corban. Reprinted below is the text of a typical advertisement for KCI, which appeared in the Hamilton Spectator on May 1, 1993. (A copy of the actual advertisement is contained in Appendix C.)

> **"Debt Reduction Grants**
>
> Are you burdened by many monthly bills? Do you face high debt payments?
>
> **We are able to help you!**
>
> Through cooperation with Corban Foundation, we are able to provide you with
>
> - Debt consolidation assistance
> - Non-repayable grants to help reduce debt
>
> For further information phone 388-8676 between 8:30 am and 4:30 pm, Monday through Friday.
>
> KCI Kraben Consulting Inc.
> 1030 Upper James St. Suite 200, Hamilton, Ont.
> L9C 6X6

Also under exclusive agreement, Vista Financial Services acts as agent for Corban, performing all administrative, fund-raising, financial counselling and grant assistance activities on behalf of Corban for a fee of $150 per hour. This fee is paid out of the 10% of receipted contributions retained by Vista in its administration of the grant and charitable gift coupon programs it manages as Corban's operating agent.

It is our understanding that Vista Financial Services is in the business of lending money and providing debt consolidation services.

Details of the Agency Agreement between Corban and 869248 Ontario Ltd. taken from the books and records of the Foundation are reprinted below:

Resolution of the Provisional Board of Directors of Corban Charitable Trust (September 25, 1995)

1. **Continuation: Resolved** that the Corporation hereby accepts and certifies that it is the continuation of Corban Foundation...
2. **Agency Agreement:** David G. Benner, Juliet Benner, Dick L. Kranendonk and Hendrika Kranendonk declared their indirect interest in this matter, and it is resolved that the Agency Agreement between the Corporation and 869248 Ontario Ltd., operating as Vista Financial Services be and is hereby approved...

Agency Agreement signed September 25, 1995

This Agreement is made this 25th day of September, 1995, cancelling and superseding an Agreement made between 869248 Ontario Ltd. and Corban Foundation on October 30, 1992 as amended on May 1, 1993,

Between 869248 Ontario Ltd (operating as Vista Financial Services)...hereinafter referred to as the "Agent"...and Corban Charitable Trust...formerly operating as Corban Foundation....hereinafter referred to as the "Corporation".

...And Whereas it is the intention of the Corporation to have all administrative, financial, counselling, and assistance to charities and financially needy individuals performed by the Agent.

And Whereas the parties have entered into this Agreement for the purpose of establishing an exclusive Agency relationship, for all of Canada, between the Agent and the Corporation in connection with all administrative, fund raising, financial counselling, and financial assistance to charities and needy individuals;

**Article I - Interpretation**

"Client" shall mean any person who in any way provides information to the Corporation in relation to financial counselling or financial assistance.

"Counselling" shall mean consulting and financial counselling to be provided to client of the Corporation.

"Grant" shall mean the financial assistance to be provided to those who have been financially counselled by the Agent on behalf of the Corporation and who have been declared eligible to receive financial assistance...

**Article II - Activities Assigned to Agent**

1. Perform all administrative activity...
2. Perform all fund raising activities for the Corporation...
3. Provide Counselling to those who provide the Corporation with a statement of their financial assets, liabilities, income and expenditures.
4. Provide Grants to financially needy Canadian students ...provided funds are available for each specific student grant...
5. Provide Grants to individuals up to 75% of the amount that their annual payments...are in excess of 42% of gross income provided they make use of financial counselling, and provided the individual raises funds for the Corporation...
6. Provide such other grants or assistance...as approved...from time to time.
7. Provide coupons for charitable donations made to the Corporation for which the Corporation issues official charitable donation receipts...

**Article V - Remuneration**

The Agent shall be remunerated for all its services at a rate not exceeding $150.00 per hour, but charges for the administrative part of the services shall not to exceed 3% of the total annual revenue of the Corporation.

During all of the years under review, Mr. Dick Kranendonk was the General Manager of Vista Financial Services and in this capacity was directly responsible for day-to-day administration of all aspects of Corban Foundation's affairs, including all record keeping and bank deposits. There is no documented evidence, either in the form of reports to the charity or in the minutes of Trustee's meetings, that control over these activities is exerted by the directors of Corban Foundation.

It is our understanding that Mr. Kranendonk, David Benner, G. Langerak and Gregory Hatton are all directors of Vista. It is also our understanding that Dick and Hendrika Kranendonk, David and Juliet Benner, Gilbert Langerak, and Henry DeBolster all hold an equity position in Vista Financial Services, and that they all have outstanding loans payable to Vista.

We note that Corban Foundation's financial statements show a short-term investment in the form of a note receivable from 869248 Ontario Ltd., operating as Vista Financial Services, for $643,568 in 1994, and $300,888 in 1995. The note is receivable upon demand, with interest calculated and paid monthly in arrears at bank prime in effect on the last day of each previous month. There is no information given as to whether this note is secured. It appears to us that this arrangement improperly benefits Vista and its shareholders and is not a charitable use of Corban's resources.

Our audit review also revealed that during Corban Foundation's 1992 year, debt assistance grants were awarded to individuals related to three of five trustees:

Juliet Benner, Trustee and Chairman:
Grant to David Benner, for $49,500 (i.e. 90% of $55,000 receipted amount in same fiscal year)

Hendrika Kranendonk, Trustee and Secretary-Treasurer
Grant to Dick Kranendonk, her husband and the General Manager of Vista Financial Services, for $4,882

Grace Hunse, Trustee
Grants to [redacted] who live at the same address as Grace Hunse, totalling $12,400 (i.e. 90% of combined $13,778 in receipted amounts from [redacted] in same fiscal year)

These three trustees are still serving as directors of the new corporation, Corban Charitable Trust.

The *Income Tax Act* specifically provides that no part of the income of a registered charity may be payable to, or otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof.

The facts outlined above indicate that the operations of Corban Foundation have contravened this requirement. It appears to us that trustees of Corban have received personal benefit from the awarding of debt assistance grants. Moreover, the evidence suggests that the affairs of the charity have been principally under the control of Mr.

Dick L. Kranendonk, acting simultaneously as Administrator of Corban Foundation, General Manager and shareholder of Vista Financial Services, and shareholder in Kraben Consulting Inc., and that both Vista Financial Services and Kraben Consulting Inc. have derived financial and, under charity law, unwarranted benefit from the operations of Corban Foundation.

Based on the information outlined above, it appears to us that Corban is operated in conjunction with both Kraben Consulting Inc. and Vista Financial Services as part of an integrated business plan. Corban's capacity to provide donors with official donation receipts for income tax purposes appears to be integral to the marketing of KCI's services, and provides the means by which funds are generated to pay administration fees to Vista Financial Services.

Even the brochures used to promote the debt and education assistance grants and the charitable gift coupons offered by Corban appear to us to be geared to KCI's debt and financial counselling business lines. It appears to us that someone who answers a KCI advertisement like the one outlined above would be counselled to take advantage of one or more of the tax benefit schemes being offered on the strength of Corban's status as a registered charity. The only money that actually remains in the charity's hands under these schemes is the 10% surcharge built into the grant and coupon programs, from which administration fees are paid to Vista. During the 1992 year, in fact, the audit evidence shows that clients were counselled to take out loans with Vista Financial Services in order to make the contributions required to take advantage of the debt assistance grants run under the auspices of Corban.

We believe it is open to us to conclude that Corban Foundation's resources have not been devoted exclusively to charitable purposes, that its resources have been made available for the personal benefit of trustees and, more particularly, that its status as a registered charity has been used to provide a business advantage to companies controlled by individuals directly involved in the management of the charity's assets.

**Failure to Comply with Disbursement Quota and Filing Requirements**

The Foundation takes the position that all of its expenditures are expenditures on charitable activities. The Foundation has included an attachment to its 1992 to 1995 information returns stating the following:

> "As a charitable organization, Corban Foundation (Corban Charitable Trust) is required to devote all of its resources for charitable purposes in order to maintain its status under the Income Tax Act. Expenditures to raise funds and to administer charitable activities are an integral and necessary part of carrying on such activities. If such expenditures were

> not regarded as a devotion of a charity's resources for charitable purposes, no charity could qualify as such. Accordingly, expenditures to raise funds and to administer the charitable activities of a charity are amounts expended for charitable purposes by the charity for the purposes of Paragraph 149.1(2)(b) of the Income Tax Act. Thus the amount shown in line 114 ["Total amount expended on charitable programs carried on by your charity"] includes such amounts."

This issue was discussed by our auditor with Mr. Dick Kranendonk following our audit for the year ended December 31, 1992. During this discussion, the auditor advised that the foundation was incorrectly reporting its expenditures, causing the disbursement quota to be incorrectly calculated. Mr. Kranendonk replied that the Foundation was following the advice and direction of the Canadian Council of Christian Charities in this matter, and intended to persist in filing its annual returns in this way. We note from the public information returns filed by the Canadian Council of Christian Charities that Mr. Dick Kranendonk was then, and still remains, Treasurer of the Canadian Council of Christian Charities.

Although we appreciate the work done by the Canadian Council of Christian Charities in many respects, Revenue Canada does not give a blanket endorsement to all of the Council's pronouncements. The Council's position on the treatment of fundraising and administration costs is one of several positions advocated by the Council that is not accepted by Revenue Canada.

A registered charity must spend a minimum amount of money each year on charitable activities or as gifts to qualified donees (generally other registered Canadian charities). This minimum amount, or "disbursement quota", varies according to a charity's designation. The test provides some assurance to donors that a significant portion of their donations to charities will be used for charitable purposes and activities, with a minimum expenditure on administrative and other non-charitable expenses.

In meeting its disbursement quota, a registered charity must take into account only monies spent directly on charitable activities. Generally speaking, the Department distinguishes expenditures on the basis of whether they are directly related to accomplishing a charitable goal, or are only supportive of the goal. Those that are directly attributable to the accomplishment of charitable activities are considered charitable expenditures. This includes paying salaries to persons performing actual charitable work, purchasing goods and services used in charitable activities and gifting funds to other registered charities. It does not include amounts paid for purely administrative expenses such as fund-raising costs, and legal or accounting fees. The guide to the annual information return outlines this distinction and provides

examples to assist charities in reporting their expenditures.

Where a registered charity fails to complete an information return properly or fails to meet its disbursement quota, its registration may be revoked under subsection 168(1) of the *Act*.

**Conclusion**

For all of the reasons indicated above, it appears to us that there are grounds for revocation of the Foundation's status as a registered charity.

The consequences to a registered charity of losing its registration include:

1. the loss of its tax exempt status as a registered charity which means that the foundation would become a taxable entity under Part I of the *Income Tax Act* unless, in the opinion of the Director of the applicable Tax Services office, it qualifies as a non-profit organization as described in paragraph 149(1)(l) of the *Act*;

2. loss of the right to issue official donation receipts for income tax purposes which means that gifts made to the foundation would not be allowable as a tax credit to individual donors as provided at subsection 118.1(3) of the Act or as a deduction allowable to corporate donors under paragraph 110.1(1)(a) of the *Act*; and

3. the possibility of a tax payable under Part V, subsection 188(1) of the *Act*.

For your reference, we have attached a copy of the relevant provisions of the *Income Tax Act* concerning revocation of registration and the tax applicable to revoked charities as well as appeals against revocation.

If you do not agree with the facts outlined above, or if you wish to present any reasons why the Minister of National Revenue should not revoke the registration of the Corban Foundation in accordance with subsection 168(2) of the *Act*, you are invited to submit your representations within 30 days from the date of this letter. If you wish to obtain an extension, please contact the undersigned. Subsequent to this date, the Director of the Charities Division will decide whether or not to proceed with the issuance of a notice of intention to revoke the registration of the foundation in the manner described in subsection 168(1) of the *Act*.

If you appoint a third party to represent you in this matter, please send us a written

authorization naming that individual.

Should you have any questions on these matters, please telephone Michel Lalonde at [redacted] or myself at [redacted] or write to 400 Cumberland Street, Room 5004B, Ottawa, Ontario, K1A 0L5.

Yours sincerely,

Rhéal Dorval, C.G.A.
Assistant Director - Audit
Charities Division

Enclosures

[redacted]

March 30, 1998

REGISTERED MAIL

Corban Charitable Trust
1030 Upper James Street, #201
Hamilton, Ontario
L9C 6X6

Attention: Mr. Henry R. DeBolster, Chairman

Dear Mr. DeBolster:

Subject: Corban Charitable Trust (formerly Corban Foundation)

This letter is further to the meeting held October 22, 1997 at the Hamilton Tax Services Office and attended by representatives of Corban Charitable Trust, formerly known as Corban Foundation ("Corban"), and by representatives of the Department. This letter also follows several items of correspondence exchanged between Corban and/or its representatives and the Department. The correspondence and meeting dealt with the question of whether the Minister of National Revenue should revoke the registration of Corban in accordance with subsection 168(1) of the *Income Tax Act* (the "*Act*").

I have carefully reviewed the submissions included in your letter dated October 1, 1997, those made by the Canadian Council of Christian Charities (CCCC) in their letter dated March 5, 1997 signed by Frank Luellau as Executive Director of the CCCC, as well as the representations made during the October 22nd meeting. It is my conclusion that these letters and representations do not provide sufficient reason why Corban's status as a registered charity should not be revoked.

As well as outlining the reasons why the representations made on Corban's behalf have not satisfied our concerns, I would like to take the opportunity to formally respond to a related matter arising from Mr. Patrick Boyle's letter of October 1, 1997 and discussed during the October 22, 1997 meeting. Mr. Boyle's letter indicates that Corban would be willing to accept revocation of its registered status without contest if the Department's Taxation Services Offices were to agree not to reassess "donors who were not affiliated with Corban who made charitable contributions to Corban". I wish to put on the record that the Department is not willing to agree to this condition to obtain a guarantee or commitment from Corban that it would not contest revocation action.

.../2

I will begin by addressing certain matters arising from our letters dated December 19, 1996 and August 11, 1997 which, while not central to the matters at issue, should be commented upon in the interests of clarity.

1. Our December 19, 1996 letter makes reference to matters of non-compliance discussed with Mr. Krandendonk "following" our audit for the year ended December 31, 1992. Mr. Luellau's representations maintain that this is not accurate. It may well be that these discussions took place during the course of the audit rather than at the end of the audit. It is clear, however, that the auditor did make Mr. Kranendonk aware at the time of the audit that the Department had specific compliance concerns. It is also clear from the auditor's report that Mr. Kranendonk was aware of the fact that the position he was taking on these matters, while consistent with the advice of the Canadian Council of Christian Charities, was contrary to the Department's position. In this regard Mr. Luellau also points out that our letter of December 19, 1996 was incorrect in stating that Mr. Kranendonk was "...and still remains..." Treasurer of the Canadian Council of Christian Charities. He has clarified that Mr. Kranendonk retired as Director and Treasurer of CCCC in September of 1993. The return of information filed by the CCCC for the period ended April 30, 1994 lists Mr. Kranendonk as Vice-President and Treasurer. The required listing of Executive Officers was not attached to the 1995 or the 1996 return. I note, in any case, that since his resignation as Treasurer Mr. Kranendonk has been employed as Director, Trust Services, for the CCCC. The relevant point remains that in either of these key organizational capacities Mr. Kranendonk is likely to have had significant influence over positions adopted by the CCCC in relation to these matters, and that Mr. Kranendonk's contention during these discussions that Corban's actions should be acceptable to the Department on the strength of CCCC standards and guidelines has to be considered in light of those circumstances.

2. The key point in our December 16, 1996 letter's discussion of Corban's Application for Registration is that there was nothing in the documentation submitted to indicate either that the Trust had been established for purposes other than the relief of poverty as that term is normally understood in a charity law context or that there was to be a requirement for those seeking assistance from Corban to enter into any sort of fund-raising agreement as a condition of assistance. A comparison of the limited information provided with Corban's application, as reproduced in Appendix A to our December 19, 1996 letter, and the information provided on pages 16 through 19 of Mr. Luellau's March 5, 1997 reply,

.../3

attests to the fact that the full facts and circumstances surrounding Corban's programs were not disclosed at the time of registration. No mention at all was made of Corban's coupon program.

3. With regard to Corban's application for redesignation from a public foundation to a charitable organization, subsection 149.1(6.3) of the *Act* clearly provides that the designation assigned by the Minister at the time of registration remains in effect until such time as a registered charity is sent a notice confirming the Minister's approval of an application subsequently made for designation. Subsection 172(4) provides a right of appeal against a deemed refusal to designate under subsection 149.1(6.3) where the Minister has not notified an applicant of the disposition of an application within 180 days. Whether Corban remained designated as a charitable foundation or had been re-designated as a charitable organization as a consequence of the changes made to its objects following registration has limited bearing upon the matters raised by our letter dated December 19, 1996. Under either designation, a registered charity is permitted to carry on charitable activities directly or to make gifts to qualified donees in meeting its annual expenditure requirement. I would draw to your attention, however, that subsection 149.1(3) provides for revocation of a public foundation if it has incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments, and debts incurred in the course of administering charitable activities. Based on the information provided by your letter dated October 1, 1997, it appears to me that Corban was in violation of this provision of the *Act* even before it made application for designation as a charitable organization.

4. It is the Department's administrative practice to treat as a charitable gift part of a parent's payment for instruction at a private elementary or secondary school that offers both secular and religious education, regardless of whether the payment is a fixed fee or is a voluntary contribution.

The policy set out in Information Circular 75-23 was informally adopted in the 1960's. As a matter of administrative practice, the Department decided that payments for religious instruction could be treated as having been made "without consideration" for purposes of the definition of a charitable gift under the Act. Mr. Kranendonk is correct in his assessment that this decision was based on an analogy drawn to the tax treatment of contributions made for religious instruction given in a Sunday

.../4

school setting. Thus, private schools which provided both religious and secular instruction were permitted to receipt a portion of the tuition paid by a parent as a gift to a charity. The terms of this informal policy required that such schools maintain two clear-cut departments with separate accounting systems. School fees for the religious department were to be clearly identifiable from those for academic instruction and no arbitrary "splitting" of fees was to be allowed.

As a result of this policy, the Department was under pressure from other religious groups, who took the position that religious and secular training could not be separated and that all subjects taught within the context of a particular system of religious belief should be considered to be religious training, to permit a donation deduction in respect of amounts paid by parents toward the operating costs of their schools. These groups operated schools on the basis of voluntary contributions from their members. The Department maintained that in these circumstances only the amount paid by a parent over and above the cost-per-pupil of operating the school could be treated as a "gift". Reassessments in one such case resulted in the Federal Court, Trial Division's decision in *The Queen* v. *Zandstra* 74 DTC 6416. In that case, the taxpayer argued unsuccessfully that a voluntary payment to the School Society which operated the Christian school attended by his children should be considered a charitable gift. The court recognized his contributions to the Society as a gift only to the extent that they exceeded the amount accepted by the Department as representing the School's operating cost-per-pupil.

During the course of discussions with affected parties prior to the *Zandstra* appeal, the Department made a commitment to issue guidelines specifying the Department's policy with regard to tuition payments. This commitment was honoured in 1975 with the publication of Information Circular 75-23. Contrary to the interpretation used in promoting Corban gift coupons as a means of paying tuition and related school expenses, the purpose of paragraph 5 of I.C. 75-23 was to make it clear that the policy set out in the Circular would apply equally to schools operated with no set fee (i.e. the *Zandstra* circumstances) as to cases where a set tuition fee is charged. The Circular's language is purposely broad enough to encompass any payment to a school which, although not labelled a tuition fee, is nevertheless a payment made to ensure a student's attendance at that school.

5. Your October 1, 1997 response to our request for clarification as to the uses of Corban's charitable gift coupons outlined in Mr. Luellau's letter takes issue with what you refer to as our "unsubstantiated allegations about the activities of Canadian missionaries abroad." You go on to suggest, based on your own experience as an ordained minister in the Reform tradition, that missionaries are not normally required to participate in raising support for their missions. It may be helpful for you to know that the support scenario presented in our letter was based on representations made to the Department by Mr. Kranendonk and Mr. Luellau, on behalf of the CCCC, in discussions with our Assistant Deputy Minister, Mr. Denis Lefebvre, and Mr. Carl Juneau, then Acting Director of this Division, on January 4, 1996. I would also point out that pages 12 through 15 of Mr. Luellau's March 5, 1997 letter expressly refer to situations where missionaries are supported in whole or in part by contributions from their parents, and we understand from our contacts in the religious community that this is a common occurance indeed.

Given this background, Mr. Luellau's earlier reference in that letter to the use of Corban gift coupons "...to acknowledge gifts by individuals for the support of the ministry of the church..." appeared to leave open the possibility that these coupons might be used to allow parents and other relatives of missionaries to obtain tax receipts for amounts they are expected to pay toward the support of a family member serving the church as a missionary. It is not at all clear to us that the character of such payments would in all cases come within the legal concept of a charitable gift, nor would they be made so by conversion of a direct payment to a charitable gift coupon.

I will now address the grounds for revocation outlined in our letter dated December 19, 1996, and the reasons why we do not accept the representations made to us on these matters as being a satisfactory response to those concerns.

Grant Programs

Mr. Luellau's letter dated March 5, 1997, seems to suggest that the charitable gift provisions of the *Act* allow a means by which a taxpayer's "financial assistance for needy relatives would be regarded as charitable for purposes of the Act" provided suitable arrangements are made so that such assistance flows through a registered charity. He acknowledges that "one of the principal opportunities provided to many donors to Corban's programs is the ability to structure the donor's affairs, in certain cases, to provide support for Corban's public benevolence programs rather than providing such

support through acts of private benevolence." It is well established at law that gifts of private benevolence lack the necessary element of public benefit to be considered charitable. The Department does not accept the proposition that subsection 118.1(1) of the *Act* was enacted with the intention that it is appropriate for a registered charity to structure its programs in such a way as to recharacterize financial assistance for needy relatives or other acts of private benevolence as charitable gifts.

Mr. Luellau's letter suggests that this proposition is supported by the recommendations of the 1966 Report of the Royal Commission on Taxation, known as the Carter Commission. I note, however, that the Commission presented its recommendations concerning tax relief for gifts in support of dependants and other close relations in a section of its report that is wholly distinct from its recommendations regarding the tax treatment of charitable donations. What is more, the Commission refers to charitable organizations as having "...some general public purpose..." and, more particularly, as not being "...intended to provide any benefit to the contributor members, other than the better organization of the disbursement of their contributions to charity".

Mr. Luellau's letter also contends that support for Corban's position that its grant programs should be regarded as charitable may be found in *Harry Graves Curlett* v. *MNR*, 66 DTC 5200. I would point out that the facts of that case differ significantly from the financial arrangements for student assistance and social (or debt) assistance made through Corban in two key respects. The first, as Mr. Luellau has noted, is that Gibson, J. found in that case that The Salvation Army was under no compulsion to provide assistance to the needy families brought to its attention by the taxpayer and gave them assistance only after it had investigated and determined that their needs were consistent with its general welfare work. In contrast, our audit established that eligibility for Corban financial assistance required that potential grant recipients - including minor children in the case of education assistance grants - enter into agreements obliging them to make, or to arrange for someone else to make, contributions to Corban sufficient to cover the amount of the grant to be provided plus a 10% administrative charge. Corban's claim that relatives of grant recipients are making unconditional, unrestricted gifts to Corban is contradicted by the fact that 90% of funds raised by the bursary or grant recipient are to be used to fund that recipient's bursary or grant. I note, in this regard, that our audit findings include a sample copy of a letter signed by Mr. Gregory Hatton as National Director of Corban providing the following instructions to an eligible grant recipient:

> "Since you have been declared eligible for a grant, Corban asks you to participate in raising funds so that your grant can be paid out. Grants paid out amount to 90% of funds raised. Of the remaining 10%, a maximum of 3% of donations is used for administrative costs, and at least 7% is allocated for Corban's other charitable purposes. Anyone (including

.../7

corporations, grandparents, parents, etc.) may make a donation to Corban in support of your fund raising activities. Corban will pay you 90% of funds raised by you up to your total grant eligibility. Please inform prospective donors that they should not designate donations to you....Before a grant can be paid out, you will be required to sign the enclosed Grant Agreement."

It remains our view that the conditions of these grant agreements inextricably link the contributor with the grant and inherently refute the claim that the use of funds contributed under these programs is unrestricted.

The second key point of difference between the *Curlett* case and the Corban circumstances is the requirement at law for a charitable "gift" to proceed from a detached and disinterested generosity. This essential requirement was present in *Curlett* and is not met in the case of Corban's grant arrangements.

In my view, *Re Compton, Powell* v. *Compton*, [1945] All E.R. 198, 206, C.A., also cited in Mr. Luellau's letter, emphasizes that charity requires public benefit and offers no support for the proposition that the assistance provided to a donor's family members through Corban's education and social assistance grants should be regarded as fulfilling a charitable purpose. Corban's representations have not established, nor did our audit findings indicate, that these programs were operated for the relief of poverty during the years under audit. In the case of an education assistance grant, financial need is determined without regard to the financial resources of parents and legal guardians even for elementary and secondary school students. I also note that while the terms and conditions for providing "Social (Debt) Assistance Grants" outlined in Schedule D of Mr. Luellau's letter as being in effect for 1996 and subsequent years differ somewhat from those previously applied, someone determined to be ineligible for debt reduction assistance under these new terms may still qualify for grant assistance under Corban's Social Assistance program without any income threshold, evaluation of net worth, or any requirement for reduction of discretionary spending. Significantly, our auditor's notes indicate that his reconciliation of Corban donors to Corban social assistance grantees for 1993 and 1994 showed that in most instances the donor was also the grantee, and that the donation and grant transactions occurred concurrently.

I express no opinion as to the propriety of Corban's characterization of these grant payments as social assistance payments included in income under paragraph 56(1)(u) of the *Act* and deductible in computing taxable income under paragraph 110(1)(f).

I do note that Corban adds $1,200 to the amount of a social assistance grant, and that this levy is used to pay the commission of local counsellors contracted through

.../8

Vista Financial Services to provide counselling services on behalf of Corban. I see no evidence that the financial counselling provided offers any service other than access to Corban grants. I note from Mr. Luellau's letter dated March 5, 1997 that Corban's debt and social assistance programs each have "...a prerequisite that the prospect submits to financial counselling", that an initial free counselling session is used to determine eligibility for Corban's grant programs, and that further financial counselling "...may be available without cost..." only to those deemed eligible for these grants. Further comment as to the connection between Corban's grant programs and the business interests of Mr. Hatton and Mr. Kranendonk, as disclosed in their sworn testimony before the Tax Court of Canada, follows below under the heading "Private Benefits".

Finally, with regard to Corban's education assistance grants, I note that Mr. Luellau's March 5th letter advises, in Appendix F, that this program is primarily intended to serve as an inducement for parents to have their children educated in a Christian environment, but also provides grants to students at the elementary and secondary school level to further their education within an environment designed to overcome learning impediments caused by physical or psychological disabilities. These children, too, are required to enter into a grant agreement requiring them to raise funds from parents and other sources to cover the amount of their grant. Mr. Luellau's letter argues that even if a grant or bursary paid out under this program could be regarded as benefiting the parent, that benefit has no economic value. This conclusion is premised on the assertions that the education provided is not "exclusive" where the academic facilities and curriculum are no better than those in a public elementary or secondary school, and that there is no economic or commercial value attached to the religious or health and psychological context or environment provided by the private schools attended by these children.

I would respond, firstly, that a private school operated on the basis of adherence to a particular set of religious beliefs could, by definition, be termed "exclusive". Secondly, as recognized by the Supreme Court of Canada's decision in *Adler* v. *Ontario*, [1996] 3 S.C.R. 609, there is a cost or economic burden to be met when parents choose to opt out of the public school system so that their children may receive the benefit of attending a school which meets their particular religious requirements. This cost is represented by the tuition charged, or the amounts parents are asked to pledge towards covering the school's costs of operation. In my view, therefore, this choice conveys a benefit anticipated by these parents which, *ipso facto*, has an economic or commercial value.

Charitable Gift Coupons

The Department is quite willing to agree that there is nothing inherently wrong with the concept of substituting charitable gift coupons for cash payments to a

charity that are "gifts" at law. Mr. Luellau's representations suggest that the use of gift coupons is comparable to gifts made to the United Way but designated for the benefit of a particular charity. However, our re-examination of the facts determined by our audit indicate that Corban's coupon program is, in fact, being used primarily to satisfy tuition fee obligations of parents to schools attended by their children. Indeed, the coupon order form supplied with Corban's brochure, "How to Reduce Religious School Education Costs by up to 40%", instructs parents to give these coupons to a school in payment for part of the "total family payment required by (a) school". It is difficult to understand how this arrangement can in any way be compared to a donation made anonymously to a particular charity under the United Way contributor's choice concept since the parents presenting these coupons would be known to the schools involved.

The representations made on Corban's behalf rely upon a number of fundamental misconceptions also promoted in seminars and brochures used to publicize the use of Corban's coupon program as a means of reducing the financial burden assumed by parents who choose private Christian schooling for their children. The first is that the courts have said that religious education does not confer a benefit measurable in commercial terms. The second is that the fair market value of the academic education that children receive in a religious school setting should be considered to be nil on the basis that academic education is available to all free of charge in the public school system. Both these assertions, as well as Mr. Luellau's reliance upon *Antoine Guertin Ltee* v. *Her Majesty The Queen*, 81 DTC 5045, would appear to be based on Muldoon J.'s reasoning at the Trial Division in *McBurney* v. *Her Majesty The Queen*, 84 DTC 6494.

As you may be aware, that decision was subsequently overturned by the Federal Court of Appeal in *The Queen* v. *McBurney*, 85 DTC 5433 (F.C.A.). As indicated above in response to the similar submissions made regarding Corban's education assistance grants, what can be fairly said on the basis of the Federal Court of Appeal's decision in *McBurney* and other relevant judicial precedents is that the decision taken by parents to forego tuition-free education for their children in the public school system in favour of schooling that reflects a particular system of religious belief carries with it an economic consequence. That consequence is measurable in commercial terms by the amounts they are expected to pay to cover the costs of the school's operations, and parents are not making a gift when the amounts they pay are intended to defray these costs.

A third misconception promoted by Corban is that Information Circular 75-23 can be applied only to parochial schools that do not charge a set tuition fee. This ignores the consistent finding of law by Canadian courts that the fact that a payment for tuition is voluntary and not made pursuant to a contractual obligation is irrelevant in determining whether the payment is a gift.

.../10

A fourth is the claim that the donor to Corban relinquishes full control over the funds paid to Corban under its coupon program. This is obviously untrue, in that the donor has absolute control over how those coupons are then used. This claim is also contradicted by the fact that donors are encouraged to use these coupons to their own advantage in defraying the costs of a child's enrollment in a private, religious school.

The fifth misconception promoted by Corban, again relating to I.C.75-23, is that the provision in paragraphs 8 and 9 of the Circular allowing a school's operating costs to be reduced by "donations received from persons with no children in attendance" in calculating net operating cost-per-pupil permits the use of an "arm's-length" entity such as Corban to transform the character of payments from parents to unrelated "third-party" contributions. I think it is worth noting that other professional commentators interpret this wording to exclude third-party funding derived from parent contributions. Arthur Drache Q.C., for example, in his handbook, *Canadian Taxation of Charities and Donations* (Thomson Canada Ltd., 1994), cautions that "(i)t should be noted that according to the Circular, outside funding does not include gifts from people who have children in attendance at the school".

It is our view that payments made by parents who have remitted Corban charitable gift coupons to schools attended by their children have been made to Corban in lieu of tuition paid directly to the schools involved, serve the same function as payments for tuition made directly to the schools involved, and do not exhibit the characteristics of a "gift" at law in that they are made for consideration, without any intent of detached benefaction. The intended result of these transactions is that parents obtain financial relief from tuition payments they would otherwise have to make. Using Corban as an intermediary to convert these payments to charitable gift coupons does not alter the fact that, in substance, they are payments being made with the intention of discharging the financial obligations parents have assumed, whether by contract or pledge, in order to obtain the particular kind of education they wish to provide for their children. As our December 19, 1996 letter indicates, our audit evidence counters the suggestion that this arrangement conferred anonymity to these transactions.

With regard to your representations that this program is not providing parent donors with charitable gift receipts in excess of what they would be entitled to under I.C. 75-23, I would again refer you to the following extract from a Corban publication reproduced in Appendix B-3 of our letter dated December 19, 1996:

> Use of charitable gift coupons also allows parents to obtain much more favourable tax treatment for the donation portion of contributions made to religious elementary and secondary schools. Such schools are eligible to redeem the coupons as a grant from a charity. Grants received in this manner reduce the "cost per pupil". Thus, the amount for which a charitable donation receipt may be issued by the school is increased.

.../11

furthermore, that they all have outstanding loans payable to Vista. This statement was based on copies we have of resolutions of Vista's Board of Directors showing Vista share allotments to David and Juliet Benner, Dick and Henny Kranendonk, Henry and J. DeBolster, and Alayne and Gilbert Langerak. I understand from Mr. Luellau's letter that neither you nor Mr. Langerak currently hold shares in Vista, although you both have outstanding mortgages payable to Vista. I take Mr. Luellau's response as confirmation, however, that Dick and Hendrika Kranendonk and David and Juliet Benner continue to hold an equity position in Vista.

Our letter of December 19, 1996 noted that Vista Financial Services acts as agent for Corban, performing all administrative, fund-raising, financial counselling and grant assistance activities on behalf of Corban. Our letter indicated that fees for these services are paid out of the 10% of receipted contributions retained by Vista in its administration of the grant and gift coupon programs it manages as Corban's operating agent. Mr. Luellau's March 5th reply denied that there was any basis for concluding that Vista's fees were paid out of the 10% of receipted contributions retained by Corban for its administration function. This assertion is contradicted, however, by testimony given by Mr. Dick Kranendonk and by Mr. Gregory Hatton before the Tax Court of Canada in *Adriana Hatton* v. *Her Majesty The Queen* (August 25, 1997, decision of the Tax Court of Canada; Court File No. 97-670 (IT)I). This is, I believe, the case to which your October 1, 1997 letter refers on page 4. During our meeting at the Hamilton Tax Services Office on October 22, 1997, Corban's representatives confirmed that they had already obtained a copy of this transcript from the court and that there was no reason in their view why we should not rely on this information.

During his testimony, Mr. Kranendonk was asked who paid for the financial counselling provided in conjunction with Corban's social assistance and debt counselling programs. He replied that it was Corban, and confirmed that this cost came out of the 10% of money retained by Corban for each grant awarded. His testimony in this regard is recorded on pages 64 through 67 of the court transcript. Later, Mr. Hatton testified that he worked for Vista providing counselling services to grant applicants to Corban. He explained that he was remunerated by Vista under the terms of Vista's service contract to provide financial counselling services to Corban and that he, in turn, sub-contracted these services to independent counsellors. These counsellors billed him and he then billed Vista for their counselling services. This testimony appears on pages 80 through 86 of the court transcript.

This testimony confirms that Corban's capacity to provide donors with official donation receipts for income tax purposes provides the means by which funds are generated to pay counselling and administration fees to Vista, thereby benefiting Vista and its shareholders. It confirms that Mr. Hatton, while National Director of Corban, derived

.../13

This is the effect shown in the example given at the bottom of page 6 of Mr. Luellau's March 5th letter. The recharacterization of parent contributions as unrelated "third-party" donations distorts the cost-per-pupil calculation, artificially reducing the costs attributable to secular instruction. This increases the amount of a parent's payment that can be regarded as having been paid for religious instruction and can therefore be receipted as a charitable gift under the Circular.

It remains our view that Corban purposely attempted to confer a more generous tax treatment than I.C. 75-23 allows by characterizing payments made to cover tuition costs as gifts to Corban under its charitable gift coupon program. In this, as in its grant programs, Corban has been used to artificially break the link between the payment being made and the consideration expected.

Private Benefits

The *Act* stipulates that no part of the income of a registered charity shall be payable to, or otherwise available for the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof. The Department considers these terms to refer to those persons having the general control and management of the administration of a charity. This is, essentially, a rule against self-dealing, reflecting the general rule of equity that a trustee must not profit out of his position of trust, nor must he place himself in a position where his duties as a trustee conflict with his own interests. It is also a statutory embodiment of the common law test that individuals with ties to a charity should not profit from their association with it.

Our review of the information provided in response to our letters of December 19, 1996 and August 11, 1997 does not in any way lessen our concern that there has been insufficient separation between the Corban's affairs and the financial and business interests of individuals responsible for administration and management of Corban's programs and that Corban's programs have been operated in such a way as to benefit those interests. It is our conclusion, based on all of the evidence before us, that Corban, Kraben Consulting Inc., and Vista Financial Services have been controlled and operated by the same group of individuals, that Corban exists as little more than a shell with the capacity to issue receipts for income tax purposes, and that this capacity has been exploited as a means by which revenues are generated as fees and commissions paid to Kraben and Vista.

With regard to the matter of Corban's incorporating and directing officers holding financial interests in Kraben and Vista, our letter dated December 19, 1996 stated that it was our understanding that Dick and Hendrika Kranendonk, David and Juliet Benner, Gilbert Langerak, and Henry DeBolster are all shareholders in Vista and,

.../12

direct financial benefit from Vista's contracting arrangement with Corban. It also confirms that the affairs of the charity have been principally under the control of Mr. Kranendonk, acting simultaneously as Administrator of Corban and President and General Manager of Vista. I note that the representations made in Mr. Luellau's letter of March 5, 1997 concerning Corban's purchasing of services from Kraben and Vista reports administration fees paid to Vista but omits any reference to the additional fees paid for counselling services. According to the financial statements filed with Corban's annual returns, these counselling fees amounted to $45,622 in 1992, $83,145 in 1993, $189,541 in 1994, $173,530 in 1995, and $132,914 in 1996. Mr. Luellau's submission indicates that Corban commits approximately 5% of its gross revenue from receipted donations to the cost of contracting financial counselling services through Vista, over and above the 3% of gross income allocated for administrative services also contracted to Vista.

Schedule B to your October 1, 1997 letter provides a table illustrating that the interest received by Corban on amounts loaned to Vista exceeded the amounts Corban paid to Vista in administrative fees by a total of $72,260 for the 1992 through 1995 years. However, this analysis does not reflect the $491,838 in counselling fees also paid to Vista during this period, nor does it take into account the interest paid by Corban to individuals whose loans to Corban were re-loaned to Vista.

With regard to the matter of monies loaned to Vista by Corban and, in particular, whether these loans were properly secured, schedule A to your letter dated October 1, 1997 detailed loans which Corban received from individuals and then loaned to Vista. You advised that Corban received a demand promissory note covering the funds loaned by Corban to Vista, and that Corban was never at risk in relation to its notes payable under this arrangement because the individuals involved knew that the only security for their loans to Corban was the note receivable from Vista. You also advised that Corban also obtained security of up to $151,000 for its own surplus funds loaned to Vista by means of the assignment to it of one of Vista's mortgages, and that the promissory notes payable by Corban to individuals were secured to the extent of notes receivable from Vista and unsecured as the remainder.

The chart you provided showing the flow of funds between Vista and Corban confirms that the balance of Corban's loans to Vista was not covered by the assignment to Vista of notes receivable from Corban in March and April of 1993, in December 1994, and in July 1996. Moreover, two of the three promissory notes from Vista to Corban provided to us after our meeting with Corban representatives in the Hamilton Tax Services Office on October 22, 1997, were unsecured notes. The first note, dated January 31, 1994 and signed by D. L. Kranendonk on behalf of Vista Financial Services, was in the amount of $152,465.57. The second note, for $643,567, cancelled and replaced all previous notes to Corban and was signed on behalf of Vista by both Mr. Kranendonk and Mr. Hatton on December 31, 1994.

.../14

The third note, for $375,887.52, was dated December 31, 1996, approximately two weeks after our registered letter dated December 19, 1996 raised this issue. It was signed on Vista's behalf by D. L. Kranendonk and Gilbert Langerak. I note that Mr. Langerak was, at this point, a Corban director. This note did not specify that it cancelled or replaced the December 31, 1994 note. The language of this note is confusing. It pledged as security "...the general assets of Vista as to $130,000 in relation to a Promissory Note previously made in favour of Mr. Henry R. DeBolster and as to $152,465.57 in relation to a Promissory Note previously made in favour of Mr. Cornelius (Len) DeBolster both of which Promissory Notes were assigned to Corban Foundation". I understand this to mean that Vista's note to Corban was secured by the holders of notes receivable from Corban assigning those notes to Vista. In other words, Vista's debt to Corban was backed by the assignment of Corban's debt to Vista to the extent of $282,466.

This third note also pledged and assigned, as security for the remaining $93,421.95 owed to Corban, the mortgage held by Vista on real property located at [redacted]. We understand that this is your personal residence. This mortgage assignment agreement was signed on July 30, 1994 by Gregory Hatton, acting for Vista, and Dick Kranendonk, acting for Corban. It limits the security provided to $151,000, an amount far below the balance owed to Corban on that date and during most of the time Vista's loan was outstanding. Moreover, we have determined that this mortgage assignment was never registered against the title to this property, largely reducing its enforcibility as security.

It would appear from Mr. Luellau's October 1st submission that our letter of December 19, 1996 prompted repayment of all of Corban's loans to Vista. Nevertheless, these transactions attest to the fact that Corban has been operated in a way that allowed the financial resources of the charity to be made available to Vista, a profit-making company operated by and for the benefit of the same group of individuals who were responsible for managing and administering the charity.

Our letter dated December 19, 1996 also raised the issue of debt assistance grants having been awarded during Corban's 1992 year to individuals related to trustees. Mr. Luellau's letter clarifies that Grace Hunse was not a trustee at the time of the grants made to [redacted]. With regard to the grants made to David Benner and Dick Kranendonk while Juliet Benner and Hendrika Kranendonk were acting as Corban's trustees, Mr. Luellau's letter advises that Corban does not consider such arrangements to constitute a personal benefit in that "any grants paid to Trustees or Directors or persons in any way related to them were paid on the basis of the same criteria applied to the total population". It remains our view that the awarding of debt assistance grants to individuals related to Corban's trustees was and is an improper use of the charity's resources under any circumstances.

.../15

Failure to Comply with Disbursement Quota and Filing Requirements

For the reasons indicated in our letter dated December 19, 1996 and further detailed above, we do not consider the expenditures Corban has made under its grant and charitable gift coupon programs to have been expenditures made in respect of charitable activities carried on by it or gifts made by it to qualified donees. Consequently, it is our view that Corban has failed to meet the disbursement quota provisions of the *Act*. In addition, Corban has failed to distinguish fund-raising and administrative costs from amounts reported at line 114 of form T3010 for the purposes of completing the prescribed public information return and calculating its disbursement quota.

Conclusion

Having fully considered all of the representations submitted, I have concluded that the charitable registration of the Corban Charitable Trust (formerly Corban Foundation) should be revoked for the reasons given in our letter dated December 19, 1996 and elaborated above. In summary, these are that:

- Corban has provided official donation receipts for amounts that are not "gifts" within the meaning of subsection 118.1(1) of the *Act;*
- Corban's resources have not been devoted to charitable purposes and activities;
- Corban has not met its disbursement quota requirements under the *Act;*
- Corban has been operated in a manner that has allowed its income to be made available for the personal benefit of trustees and others responsible for the control and management of its programs and resources;
- Corban has improperly used its receipting authority as a registered charity to circumvent the limits of the *Act* with regard to the deductibility and transfer to a supporting person of tuition payments and related education expenses; and
- Corban has failed to properly complete the information required by prescribed form T3010.

Therefore, I wish to advise that pursuant to the authority granted to the Minister in subsections 149.1(3) and 168(1) of the *Act* and delegated to me in subsection 900(8) of the Regulations to the *Act*, I propose to revoke the registration of Corban Charitable Trust (formerly Corban Foundation). By virtue of subsection 168(2) of the *Act*, the revocation will be effective on the date of publication in the Canada Gazette of the following notice:

.../16

Notice is hereby given, pursuant to paragraphs 168(1)(b), (c), and (d) of the *Income Tax Act*, that I propose to revoke the registration of the organization listed below and that the revocation of registration is effective on the date of publication of this notice.

**Registration number:** 0932772-05

**Business number:** 135411502RR0001

Name: Corban Charitable Trust (formerly Corban Foundation)

Should you wish to appeal this notice of intention to revoke in accordance with subsections 172(3) and 180(1) of the *Act*, you are advised to file a Notice of Appeal with the Federal Court of Appeal within 30 days from the mailing of this letter. The address of the Federal Court of Appeal is:

Supreme Court Building
Wellington Street
Ottawa, Ontario
K1A 0H9

Please take note that the *Federal Court Rules, 1998* come into force on April 25, 1998, and will apply to existing proceedings as well as to all proceedings commenced after that date. These new rules impose particular obligations upon an appellant to be met within restricted time-frames. Your attention is drawn in this regard to sections 337, 339, 343, 344, 345, 346, 347 and 348 of the *Rules* concerning the content of a notice of appeal, persons to be included as respondents, service of the notice of appeal, proof of service, agreement re appeal book, preparation and content of appeal book, service and filing of appeal book, appellant's memorandum, requisition for hearing, and filing of a joint book of authorities.

As of the date of revocation of the registration of the organization, which is the date upon which the above-noted notice is published in the Canada Gazette, the organization will no longer be exempt from Part I Tax as a registered charity and will no longer be permitted to issue official donation receipts.

Additionally, the organization may be subject to tax exigible pursuant to Part V, section 188 of the *Act*. For your reference, I have attached a copy of the relevant

.../17

provisions of the *Income Tax Act* concerning revocation of registration and the tax applicable to revoked charities as well as appeals against revocation.

I wish to advise you that pursuant to subsection 150(1) of the *Act* a return of income for each taxation year in the case of a corporation (other than a corporation that was a registered charity throughout the year) shall, without notice or demand therefor, be filed with the Minister in prescribed form containing prescribed information. Also we draw your attention to paragraph 149(1)(l) of the *Act* which states the definition of a non-profit organization and subsection 149(12) which states the filing requirements of a non-profit organization.

Yours sincerely,

Neil Barclay

Neil Barclay
Director
Charities Division

Attachment

c.c. [redacted]