



**REGISTERED MAIL**

Ecotecture: Centre for Ecological Art and Architecture  
1581 Dupont Street  
Toronto ON M6P 3S5

**OCT 29 2014**

BN: 86898 7397RR0001

Attention: Gerrard Jennings

File #: 3005916

**Subject:      Notice of Intention to Revoke  
Ecotecture: Centre for Ecological Art and Architecture**

Dear Mr. Jennings:

I am writing further to our letter dated February 7, 2014 (copy enclosed), in which you were invited to submit representations as to why the registration of Ecotecture: Centre for Ecological Art and Architecture (the Organization) should not be revoked in accordance with subsection 168(1) of the *Income Tax Act* (Act).

We have now reviewed and considered your written response dated April 4, 2014. However, notwithstanding your reply, our concerns with respect to the Organization's non-compliance with the Act have not been alleviated. Our position is fully described in Appendix "A".

**Conclusion**

The audit by the Canada Revenue Agency (CRA) has revealed that the Organization primarily operated for the non-charitable purpose of furthering a gifting tax shelter, Vintage Iconic Archives (the VIA Project), by agreeing to accept alleged gifts of property from participants and to act as a receipting agent for this donation arrangement. As a direct result, from 2009 to the present, the Organization issued donation receipts nearing \$200 million for supposed gifts of vintage photographs. It is the view of the CRA that the property was overvalued; therefore the value of the corresponding tax receipts was overstated. Further, not only did the Organization fail to demonstrate it had actually received the tax-receipted property, it was unable to show that it carried out any charitable activities, using the alleged property or otherwise.

In addition, the audit revealed that the Organization has failed to comply with several other requirements set out in the *Income Tax Act*. In particular, it was found that the Organization provided undue benefits to one of its members, gifted to a

non-qualified donee, failed to promote the objects for which it was registered, did not maintain adequate books and records, did not file an accurate T3010 Information Return, failed to meet its disbursement quota and allowed its corporate status to lapse. For all of these reasons, and for each reason alone, it is the position of the CRA that the Organization no longer meets the requirements necessary for charitable registration and should be revoked in the manner described in subsection 168(1) of the Act.

Consequently, for each of the reasons mentioned in our letter dated April 4, 2014, I wish to advise you that, pursuant to subsection 168(1) of the Act, 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*:

*Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(c), 168(1)(d) and 168(1)(e) and subsections 149.1(2) and 149.1(4.1) 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.*

**Business Number**  
868987397RR0001

**Name**  
Ecotecture: Centre for Ecological Art  
and Architecture  
Toronto ON

Should you wish to object to this notice of intention to revoke the Organization's registration in accordance with subsection 168(4) of the Act, a written Notice of Objection, which includes the reasons for objection and all relevant facts, must be filed within **90 days** from the day this letter was mailed. The Notice of Objection should be sent to:

Tax and Charities Appeals Directorate  
Appeals Branch  
Canada Revenue Agency  
250 Albert Street  
Ottawa ON K1A 0L5

Notwithstanding the filing of an Objection, a copy of the revocation notice, described above, will be published in the *Canada Gazette* after the expiration of 30 days from the date this letter was mailed. The Organization's registration will be revoked on the date of publication.

A copy of the relevant provisions of the Act concerning revocation of registration, including appeals from a notice of intent to revoke registration can be found in Appendix "B", attached.

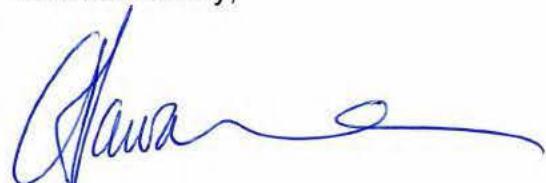
### Consequences of Revocation

As of the effective date of revocation:

- a) 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**. 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;
- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the Notice of Intention to Revoke. This revocation tax is calculated on prescribed form T2046, *Tax Return Where Registration of a Charity is Revoked* (the Return). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the Notice of Intention to Revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix "B". Form T2046 and the related Guide RC4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, are available on our Web site at [www.cra-arc.gc.ca/charities](http://www.cra-arc.gc.ca/charities);
- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the *Excise Tax Act*. As a result, the Organization may be subject to obligations and entitlements under the *Excise Tax Act* that apply to organizations other than charities. If you have any questions about your Goods and services tax/harmonized sales tax (GST/HST) obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

Finally, I 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 in the prescribed form, containing prescribed information, for each taxation year. The return of income must be filed without notice or demand.

Yours sincerely,



Cathy Hawara  
Director General  
Charities Directorate

**Attachments:**

- CRA letter dated February 7, 2014;
- Organization letter dated April 4, 2014;
- Appendix "A" Comments on Representations; and
- Appendix "B", Relevant provisions of the Act

c.c.: Robert McMechan  
28 Glengarry Rd  
Ottawa ON K1S 0L5



REGISTERED MAIL

Ecotecture Centre for Ecological Art and Architecture  
1581 Dupont Street,  
TORONTO, ON M6P 3S5

BN: 86898 7397RR0001

Attention: Gerard Jennings

File #: 3005916

February 7, 2014

**Subject: Audit of Ecotecture Centre for Ecological Art and Architecture**

Dear Mr. Jennings:

This letter is further to the audit of the books and records of the Ecotecture Centre for the Ecological Art and Architecture (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from January 1, 2008 to December 31, 2010.

The CRA has identified specific areas of non-compliance with the provisions of the *Income Tax Act* and/or its *Regulations* in the following areas.

AREAS OF NON-COMPLIANCE:		
	Issue	Reference
1.	Failure to Devote Resources to Charitable Activities a) Activities not in support of registered objects b) Promotion of a registered tax shelter c) Undue benefits d) Gifts to a non-qualified donee	149.1(2), 188.1(4), 149.1(4.1), 168(1)
2.	Failure to Maintain Adequate Books and Records	149.1(2), 168(1)(e), 230(2)
3.	Failure to File an Accurate Information Return	168(1)(c)
4.	Failure to Issue Official Donation Receipts in Accordance with the Act	Reg. 3501, 168(1)(d)
5.	Failure to Meet its Disbursement Quota	149.1(2)(b)
6.	Lapse of Incorporated Status	168(1)(b)

The purpose of this letter is to describe the areas of non-compliance identified by the CRA during the course of the audit as they relate to the legislative and common law

requirements applicable to registered charities, and to provide the Organization with the opportunity to make additional representations or present additional information. Registered charities must comply with the law, failing which the Organization's registered status may be revoked in the manner described in section 168 of the Act.

The balance of this letter describes the identified areas of non-compliance in further detail.

### **Identified Areas of Non-Compliance**

#### **1. Failure to Devote its Resources to Charitable Activities**

To qualify for registration as a charity under the Act, an organization must be established for charitable purposes that oblige it to devote all its resources to its own charitable activities. This is a two-part test. First, the purposes it pursues must be wholly charitable and second, the activities that a charity undertakes on a day-to-day basis must support its charitable purposes in a manner consistent with charitable law. Charitable purposes are not defined in the Act and it is therefore necessary to refer, in this respect, to the principles of the common law governing charity. An organization that has one or more non-charitable purposes or devotes resources to activities undertaken in support of non-charitable purposes cannot be registered as a charity.

Common law courts have grouped charitable purposes into four categories: the relief of poverty, the advancement of education, the advancement of religion, and other purposes beneficial to the community as a whole which have been identified as charitable by the courts. The fourth category merely identifies an additional group of specific purposes that have been held charitable at law, rather than qualifying as charitable every purpose that provides a public benefit. It is important to note that not all endeavours that directly or indirectly benefit the community are necessarily charitable at law. Many endeavours must be denied charitable status because they do not meet the definition or criteria of "charitable" as established by common law.

Once registered, a charity must only pursue activities in furtherance of the specific charitable purposes as approved by CRA. The implicit understanding is that the charity will not undertake any activity beyond those described in the application for charitable registration. This is necessary to ensure that the charity will operate within the limitations imposed by the Act.

The Organization was registered effective January 1, 2001 and was designated upon registration as a "charitable organization". Pursuant to subsection 149.1(1) of the *Income Tax Act* (the Act), a "charitable organization means an organization, whether or not incorporated,

- a) all the resources of which are devoted to charitable activities carried on by the organization itself;

- b) no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof; and
- c) more than 50% of the directors, trustees, officers or like officials of which deal with each other and with each of the other directors, trustees, officers or like officials at arm's length."

The Organization was incorporated pursuant to the *Ontario Corporations Act*, by way of letters patent dated April 6, 1998. The stated objects of the Organization provide that the organization was incorporated for the purposes of:

- researching and developing multi-disciplinary approaches to ecological art and architecture with a view to disseminate its research findings to the general public;
- planning or organizing forums, seminars and multi-disciplinary workshops to educate the public about ecological art and architecture;
- curate on-going exhibitions and permanent collections of ecological art and architecture;
- creating a resource centre and archives for ecological art and architecture.

With the assistance of CRA, supplementary letters patent were drafted and later obtained pursuant to the *Ontario Corporations Act*. These supplementary letters patent were dated February 6, 2001, in which the formal objects of the Organization were changed to the following:

- to acquire, accept, solicit or receive, by purchase, lease, contract, donation, devise, legacy, gift, grant, bequest or otherwise any monies or other kinds of property, rights or interests, whether real or personal, of any kind or nature;
- to maintain and administer a fund or funds to use, apply, give, devote, accumulate or distribute all or part of the principal and income therefrom, from time to time, for charitable purposes and in particular for the following charitable purpose:
  - planning or organizing forums, seminars, and multi-disciplinary workshops to educate the public about ecological art and architecture;
  - curating on-going exhibitions and permanent collections of ecological art and architecture;
  - creating a resource centre and archives of ecological art and architecture

In its original application and subsequent correspondence during the registration process, it was CRA's understanding that the Organization's primary purpose fell under the second category of charitable purposes - the advancement of education in the arts and registration was granted based on this understanding.

Teaching or training artists, art students, or the public through sufficiently structured activities may further a charitable purpose under the second category of charitable purposes -

the advancement of education. To be sufficiently structured, an activity must have a teaching or learning component and involve a legitimate, targeted attempt to educate. The following statement from the *Vancouver Society*<sup>1</sup> decision summarizes the direction of the court in this regard:

"...the threshold criterion for an educational activity must be some legitimate, targeted attempt at educating others, whether through formal or informal instruction, training, plans of self-study, or otherwise. Simply providing an opportunity for people to educate themselves, such as by making available materials with which this might be accomplished but need not be, is not enough. Neither is 'educating' people about a particular point of view in a manner that might more aptly be described as persuasion or indoctrination. On the other hand, formal or traditional classroom instruction should not be a prerequisite, either. The point to be emphasized is that, in appropriate circumstances, an informal workshop or seminar on a certain practical topic or skill can be just as informative and educational as a course of classroom instruction in a traditional academic subject. The law ought to accommodate any legitimate form of education."

Based on our audit findings, the Organization has demonstrated that it does not operate for purely charitable purposes. In fact, the audit evidence, as outlined below, indicates a majority of the Organization's activities do not appear to be conducted for the purpose of advancing education of the arts, but rather demonstrates that the preponderance of the Organization's efforts and resources are devoted to non-charitable activities such as engaging in activities beyond the scope for which it was registered, participating in a gifting tax shelter arrangement, providing undue benefits to its members and gifting to a non-qualified donee, none of which are charitable purposes at law.

a) Activities Not in Support of Registered Objects

As explained above, the Organization was originally registered under the second category of charitable purposes, the advancement of education in the arts. The Organization's main purpose can be summarized as educating the general public about, researching and acquiring ecological art and architecture. The Organization submitted with its original application for registration that it intended to conduct activities such as delivering educational sessions and seminars, acquiring ecological art for preservation and acquiring a suitable facility for the storage and preservation of such artwork.

In our opinion, when an Organization receives registered status as a charitable organization at the registration stage by providing its stated objects and proposed activities, these are the only true objectives of the Organization and that any and all activities that the Organization devotes its resources to should be in pursuit of that purpose. If the charity chooses to pursue different purposes other than those it was registered for, it must seek additional approval from the Charities Directorate before engaging in any activity that might

<sup>1</sup> [1999] 1 S.C.R. 10 (*Vancouver Society*)

support the proposed purpose. Failure to do so will put the Organization offside and may threaten its continued registration.

Documentary evidence obtained during the audit suggests that the Organization engaged in very little activities that were in support of its charitable purposes and as it stated when it applied for registration. A preponderance of effort appears to be devoted to activities that do not support its stated charitable purpose such as purportedly obtaining vintage photographs through its participation in a tax shelter arrangement and providing funds to operate the programs of a previously registered entity.

Through its participation in the VIA Project, which is described in greater detail below, the Organization purportedly obtained the rights to certain vintage photographs. Our understanding is that all of the photographs thusly obtained are part of a collection of photos known as the Sovfoto/Eastfoto Photographic Archive collection. This collection consists of photographs taken by Russian media outlets. The subject matter of the photographs; however, are not necessarily categorized as 'ecological' nor do they appear to support any ecological educative purpose in any way. In fact, it is CRA's understanding that the photographs in question are not readily accessible to the Organization as they remain physically located with the vendor in the US. We do not dispute that these photographs have significant historical and cultural relevance and deserve to be preserved; however, it is not entirely clear that the photographs are in any way relevant to the Organization furthering its charitable purpose of promoting ecological art and architecture.

Further, during the audit, the Organization provided documentary evidence through bank statements, invoices and journal entries that appear to support the activities of the formerly registered charity, Living Waters Ministry Trust (Living Waters) after they had their registered status revoked for cause by CRA. The expenses that are supported by this documentation are clearly representative of the expenditures necessary to support Living Waters in its continued programming of promoting religion. Advancing religion through religious teachings and promotion is a charitable purpose at law; however, the Organization was not registered for such a purpose. As such, the Organization is not permitted to conduct, support or fund any activities in support of such purpose, without the explicit written consent of the CRA.

Therefore, it is our opinion that based on our audit findings, the Organization has failed to pursue the purposes for which it was registered subsequently pursued activities in support of the unapproved purpose. Although, the purposes as described above may be charitable at law, they were not the purposes for which the Organization was granted its registration. As a result, the Organization is in direct contravention of the Act.

b) Promotion of a Registered Tax Shelter

It has consistently been CRA's position that the promotion of a tax shelter or donation arrangement is not charitable at law. Our position has been published in several publications

as a matter of courtesy to inform the public of our position. An excerpt from one such publication, Registered Charity Newsletter No 29 – Winter 2008, states the following:

Registered charities and registered Canadian amateur athletic organizations participating in abusive or fraudulent arrangements will be subject to revocation and/or monetary penalties. Further, any person, promoter, tax professional, or other third party who is closely involved with the development of an abusive or fraudulent tax shelter arrangement may be liable to penalties regarding false or misleading information, or omission of or inappropriate use of the tax shelter identification number.

Our audit evidence has revealed that the Organization has participated in the non-charitable activity of supporting, promoting and participating in an abusive tax shelter arrangement, namely the Vintage Iconic Archives Project (VIA Project). The program is promoted by Deleon White Vintage Images Inc. (DWVII).

#### The VIA Project

The VIA Project (VIA) is a registered gifting tax shelter donation arrangement. It is a leveraged donation arrangement whereby participants acquire the academic rights to vintage photographs in exchange for cash and a purported loan. The photographs are then donated to the Organization. The participant then receives a donation receipt, albeit at an inflated amount, for their donation. CRA's understanding of how the VIA program works is outlined below.

According to the promotional materials, participants are encouraged to make an application for membership in the Cultural Heritage Association of Canada (CHAC) along with a cheque to the Association for up to \$100 based on the membership class subscribed to. Once approved<sup>2</sup>, participants then purchase from DWVII batches of photographs (White Collection) for a total cost to the participant of \$5,990. However, when acquiring the property, the participant only pays \$2,000 in cash.<sup>3</sup> It is suggested that participants hold this property for 3 years. Next, the participant acquires a second batch of photographs (Moos Collection) for a purchase price of \$17,500. At the time of this purchase, the participant only pays \$2,000 plus \$950 in prepaid interest to the promoter. The participant then secures a 10 year loan from Vintage Capital Corporation for the balance outstanding of \$15,500 as well as the implied loan for the White Collection. The first batch of photos (White Collection) is used as security for the loan thusly obtained to purchase the second batch of photos (Moos Collection). Next, the participant donates the Moos Collection photos to the Organization and receives a charitable donation receipt for \$17,500. Lastly, after holding the White Collection photographs for three or more years, the participant may sell the collection and use any funds received from this in order to satisfy the loan amount outstanding of \$15,500 plus any outstanding amount owing from the purchase of said collection.

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<sup>2</sup> It is CRA's understanding that the approval process simply put, is paying the fee.

<sup>3</sup> This amount represents \$1,740 for the photographs (29% of the purchase price) plus \$209 of prepaid interest on the remaining amount outstanding of \$4,250.

During the audit period, the Organization has issued receipts for property purportedly acquired through this tax shelter exceeding \$62 million. Additionally, although outside the audit period, the Organization has reported receipting another \$33 million for this program in the fiscal period ending December 31, 2011 and \$48 million for this program in the fiscal period ending December 31, 2012.

Although valuation appraisals have been provided by the Organization to purportedly substantiate the fair market value for the property received, the CRA has serious concerns about the valuation methods used and the values attributed to the photographs in the collection. Also, documentary evidence obtained by CRA demonstrates that the Organization has not physically received any of the property for which it has issued receipts. In fact, evidence suggests that the majority of the actual property still resides with the vendor in the U.S. and will remain there until such a time as the Organization arranges for its shipment and transfer.

The Organization failed to demonstrate, through documentary evidence, that they ever intend to receive the property in question. The photographs are not sufficiently insured by the Organization nor is there any evidence in the Organization's board minutes that the idea of obtaining insurance for the photographs was even discussed. This suggests that the Organization either does not own the photographs or that it never intended on taking physical possession of the photographs thus negating the need for insurance.

Further, the Organization does not have the proper facilities to adequately store the photographs, nor does it appear to have such a facility available to them. Items of this nature require proper storage in a temperature and humidity controlled environment so to ensure their longevity and protect against deterioration. There has been no evidence to suggest that the Organization is working towards actually obtaining such a property nor does there appear any immediate plan to make the necessary arrangement for such a transfer.

Lastly, the Organization has failed to provide documentary evidence to support that the photographs were used in an activity that is in support of its charitable objects for which it was registered. The only evidence that was provided suggests that the Organization used a very select few of the photographs in order to promote the activities of the tax shelter arrangement at various meetings or presentations. All of these factors would suggest that the Organization has little interest in promoting its own objects but rather promoting the activities of the tax shelter.

We find the Organization's participation in this tax shelter arrangement to be problematic, as, in our view, the Organization appears to be facilitating an arrangement designed to avoid the application of the provisions of the Act and may be designed to create improper tax results. In our view, the Organization is operating primarily for the purpose of promoting a tax shelter program as the Organization has not shown or otherwise indicated it is conducting its own activities. The Organization is an integral part of the arrangement being paid to issue tax receipts and accept ownership of specified property to facilitate and lend legitimacy to the overall arrangement.

Given the manner in which the Organization allegedly structured and conducted its activities to accommodate the tax shelter, and the proportional levels of involvement in the arrangement, it is our view that a collateral purpose, if not primary purpose of the Organization is, in fact, to support and promote a tax shelter arrangement. In this regard, it appears that the Organization enthusiastically lent its physical, financial and human resources, and in particular its tax receipting privileges and registered charity status to support the tax shelter arrangement, with little regard for the mandate and best interests of the Organization itself. Operating for the purpose of promoting tax shelters is not a charitable purpose at law. It is our view, therefore, that by pursuing this non-charitable purpose, the Organization has failed to demonstrate that it meets the test for continued registration under subsection 149.1(1) of the Act as a charitable organization "all the resources of which are devoted to charitable activities".

c) Undue Benefits

Paragraph 149.1(1)(b) of the Act stipulates that no part of a charity's income is payable or otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settler thereof. In circumstances where an organization does provide such benefits to its members, it is considered an undue benefit. The meaning of "undue benefit" with respect to charities is clarified in subsection 188.1(5) of the Act:

"an undue benefit conferred on a person (referred to in this Part as the "beneficiary") by a registered charity or registered Canadian amateur athletic association includes a disbursement by way of a gift or the amount of any part of the income, rights, property or resources of the charity or association that is paid, payable, assigned or otherwise made available for the personal benefit of any person who is a proprietor, member, shareholder, trustee or settlor of the charity or association, who has contributed or otherwise paid into the charity or association more than 50% of the capital of the charity or association, or who deals not at arm's length with such a person or with the charity or association, as well as any benefit conferred on a beneficiary by another person, at the direction or with the consent of the charity or association, that would, if it were not conferred on the beneficiary, be an amount in respect of which the charity or association would have a right, but does not include a disbursement or benefit to the extent that it is

(a) an amount that is reasonable consideration or remuneration for property acquired by or services rendered to the charity or association;

(b) a gift made, or a benefit conferred,

(i) in the case of a registered charity, in the course of a charitable act in the ordinary course of the charitable activities carried on by the charity, unless it can reasonably be considered that the eligibility of the beneficiary for the benefit relates solely to the relationship of the beneficiary to the charity, and

(ii) in the case of a registered Canadian amateur athletic association, in the ordinary course of promoting amateur athletics in Canada on a nationwide basis; or

(c) a gift to a qualified donee."

Audit evidence has revealed that on or about April 20, 2010, the Organization entered into an agreement with Living Waters Ministry Trust<sup>4</sup> (Living Waters). This agreement included the transfer of assets from Living Waters to the Organization including funds and the property located at 546 Beaverbrook Avenue, London, Ontario. The board minutes dated April 10, 2010 indicate the Organization wished to acquire the property as it "intends to expand its operations into the London, Ontario area." These same board minutes resolve to designate Bernie McMillan and Judith Hansen (both former directors of Living Waters) as corporate agents of the Organization, authorizing them to open a bank account in the Organization's name as well as have control of the funds in said account. Land transfer documents indicate the property was officially transferred from Living Waters to the Organization on April 20, 2010 and Bernie McMillan was the authorizing agent acting on behalf of Living Waters. Further documentation indicates \$163,607.07 in cash was also transferred to the Organization and deposited into the above mentioned bank account under Mr. McMillan's control.

In the minutes and resolutions of the board of directors dated November 21, 2010, it is indicated the Organization resolved to enter into a user rights agreement for the London property with Living Waters Ministry Healing Centre Church<sup>5</sup>. The agreement indicates that the Organization originally intended to use the property in its on-going charitable activities, specifically as an office, educational centre and meeting place; however, at the time of this agreement, the Organization had not established the necessary organization in the London area to maintain the property and deems the costs associated with such maintenance as an "unnecessary and unsustainable burden on the resources of Ecotecture". The agreement further states that as a result, the property will be transferred to Living Waters Ministry Healing Centre Church for \$2 and "other good valuable consideration". According to documents obtained during the audit, it appears the property in question was transferred on January 20, 2011 from the Organization to Living Waters Ministry Healing Centre Church, represented by Bernie McMillan, for consideration of \$2.

As previously discussed above, an undue benefit is conferred on an individual by a charity when the recipient, being a member of that charity, receives a personal benefit as a result of any transaction that is deemed to not be conducted at arm's length. The term "arm's length" is clarified in subsection 251(1) of the Act and identifies who qualifies as being such:

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<sup>4</sup> Living Waters Ministry Trust was previously a registered charity but had its charitable status revoked for cause effective April 24, 2009. As a result, the Organization appears to have accepted assets from Living Waters Ministry Trust as a part of its Part V tax obligations under the Act.

<sup>5</sup> Living Waters Ministry Healing Centre Church was the newly incorporated non-profit organization that replaced Living Waters Ministry and was directed by Bernie McMillan.

- a) related persons shall be deemed not to deal with each other at arm's length;
- b) a taxpayer and a personal trust (other than a trust described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1)) are deemed not to deal with each other at arm's length if the taxpayer, or any person not dealing at arm's length with the taxpayer, would be beneficially interested in the trust if subsection 248(25) were read without reference to sub clauses 248(25)(b)(iii)(A)(II) to (IV); and
- c) in any other case, it is a question of fact whether persons not related to each other are, at a particular time, dealing with each other at arm's length.

The CRA provides further clarification of its interpretation of "arm's length" and transactions deemed as being arm's length in its publication IT419R2 – *Meaning of Arm's Length*. Paragraphs 22 through 26 of this document discuss circumstances and criteria that are applicable to unrelated persons who may be deemed to be dealing with each other at arm's length or not. The following criteria have generally been used by the courts in determining whether parties to a transaction are not dealing at "arm's length":

- was there a common mind which directs the bargaining for both parties to a transaction;
- were the parties to a transaction acting in concert without separate interests; and
- was there "de facto" control.

As outlined above, Mr. McMillan was made a corporate agent of the Organization on April 10, 2010 and as further documentary evidence suggests, had continued to operate Living Waters, either as Living Waters Ministry Trust or under its new name Living Waters Ministry Healing Centre Church. At the time membership in the Organization was granted, Mr. McMillan was still the director of Living Waters Ministry Trust, the entity from which the Organization acquired the London property. As both the transferor, (Living Waters) and the transferee (the Organization) were at the time of the transfer, part of the same entity, it is reasonable to conclude there was a common mind in directing the transaction involving the London property. Documentary evidence was not provided during the audit, through either correspondence or board minutes to demonstrate which entity Mr. McMillan was acting on behalf of when the transaction was negotiated. Although the property was gifted to the Organization for zero consideration, it nonetheless acquired property (cash and building) valued at \$390,000 and quickly relinquished the same property back to its original proprietors, directors of a charity recently revoked for serious breaches of the Act, for \$2 – an act we find to be a serious contravention of the Act and wilful manipulation of the legislation applicable to registered charities<sup>6</sup>. It is CRA's opinion that it is highly unlikely that the FMV of the property decreased to almost zero in such a short period of time, given the stability of the real estate

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<sup>6</sup> Less than one year later, on January 20, 2011 the same property was transferred by the Organization to Living Waters Ministry Healing Centre Church, a non-profit corporation under the direction and control of Mr. McMillan. Land transfer records confirm that the property was transferred for \$2, an amount significantly less than the FMV of \$226,454 determined a mere 9 months previous.

market at the time. Further, there was no documentary evidence provided during the audit to substantiate the FMV of the property at the time of the January 2011 transfer.

This series of events with respect to the London property as described above, strongly suggest that the transfer of this property to and from the Organization was part of a larger plan to ensure that Mr. McMillan retained "de facto control" over the property throughout the revocation process. It is the opinion of CRA that the Organization and Mr. McMillan were acting in concert without separate interests with respect to this property. The Organization acquired the property with the supposed intention of developing a program based in the London area. However, evidence obtained during the audit does not support that the Organization engaged in any activities that were in pursuit of its own charitable objects. In fact, the only documentary evidence that was provided, demonstrated that the Organization appeared to support the activities of Mr. McMillan and the former Living Waters stated purposes rather than its own.

Therefore, it is the CRA's opinion that the relationship between the Organization and Mr. McMillan is not conducted at arm's length due to the demonstrated "de facto" control held by Mr. McMillan, the common mind of both parties involved in the transaction and the fact that both parties were acting in concert without separate interest in the transaction. Such a relationship permits preferential treatment between the parties with respect to the Organization's assets, including the transfer of property at less than fair market value, which the CRA finds problematic.

Further, it is our opinion that the transaction described above was entered into solely for the avoidance of Part V tax payable by an organization that had its charitable status revoked, such as Living Waters Ministry Trust and not for use in charitable activities in pursuit of the Organization's charitable purpose. The intent of the Part V revocation tax is to ensure charitable assets remain within the charitable sector and continue to be used for accomplishing charitable activities. The steps the Organization and Mr. McMillan took to circumvent the legislation applicable to revoked charities demonstrates calculated non-compliance to place Living Waters' net assets back in the control of the same persons responsible for that charity's revocation while seemingly satisfying its Part V tax obligations under the Act.

As a result, it is our position the Organization has transferred charitable assets for the private gain of a member and therefore has failed to demonstrate that it meets the test for continued registration under subsection 149.1(1) as a charitable organization that "no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof". For this reason, it appears to us that there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

In cases where a registered charity is involved in serious non-compliance, or for repeat or multiple infractions, the Canada Revenue Agency (CRA) may impose intermediate sanctions (that is, financial penalties or suspensions) as outlined in section 188.1 of the Act.

The penalty applicable to a registered charity that provides an undue benefit to any person or entity, on first offense, is 105% on the amount of the undue benefit<sup>7</sup>. In this circumstance we are considering whether to apply this penalty to the amount of the undue benefit provided.

**d) Gifts to a Non-Qualified Donee**

A registered charity is permitted in certain circumstances, to gift money or property to a qualified donee in order to carry out its charitable programming. A qualified donee is defined in subsection 149.1(1) of the Act as:

a person that is

(a) registered by the Minister and that is

- (i) a housing corporation resident in Canada and exempt from tax under this Part because of paragraph 149(1)(i) that has applied for registration,
- (ii) a municipality in Canada,
- (iii) a municipal or public body performing a function of government in Canada that has applied for registration,
- (iv) a university outside Canada that is prescribed to be a university the student body of which ordinarily includes students from Canada, or
- (v) a foreign organization that has applied to the Minister for registration under subsection (26),

(b) a registered charity,

(c) a registered Canadian amateur athletic association, or

(d) Her Majesty in right of Canada or a province, the United Nations or an agency of the United Nations.

At the time the Organization gifted the London property, the recipient, Living Waters Healing Centre Church, was not a qualified donee as per the definition above. Since the property was transferred for \$2 despite its FMV of at least \$226,454, the property is considered a gift to Living Waters Healing Centre Church. It is the opinion of CRA, that the Organization has gifted the property to a non-qualified donee, which was not in support of its charitable objects.

It is our view, by gifting to a non-qualified donee, the Organization has failed to demonstrate that it meets the test for continued registration under subsection 149.1(1) of the Act. For this reason, it appears to us that there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

**2. Failure to Maintain Adequate Books and Records**

The Act, per subsection 230(2), requires that every registered charity shall keep records and books of account at an address in Canada recorded with the Minister containing:

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<sup>7</sup> Paragraph 188.1(4)(a) of the Act.

- Information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under the Act;
- A duplicate of each receipt containing prescribed information for a donation received by it; and
- 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 the Act.

In addition, subsection 230(4) also states “every person required by this section to keep books of account shall retain:

- a) The records and books of account referred to in this section in respect of which a period is prescribed, together with every account and voucher necessary to verify the information contained therein, for such period as is prescribed; and
- b) All other records and books of account referred to in this section, together with every account and voucher necessary to verify the information contained therein, until the expiration of six years from the date of the last taxation year to which the records and books relate”.

The audit evidence has revealed that the Organization's books and records were incomplete or inadequate as required by the Act. The following deficiencies were noted:

Inventory Listing - For the audit period, the Organization did not maintain a complete listing of its inventory of assets providing a complete description of each asset along with its stated value. Lack of such records prevents the auditor from reconciling the assets held by the Organization with the amounts reported on the T3010 return. Additionally, lack of such documentation, including the presence of the physical assets, further prevents the auditor from accurately assessing the value of each asset so to correctly determine the amount receipted for such assets that were gifted to the Organization.

Donation Listing - For the audit period, the Organization did not maintain a complete listing of the official donation receipts that were issued for gifts received by the Organization. Failure to maintain such records prevents the auditor from accurately reconciling the total amount receipted by the Organization to the amount reported on the T3010 information return filed. Further, a lack of such records prevents the auditor from comparing the duplicate copies of the receipts issued to a master listing as to ensure that all receipts issued are accounted for and that no receipts were missing, lost or stolen.

10 Year Gifts - For the fiscal period ending December 31, 2010 the Organization reported that it received \$29,504,537 in 10 Year Gifts. During the audit, no documentation was provided to support that such a gift exists. Further, the required documentation from the donor designating the donation as a 10-year gift was not provided. Lack of such records calls into question the legitimacy of the gifts, the accuracy of the books and records as a whole and the accuracy of the T3010 information return filed for the period.

General Ledger - Testing conducted by the auditor which involved tracing transactions from the bank statements to the general ledger indicated that several transactions were not recorded in the general ledger and therefore appear to have not been included in the T3010 information return. In particular, on April 25, 2010 a wire transfer in the amount of \$11,240.65 was transferred from the Organization's bank account to an unspecified customer. On April 27, 2010, another a wire transfer in the amount of \$11,242.95 was transferred from the Organization's bank account to an unspecified customer. Neither amount could be reconciled to the general ledger. Lack of documentary evidence was provided to support the nature of these transfers and as such, CRA cannot determine whether the amounts related to charitable expenditures.

Minute Book - The Organization failed to provide a complete set of board of directors' minutes for the period under audit. There appears to be minutes missing as well as the minutes provided do not contain sufficient detail to determine that the Organization was the guiding mind in many of the transactions they entered into.

Under paragraph 168(1)(e) of the Act, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because it fails to comply with or contravenes section 230 of the Act dealing with books and records. It is our position the Organization has failed to comply with and has contravened section 230 of the Act. For this reason alone there may be grounds to revoke the registered status of the Organization.

### **3. Failure to File an accurate Registered Charity Information Return**

Pursuant to subsection 149.1(14) of the Act, every registered charity must, within six months from the end of the charity's fiscal period (taxation year), without notice or demand, file a T3010 information return with the applicable schedules.

It is the responsibility of the Organization to ensure that the information that is provided in its Return, schedules and statements, is factual and complete in every respect. A charity is not meeting its requirement to file a T3010 information return if it fails to exercise due care with respect to ensuring the accuracy thereof.

The Organization improperly completed the T3010 information return as follows:

For the fiscal period ending December 31, 2010:

- There was no answer provided for Question C3: "Did the Charity make gifts or transfer funds to other qualified donees or other organizations?" The audit evidence revealed that funds were transferred from the Organization to Mission Services of London and Shelter Link which appear to be gifts to another registered charity.
- The Organization failed to report the land and building acquired from Living Waters Ministry Trust as described above. The property was acquired in April of 2010; however, according to land transfer documents was not transferred until January 2011. As such the value of the property must be reported at Line 4155 of the T3010 for the period.

- The amounts at lines 4500, 4505, 4510 and 4530, which are all related to gifts either received or not, received by the Organization for the period, could not be reconciled with the supporting documentation provided. As such, the amounts are not considered accurate.
- The amount at line 4505 "Total amount of 10 Year Gifts received" could not be verified as being received nor could it be verified that a 10 year gift even existed due to the lack of necessary documentation required from the donor.

Further, Budget 2012 introduced new measures to ensure that charities are accurately reporting all the activities in which they engage. The CRA was granted the authority to suspend the tax-receipting privileges of a charity that provides inaccurate or incomplete information in its annual information return until the charity provides the required information.

Under paragraph 168(1)(c) of the Act, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because the charity fails to file a Registered Charity Information Return as and when required under the Act or a Regulation. For this reason, it appears to us that there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(c) of the Act.

#### **4. Failure to Issue Official Receipts in Accordance with the Act**

The Act stipulates various requirements pertaining to official donation receipts issued by registered charities. These requirements are contained in Regulations 3500 and 3501 of the Act and are also described in some detail in Interpretation Bulletin IT-110R3, *Gifts and Official Donation Receipts*. This publication is available on our website at [www.cra.gc.ca/charities](http://www.cra.gc.ca/charities).

When a registered charity issues a receipt to acknowledge a gift of non-cash property the charity is responsible to ensure that the value on the receipt is accurate. Generally, a member of a charity, or another individual, can attest to the value of the property if the value of the property is less than \$1,000 as long as the member or individual has sufficient knowledge of the property.

In those circumstances where the value of the property exceeds \$1,000, we strongly recommend that the property be appraised by an independent third party; an independent party is one who is not affiliated with the charity or the donor. This person should be knowledgeable about the principles, theories, and procedures of the applicable valuation discipline and follow the uniform *Standards of Professional Appraisal Practice* or the standards of the profession. In each scenario, the person determining the fair market value of the item should be competent and qualified to evaluate the particular property being donated. Also, he should be knowledgeable about and active in the marketplace for the specific property.

We recognize that appraisals are not required under the Act or its Regulations. However, it is our view that the onus remains with the Organization to ascertain that the value

assigned to non-cash gifts received is reflective of the fair market value of the goods being donated.

Audit evidence has revealed that the Organization has issued receipts improperly in the following instance:

- Receipts have been issued on behalf of Living Waters Healing Centre Church which is not a registered charity. A charity is responsible for all receipts issued under its name and registration number. It must account for the corresponding donations on its annual information return and in its books and records. Under no circumstances should a registered charity issue donation receipts on behalf of another organization or lend its registration number to another organization for receipting purposes. A charity that lends its registration number may have its receipting privileges suspended and/or lose its registered status.
- According to the General Ledger, receipts appear to have been issued to [REDACTED] [REDACTED] and [REDACTED] for a total of \$102,355 which appear to be in exchange for services and/or payments made on behalf of the Organization to the promoter of the VIA Project. However, due to the incomplete books and records and lack of supporting documentation, CRA could not determine if in fact, these were legitimate amounts eligible for a charitable donation receipt.
- Receipts have been issued for a total of over \$62 million for photographs for which, in our opinion, have not been properly valued. As discussed above, the valuation report provided during the audit appears to be flawed in its methodology and it is our opinion that the photographs have not been properly valued. As a result, it appears that the Organization has issued receipts for values higher than the actual value of the gift in kind.

Under paragraph 168(1)(d) of the Act, the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and its Regulations. For this reason alone, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(d) of the Act.

## **5. Failure to Meet its Disbursement Quota**

In the VIA Program, all property donated to the Organization are reported as 10 year gifts and as per above, the documentation does not appear to be obtained nor provided to the CRA to confirm this. Furthermore, we do not view the property purportedly gifted to the Organization as valid gifts under the Act nor do we recognize them at the values reported by the Organization.

We acknowledge that enacted changes to the disbursement quota would eliminate the Organization's disbursement quota obligations; however, the amendments apply to fiscal periods commencing after March 4, 2010. As such, it is our view that the Organization has not spent sufficient amounts towards its disbursement quota obligations.

As per paragraph 149.1(2)(b) of the Act, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because it fails to expend amounts at least equal to its disbursement quota for that year. For this reason, it appears to us that there are grounds for revocation of the charitable status of the Organization under paragraph 149.1(2)(b) of the Act.

## **6. Lapse in Incorporated Status**

It has come to the attention of the Charities Directorate that the above noted Organization's corporate existence is now dissolved.

To be eligible for registration under the Act, the Organization must be a legally established entity (i.e., by virtue of governing documents such as letters patent, a certificate of incorporation, a trust deed or constitution). It is the governing documents of a organization that identify the objects or purposes for which an organization is established, as well as provide information on the Organization's corporate structure and internal procedures.

As its corporate status was dissolved by the incorporating authority, the Ministry of Consumer and Commercial Relations for the Province of Ontario, ceased to exist as an entity at law and as such no longer qualifies for registration under the Act. Where a registered charity ceases to comply with the requirements of the Act for its registration, the Minister may, by registered mail, give notice to the Organization that the CRA intends to revoke its registration under subsection 168(1)(b).

### **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, which may include:

- no compliance action necessary;
- the issuance of an educational letter;
- resolving these issues through the implementation of a Compliance Agreement;

- the application of penalties and/or suspensions provided for in sections 188.1 and/or 188.2 of the Act; or
- giving notice of its intention to revoke the registration of the Organization by issuing a Notice of Intention to Revoke 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 the individual and explicitly authorizing that individual to discuss your file with us.

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

Yours sincerely,

[REDACTED]  
Audit Advisor  
Charities Directorate

Telephone: [REDACTED]  
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OTTAWA, ON K1A 0L5

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NORTH YORK ON M2N 6P6

**Ecotecture: Centre for Ecological Art and Architecture**

**Comments on Representations on April 4, 2014**

Based on the Canada Revenue Agency's (CRA) audit of Ecotecture: Centre for Ecological Art and Architecture (the Organization), the Organization primarily operated for the purpose of furthering a gifting tax shelter, Vintage Iconic Archives (the VIA Project) by agreeing to accept alleged gifts of property from participants and to act as a receiving agent for this donation arrangement. Under this arrangement, the Organization purportedly obtained a large amount of gifted property, but failed to provide proper documentation to show that it received the property, or that it was ever used in pursuit of the Organization's charitable activities. The Organization issued millions of dollars in tax-receipts for the supposed donations, even though it could not support the alleged value or verify that the property was in its possession. Furthermore, the Organization provided undue benefits to its members, gifted to a non-qualified donee, failed to maintain adequate books and records, failed to file an accurate information return, failed to meet its disbursement quota (where applicable) and has allowed its corporate status to lapse. As described in the balance of this letter, and in our previous letter dated February 7, 2014, the Organization has failed to remain compliant with, and is in serious breach of, the requirements for continued registration under the *Income Tax Act*. As a result, its registration should be revoked.

**1. Failure to Devote Resources to Charitable Activities**

We have reviewed your representations; however, we remain of the position that the Organization failed to devote all of its resources to charitable activities. Per our letter of February 7, 2014, we noted several instances in which the Organization demonstrated it failed to devote all of its resources to charitable activities and identified the following specific concerns:

**a) Activities Not in Support of Registered Objects**

Documentary evidence obtained during our audit revealed the Organization engaged in very few activities that were in support of its own charitable purposes, as described in its application for charitable registration and for which it was supposedly established and operated. Instead, a preponderance of effort was devoted to activities that do not support its stated charitable purpose, such as purportedly obtaining vintage photographs through its participation in a tax shelter arrangement and providing funds to operate the programs of a previously registered entity. Our concerns in this regard are described below.

As described in detail in our letter of February 7, 2014, we remain of the opinion that the Organization did not pursue activities in pursuit of the stated objects for which it was granted its registration. In your representations, it is stated that CRA was "adopting too narrow a definition of 'ecological art'" and goes on to further provide a current definition obtained from Wikipedia which stated that "Ecological Art is an art practice that embraces an ethic of social justice in both its content and form/materials. EcoArt is created to inspire caring and respect, stimulate dialogue, and encourage the long-term flourishing of the social and natural

environments in which we live. It commonly manifests as socially engaged, activist, community-based restorative or interventionist art." In our review of the source reference provided, it was discovered that this definition also describes specific criteria that artists working in this field generally subscribe to in creating 'ecological art'. These include at least one of the following:

- Attention on the web of interrelationships in our environment—to the physical, biological, cultural, political, and historical aspects of ecological systems.
- Create works that employ natural materials, or engage with environmental forces such as wind, water, or sunlight.
- Reclaim, restore, and remediate damaged environments.
- Inform the public about ecological dynamics and the environmental problems we face.
- Re-envision ecological relationships, creatively proposing new possibilities for co-existence, sustainability, and healing.<sup>1</sup>

Based on the partial definition provided by the Organization and the criteria further outlined above, it remains our view that the artwork the Organization has purportedly obtained from its participation in the VIA Project does not fall entirely within the category of 'ecological art'. The documentary evidence provided during the audit, such as appraisal reports and promotional materials of the VIA Project, describe these works as "cultural property that is comprised of 46,436 photographs from the Sovfoto/Eastfoto Agency Archive". These photographs are also described as "propagandistic in nature" and in support of "the Marxist belief that art could elevate the working classes, particularly through the immediate and prolonged employment of the medium of photography...which is exemplified by the photographs of the Sovfoto/Eastfoto collection". These pieces were often described by various sources as "a valuable source of historical, political, social and cultural information significantly enhanced by the captions that accompany most of the prints".<sup>2</sup> Not once during our review, did the CRA ever discover the artwork referred to as ecological in nature, nor was it ever described in a manner that would, in our opinion, even loosely fit into the framework described above.

As such, it remains our opinion that the Organization has not operated in a manner that furthers the charitable objects for which it was originally registered. While the obtainment and preservation of cultural artwork could be a charitable activity, we have serious concerns, as outlined in our previous letter, as to whether the Organization actually obtained the rights to these photographs and had the ability to utilize the photographs as it wishes. The Organization gives merit to our concerns by stating "the collection will be present in Canada when its ownership [emphasis added] is transferred to its final home". The CRA interprets this as meaning that the Organization has not, in fact, acquired ownership of these vintage photographs, and therefore improperly issued nearly \$200 million in official donation receipts for property it did not receive or own.

Further, your representations indicated the Organization engaged in several educational events such as regional exhibitions of the Sovfoto/Eastfoto Collection and a number of exhibits that showcased a small but relevant portion of the collection in pursuit of its charitable object, advancing education of the arts. However, the Organization has failed to provide, both

<sup>1</sup> [http://en.wikipedia.org/wiki/Environmental\\_art](http://en.wikipedia.org/wiki/Environmental_art)

<sup>2</sup> Appraisal Report, Archive Consulting and Management Services LLC; Sarah Morthland, Principal Appraiser

during the audit and in its representations, documentary evidence that these events actually took place. We are aware a small portion of the collection was exhibited in Canada but its showings appear correlated to the marketing of the tax shelter program and not for advancing the public's appreciation of the arts. As such, it remains our position that these activities were not undertaken to support the Organization's purposes, but rather to further the objectives of the tax shelter.

Lastly, the Organization offered the following comments with respect to our position that the Organization promoted religion, either directly or indirectly, through its relationship with Living Waters Ministry Trust (Living Waters, a charity revoked for serious breaches of the Act): "the relationship between the organizations was that members of the Boards of [the Organization] and Living Waters who knew each other worked together on the development of a new charitable model, which combined the outreach of both programs".

Based on the documentary evidence provided during the audit, the Organization appeared to be providing resources to the formerly registered charity, Living Waters Ministry Trust after its registered status was revoked<sup>3</sup>. The day to day expenses that were supported by this documentation are clearly representative of the expenditures necessary to support the newly formed Living Waters Healing Centre Church's operation of its programs and the maintenance of the London property, subsequent to the revocation of its charitable registration of Living Waters Ministry Trust.

Advancing religion through religious teachings and promotion is a charitable purpose at law; however, according to the governing documents submitted with its application for registration, the Organization was not constituted for this purpose. Nor has it been adopted subsequently, according to our records. As such, these activities are beyond the scope of the Organization's charitable purposes. Furthermore, the *Income Tax Act* permits registered charities to use their funds in only two ways: for their own charitable programs (over which they have full direction and control), and for gifts to other qualified donees, (which includes registered charities and others specifically defined in the Act). In the context of any potentially religious activities carried on by Living Waters Healing Centre Church, the audit findings suggest the Organization's role was limited to the provision of resources. As such, it is our view that the Organization was merely funding a non-qualified donee, in contravention of the Act, rather than advancing religion in the charitable sense.

#### b) Promotion of a Registered Tax Shelter

We have reviewed your representations in this regard; however, it remains our position that an overwhelming majority of the Organization's resources are devoted to and received from its participation in a registered tax shelter, namely Vintage Iconic Archives (the VIA Project). Operating for the purpose of promoting a tax shelter donation arrangement is not a charitable purpose at law.

In your representations, the Organization acknowledges that it has accepted donations from participants of the VIA Project. The audit evidence indicates that these donations appear to represent assets purportedly worth over \$65 million in 2010 alone. During the audit period,

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<sup>3</sup> The revoked charity re-established itself as Living Waters Ministry Healing Centre Church, a non-profit corporation under the direction and control of Mr. Bernard McMillan.

the Organization issued receipts for said property exceeding \$62 million. Additionally, the Organization subsequently reported receipting for another \$33 million in the fiscal period ending December 31, 2011, \$48 million in the fiscal period ending December 31, 2012 and nearly \$27 million in fiscal period ending December 31, 2013, in relation to this tax shelter. While beyond the scope of the audit, this information is relevant in terms of demonstrating the Organization's continued participation in the tax shelter arrangement. In total, the Organization has reported acquiring assets through the VIA Project, worth nearly \$200 million, for which it subsequently issued tax receipts.

Per our previous letter, the Organization has presented very little evidence to support its ownership of the assets in question. Very little documentation was made available, or seemingly ever existed, to support that the Organization engaged in any charitable activity with respect to these photographs. For example, the Organization failed to provide substantiating evidence such as deeds of ownership, insurance policies, use of proper storage facilities and the expenses incurred for storage, physical inventories of photographs, and board of director's meeting minutes or any other such documentation. As such, we continue to find the Organization's participation in this tax shelter arrangement to be problematic, as, in our view, the Organization appears to be facilitating an arrangement designed to avoid the application of the provisions of the Act and may be designed to create improper tax results as described in our previous letter. The Organization is an integral part of the arrangement and is being paid to issue tax receipts and accept ownership of specified property to facilitate and lend legitimacy to the overall arrangement.

Given the manner in which the Organization appears to have structured and conducted its activities to accommodate the tax shelter, and the proportional levels of involvement in the arrangement, it is our position that a collateral purpose, if not primary purpose of the Organization is, in fact, to support and promote a tax shelter arrangement. In this regard, the Organization has lent its physical, financial and human resources, and in particular its tax receipting privileges and registered charity status to support the tax shelter arrangement, with little regard for the mandate and best interests of the Organization itself. Operating for the purpose of promoting a tax shelter is not a charitable purpose at law. It is our position, therefore, that by operating in a manner that advanced this non-charitable purpose, while failing to show that it conducted any charitable activities of its own, the Organization has failed to demonstrate that it meets the test for continued registration under subsection 149.1(1) of the Act as a charitable organization "all the resources of which are devoted to charitable activities".

#### c) Undue Benefit and Gifts to a Non-Qualified Donee

In your representations, the Organization admits that the London property originally acquired from Living Waters Ministry Trust upon its revocation was "returned to the beneficial owner, as [the Organization] had no practical use for it." The Organization and its directors have a fiduciary responsibility to act on behalf of the Organization's best interests at all times. As such, selling its asset, in this case, the London property valued in excess of \$226,000, for \$2 is contrary to those duties. Further, "selling" the property to a member of the Organization, as outlined and established in our letter dated February 7, 2014, at such a drastically reduced

price constitutes an undue benefit attributable to that member, contrary to the requirements of the Act<sup>4</sup>.

As stated in our previous letter, at the time the Organization gifted the London property, the recipient, Living Waters Healing Centre Church, was not a qualified donee. Since the property was transferred for nominal value, the property is considered a gift to Living Waters Healing Centre Church. It remains the opinion of CRA, that the Organization has gifted the property to a non-qualified donee, which was not in support of its charitable objects.

It remains our opinion that the transaction involving the London property was entered into solely for the avoidance of the Part V tax payable by an organization that had its charitable status revoked for serious breaches of the Act and not for use in a charitable activity in pursuit of the Organization's charitable purpose. The intent of the Part V revocation tax is to ensure charitable assets remain within the charitable sector and continue to be used for accomplishing charitable activities, which was not the case under the structure of this transaction.

For the reasons outlined above and per our previous letter, we remain of the opinion that the Organization failed to devote all of its resources to charitable activities in furtherance of its own, or any, charitable purpose and engaged with persons deemed to be ineligible individuals as per the definition at subsection 149.1(1). Additionally, as the Organization failed to provide a reasonable explanation for such actions, we conclude the Organization willingly engaged in activities that are in direct contravention of the Act, and as such should have its registered status revoked.

As a result, it is our position the Organization has transferred charitable assets for the private gain of a member and therefore has failed to demonstrate that it meets the test for continued registration under subsection 149.1(1) as a charitable organization that "no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof". Additionally, by using its resources to support a non-qualified donee, the Organization has breached paragraph 149.1(2)(c) of the Act, by failing to devote all of its resources to charitable activities. For these reasons, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

## **2. Failure to Maintain Adequate Books and Records**

Per our letter of February 7, 2014, we noted the records maintained by the Organization were inadequate to support the information reported on its T3010, *Registered Charity Information Return* and its financial statements. The Organization reported over \$62 million in assets held for future charitable activities; however, our audit revealed that the Organization has been unable to substantiate the assets' existence, the value or the use of a significant portion of

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<sup>4</sup> Per our previous letter, Mr. McMillan was made a corporate agent of the Organization and had continued to operate Living Waters, either as Living Waters Ministry Trust or under its new name Living Waters Ministry Healing Centre Church. At the time membership in the Organization was granted, Mr. McMillan was the director of Living Waters Ministry Trust. The series of events entered into by the Organization with Mr. McMillan strongly suggest it was part of a larger plan to ensure that Mr. McMillan retained "de facto control" over the property.

these assets. The Organization was unable to provide proper documentation in support of the expenditures and assets reported.

More specifically, we acknowledged that there was an electronic copy of the inventory listing provided; however, it lacked sufficient detail so that the auditor could reconcile the information with amounts reported on the information return. The physical assets were not available in Canada therefore the auditor could not ensure the inventory listing was complete and accurate. Your representations stating that Mr. Gerald Jennings personally visited the Sovfoto/Eastfoto facilities in New York on more than one occasion and was involved in the earlier tax shelter involving another part of this photograph collection does not adequately address our request and need for an accurate inventory listing. The lack of such records prevented the CRA from reconciling the assets held by the Organization with the amounts reported on the T3010 return and further prevented us from accurately assessing the value of each asset and correlating this amount to the millions of dollars in official donation receipts issued.

As per our previous letter, we remain unable to reconcile the general ledger to the financial statements or the T3010 Information Return. In particular, on April 25, 2010, a wire transfer in the amount of \$11,240.65 was made from the Organization's bank account to an unspecified customer. On April 27, 2010, another wire transfer in the amount of \$11,242.95 was provided from the Organization's bank account to an unspecified customer. Neither amount could be reconciled to the general ledger. Insufficient documentary evidence was provided to support the nature of these transfers and as such, the CRA cannot determine whether the amounts related to charitable expenditures.

Further, the Organization has failed to provide a minute book as requested at the beginning of and during the audit. The Organization's previous representative, Ms. Evelyn Rayson had informed CRA during the audit, in her letter dated December 9, 2011, that the minute book was missing and efforts were being made to reconstruct this document. However, as of the date of this letter, the Organization has not provided this document either in original or reconstructed form, to the CRA as requested. This documentation is essential in assisting the auditor in determining that the Organization was the guiding mind in many of the transactions it has engaged in.

We do acknowledge that the Organization has provided its donation listing regarding the gifts it has purportedly received, which are to be held for 10-years.

Nonetheless, we have reviewed your representations and remain of the position that the Organization did not maintain adequate books and records, as required by subsection 230(2) of the Act. The CRA's Information Circular IC 78, *Books and Records Retention/Destruction* states that "As a general rule, the Canada Revenue Agency (CRA) does not specify the books and records to be kept. However, books and records have to: ... substantiate the qualification of registered charities or registered Canadian amateur athletic association for registration under the Act..." Per our previous letter, our audit revealed the Organization had several instances wherein its books and records did not demonstrate clearly that the Organization was operating for purely charitable purposes, that it had a serious lack of control over its resources and assets, and that official donation receipts were inaccurately or improperly issued.

In conclusion, we found that the Organization has failed to maintain adequate books and records. Under paragraph 168(1)(e) of the Act, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because it fails to comply with or contravenes section 230 of the Act dealing with books and records. It is our position the Organization has failed to comply with and has contravened section 230 of the Act. For this reason alone, there are grounds to revoke the registered status of the Organization under paragraph 168(1)(e) of the Act.

### **3. Failure to File an Accurate Registered Charity Information Return**

Despite the fact that your representations indicate that the Organization believes its T3010, *Registered Charity Information Returns* were filed accurately based on the information contained in its general ledger, we do not concur. As outlined in our previous letter, there were several examples cited wherein information was either omitted or inaccurately included on the T3010 Information Return for the period ending December 31, 2010. To date, these inaccuracies have not been addressed by the Organization.

As such, we find that the Organization has not filed a complete and accurate information return. Under paragraph 168(1)(c) of the Act, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because the charity fails to file a Registered Charity Information Return as and when required under the Act or a Regulation. For this reason, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(c) of the Act.

### **4. Failure to Issue Receipts in Accordance with the Act**

In addition to the improper receipting practices described above, relating to its involvement in the tax shelter, *per* our previous letter the Organization also improperly issued donation receipts by issuing receipts for Living Waters after it ceased to be a registered charity. Registered charities are not permitted to issue receipts on behalf of other organizations. Furthermore, the Organization issued receipts for services and issued receipts for photographs whereby the values, in our opinion, are improper or overinflated with respect to the photographs' factual fair market value. The Organization has failed to provide any additional information, documentation or comments in this regard.

In conclusion, the Organization has failed to issue official donation receipts in accordance with the Act. Under paragraph 168(1)(d) of the Act, the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and its Regulations. For this reason alone, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(d) of the Act.

### **5. Failure to Meet Its Disbursement Quota**

The disbursement quota is the minimum amount a registered charity is required to spend each year on its own charitable activities, or on gifts to qualified donees. The disbursement quota calculation is based on the value of a charity's property not used for charitable activities

or administration. For the purposes of calculating the disbursement quota, property includes any real estate or investment assets that were not used directly in charitable activities or administration of the charity. The average value of property is based on a specified number of periods (decided by the charity) over a 24-month span. The 24-month span can be divided into two to eight equal, consecutive periods. The number of periods is usually chosen when the charity files its first information return. Once chosen, the charity must get our written permission to change it. If a registered charity spends less on its charitable activities or by way of gifts to qualified donees than its disbursement quota for that year, it has a disbursement shortfall.

In your representations, the Organization comments that "[The Organization] acknowledges that in some instances gifts were not specifically identified as 10 year gifts, and were not disbursed. As the intention of [the Organization] was to acquire an archive of cultural property, a period of accumulation was necessarily required in order that a collection that was viable for a suitable recipient (i.e. museum) could be assembled".

The Organization has a disbursement quota requirement for the audit period based on the fact that it retained a significant amount of assets that were not used in charitable activities. However, based on the Organization's comments above, it would appear the Organization's intention was not to use these assets in charitable programming but rather accumulate the property for a future potential charitable use.

A registered charity can request permission to accumulate property for a particular purpose which allows a charity to postpone the disbursement of funds with respect to a specified purpose that is particular and not general in nature. However, a review of our records revealed that no such request was made by the Organization and, as such, the disbursement quota requirement as described above applies to the period under audit. Therefore, it remains our position that the Organization failed to meet its disbursement quota as required under the Act.

As per paragraph 149.1(2)(b) of the Act, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because it fails to expend amounts at least equal to its disbursement quota for that year. For this reason alone, there are grounds for revocation of the charitable status of the Organization under paragraph 149.1(2)(b) of the Act.

## 6. Lapse in Corporate Status

The Organization indicated in its representations that it was investigating the fact that its Corporate Status had lapsed and that the Organization has, in fact, been dissolved by the corporate authority, the Ministry of Consumer and Commercial Relations for the Province of Ontario. Such oversights are detrimental to the continued registration of a registered charity and further speak to the inadequacy of the books and records of the Organization as a whole.

As its corporate status was dissolved by the corporate authority, the Ministry of Consumer and Commercial Relations for the Province of Ontario, the Organization ceased to exist as an entity at law and as such no longer qualifies for registration under the Act. For this reason

alone there are grounds for revocation of the Organization's registered status under paragraph 168(1)(b) of the Act.