



Canada Revenue
Agency

Agence du revenu
du Canada

REGISTERED MAIL

Escarpment Biosphere Foundation Inc.
503 Davenport Avenue
Toronto ON M4V 1B8

BN: 88878 2778

Attention: Mr. Barnett

File #: 3002949

February 15, 2012

Subject: Revocation of Registration
Escarpment Biosphere Foundation Inc.

Dear Sir:

The purpose of this letter is to inform you that a notice revoking the registration of Escarpment Biosphere Foundation Inc. (the Organization) was published in the *Canada Gazette* on February 11, 2012. Effective on that date, the Organization ceased to be a registered charity.

Consequences of Revocation:

- a) The Organization is no longer exempt from Part I Tax as a registered charity and is no longer permitted to issue official donation receipts. This means that gifts made to the Organization are no longer allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the *Income Tax Act*, 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 T-2046, *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. A copy of the Return is enclosed. The related Guide RC-4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, is available on our website at www.cra-arc.gc.ca/E/pub/tg/rc4424.

Section 188(2) of the Act stipulates that a person (other than a qualified donee) who receives an amount from the Organization is jointly and severally

Canada

liable with the Organization for the tax payable under section 188 of the Act by the Organization.

- c) The Organization no longer qualifies as a charity for purposes of subsection 123(1) of the *Excise Tax Act* (ETA). As a result, the Organization may be subject to obligations and entitlements under the ETA that apply to organizations other than charities. If you have any questions about your GST/HST obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

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

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

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

Yours sincerely,



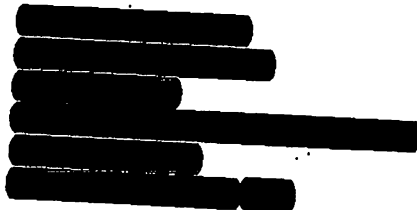
Danie Huppé-Cranford
Director

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

Enclosures

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

c.c.:





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JAN 03 2012

REGISTERED MAIL

Escarpment Biosphere Foundation Inc.
503 Davenport Avenue
Toronto ON M4V 1B8

BN: 88878 2778 RR0001

Attention: Mr. Barnett

File #: 3002949

**Subject: Notice of Intention to Revoke
 Escarpment Biosphere Foundation Inc.**

Dear Mr. Barnett:

I am writing further to our letter dated May 12, 2010 (copy enclosed), in which you were invited to submit representations as to why the registration of Escarpment Biosphere Foundation Inc. (the Organization) should not be revoked in accordance with subsection 168(1) of the *Income Tax Act*.

We have now reviewed and considered the written response dated July 26, 2010, submitted by your legal representative. However, notwithstanding your reply, our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity have not been alleviated. Our position is fully described in Appendix "A" attached.

Conclusion:

Our audit revealed that the Escarpment Biosphere Foundation Inc. (the Organization) received cash and pharmaceuticals with a purported value of over \$407 million as a result of its participating in the Canadian Humanitarian Trust tax shelter gifting arrangement (Donation Program). It is our position the Organization failed to verify the value of the properties and to maintain direction and control over the distribution of the properties. Further, we believe the Organization agreed, for a fee of approximately \$1 million, to lend legitimacy to the Donation Program by representing that it had received and distributed the properties in its own charitable programs. As such, it is our position the Organization failed to operate exclusively for charitable purposes by acting as a conduit for the Donation Program and redistributing 99% of the cash received to other parties in the Donation Program.

It is our position the Organization's books and records failed to demonstrate it maintained full control over the disbursements of the properties received through the Donation Program or that such disbursements were incurred for its charitable activities. Therefore, it is our position the Organization failed to maintain adequate books and records as required under section 230 of the *Income Tax Act*.

Canada

Place de Ville, Tower A
320 Queen Street, 13th Floor (08)
Ottawa ON K1A 0L5

Our audit also determined that the Organization failed to file an accurate T3010, *Registered Charity Information Return* as required under subsection 149.1(14) of the *Income Tax Act*.

Consequently, for each of the reasons mentioned in our letter dated May 12, 2010, 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) and 168(1)(e) 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
888782778RR0001

Name
Escarpment Biosphere Foundation Inc.
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

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, unless the Canada Revenue Agency receives an order, **within the next 30 days**, from the Federal Court of Appeal issued under paragraph 168(2)(b) of the Act extending that period.

Please note that the Organization must obtain a stay to suspend the revocation process, notwithstanding the fact that it may have filed a Notice of Objection.

Consequences of Revocation

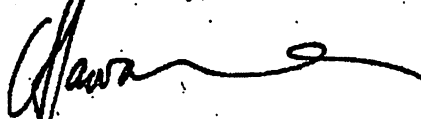
As of the effective date of revocation:

- 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 T-2046, *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. A copy of the relevant provisions of the Act concerning revocation of registration, the tax applicable to revoked charities, and appeals against revocation, can be found in Appendix "B", attached. Form T-2046 and the related Guide RC-4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, are available on our website at 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* (ETA). As a result, the Organization may be subject to obligations and entitlements under the ETA that apply to organizations other than charities. If you have any questions about your GST/HST obligations and entitlements, please call GST/HST Rulings at 1-800-959-8287.

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 May 12, 2010
- Appendix A, Comments on Representations of July 26, 2010
- Appendix B, Relevant provisions of the Act

c.c.:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]



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BY REGISTERED MAIL

Escarpment Biosphere Foundation Inc.
503 Davenport Avenue
Toronto ON M4V 1B8

Attention: Mr. Bob Barnett

BN: 88878 2778RR0001

File: 3002949

SUBJECT: Audit of Escarpment Biosphere Foundation

May 12, 2010

Dear Mr. Barnett:

This letter is further to the audit of the books and records of Escarpment Biosphere Foundation (the Organization) by the Canada Revenue Agency (the CRA). The audit related to the operations of the registered charity for the period from January 1, 2004 to December 31, 2006.

The results of this audit indicate that the Organization appears to be in non-compliance of certain provisions of the *Income Tax Act* (the Act) or its Regulations. The CRA has identified specific areas of non-compliance with the provisions of the Act or its Regulations in the following areas:

AREAS OF NON-COMPLIANCE:		
	Issue	Reference
1.	Failure to Devote Resources to Charitable Activities	149.1(2), 149.1(4.1), 168(1)(b)
2.	Failure to Maintain Adequate Books and Records	149.1(2), 168(1)(e), 230(2)
3.	Failing to File an Accurate Information Return	149.1(2), 168(1)(c)
4.	Failure to Meet its Disbursement Quota	149.1(2)(b)

The purpose of this letter is to describe the areas of non-compliance identified by the CRA during the course of our audit as they relate to the legislative provisions applicable to registered charities and to provide the Organization with the opportunity to address our concerns. In order for a registered charity to retain its registration, it is required to comply with the provisions of the Act and Common Law applicable to registered charities. If these provisions are not complied with, the Minister of National Revenue (the Minister) may revoke the Organization's registration in the manner prescribed in section 168 of the Act.

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

Identified Areas of Non-Compliance:

1. Failure to Devote Resources to Charitable Activities

In order to satisfy the definition of a "charitable organization" pursuant to subsection 149.1(1) of the Act, "charitable organization" means an organization, "all the resources of which are devoted 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. Firstly, the purposes it pursues must be wholly charitable and secondly, 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.

The Organization was registered with the following objectives: "To establish, maintain and manage a system of nature reserves in the area of the Niagara Escarpment (and including the Niagara Escarpment World Biosphere Reserve); including the maintenance of physical features of scientific and/or ecological, cultural, historic or scenic interest, to maintain, enhance or restore areas of native species or natural habitat and to encourage and support scientific research and educational services related thereto; and to educate the public about conservation and preservation of the landscape, ecology and wildlife of the Niagara Escarpment through low impact, ecologically sustainable recreational opportunities which complement and do not substantially conflict with this objective." The Organization has since amended its objects to include: "to enter into any arrangement such as co-operating with other Canadian and international organizations, to provide gifts in kind (including pharmaceuticals, essential medicines, medical devices, diagnostic devices and agricultural products including food) to the needy of the world in carrying out an objection of the corporation which is to foster and recognize a bridge between a healthy ecology and a healthy environment" and "to provide support for those in need affected by debilitating diseases, illnesses and conditions by obtaining or assisting in obtaining and distributing pharmaceuticals as well as medical products, devices and services".

Based on our audit findings, the Organization has demonstrated that it does not operate for purely charitable purposes. In fact, the evidence on the file, as outlined below, demonstrates that the preponderance of the effort and resources of the Organization are devoted to participating in a tax planning donation arrangement. Operating for the purpose of promoting a tax planning donation arrangement is not a charitable purpose at law.

a) Non-Charitable Purpose

Tax Shelter Arrangement:

As noted above, the Organization is primarily operating for the purpose of supporting, promoting and participating in an abusive tax shelter arrangement. The Organization is engaged in an artificial series of transactions that appears to have resulted in the Organization receiving over \$407 million¹ of cash and pharmaceuticals from other Canadian registered charities participating in the tax shelter while actually receiving and devoting a comparatively minor amount of resources to its own actual charitable activities. As such, the Organization is engaging in activities beyond the scope of what it was registered to undertake and pursuing non-charitable purposes and activities.

The Organization has participated in the Canadian Humanitarian Trust (CHT) tax shelter (TS69310), promoted by World Health Initiatives Inc. (WHI) since 2004 by agreeing to accept cash and pharmaceuticals from Canadian registered charities also participating in the tax shelter². The Organization entered into an agreement with WHI on July 19, 2004 whereby the Organization *"wishes to increase the gifts it receives in both monies and gifts-in-kind (specifically World Health Organization Essential Medicines) that it receives from all sources in both receipted and un-receipted donations; and ...wishes to increase the level of their support for humanitarian relief in the third world; and ...specifically wishes to provide financial support to the third world medical relief program of the Choson Kallah Foundation (CK)".*

Generally, the CHT donation program, pre-2007, involves Canadian individual participants making a cash donation to a designated registered charity. The participant then makes application to become a capital beneficiary of the Canadian Humanitarian Trust(s) (the Trust). The participant indicates on the application the number of pharmaceutical units they wish to receive. The participant also acknowledges on the application that each of the pharmaceutical units is subject to a limited recourse lien (18% of the pharmaceuticals' purported fair market value). Upon acceptance as a beneficiary, the participant receives a capital distribution from the Trust in satisfaction of his capital interest in the Trust. The capital distribution is in the form of pharmaceutical units, which the participant then "donates" to a second designated registered charity in transactions facilitated by the WHI acting as agent for the participant. The participant receives two official donation receipts for the "gifts" made to both charities: one receipt for the cash "gift" and one receipt for the value of the pharmaceutical units less the lien

¹ Per revised 2004-2006 Registered Charity Information Returns (T3010) filed. Figures per revised T3010 returns to be used throughout, except where noted.

² In 2003, the Organization participated in the Canadian Gift Initiatives (CGI) donation arrangement. CGI was a similar donation arrangement involving participants acquiring pharmaceuticals valued in excess of their cash outlay and donating these pharmaceuticals, at their purported fair market value, to the Organization. The Organization purportedly distributed the pharmaceuticals internationally. In exchange for issuing the official donation receipts, CGI was to donate 0.5% of the pharmaceuticals purported value in cash "gifts" to the Organization. Donation receipts were found to be 5-6 times the participants' purchase price of the pharmaceuticals and participants did not choose the pharmaceuticals they purchased. The tax shelter promoter, based upon the amount the participant wished to spend, selected the pharmaceuticals purchased. The pharmaceuticals were to be distributed on behalf of the Organization by Feed the Children, a U.S. organization headquartered in Oklahoma City during 2004. The Organization did not take physical delivery of the pharmaceuticals as they were held at a warehouse located outside Canada.

amount. The purported value of the pharmaceutical units, on average, is three times the value of the cash "gift".³

The CHT donation program also involves the participation of a third designated registered charity, such as the Organization and Canadian Physicians for Aid and Relief (CPAR). These designated charities receive "donations" of pharmaceutical units from the second designated charity and also receive "donations" of cash from the first designated charity. The third charity is represented as being a distributor of the pharmaceutical units and as such, has purportedly "distributed" the pharmaceutical units to needy individuals in third world countries. The Organization and CPAR have combined their gifts of pharmaceuticals from the other participating charities and state they have jointly distributed the pharmaceuticals.

The Organization earns, for its participation and registered charity status, "1% of the total of all funds received". The Organization also agrees to make a cash gift equivalent to "1.57% of the total unencumbered value of the medicines it receives to [Choson Kallah Fund of Toronto]". The "gift" to Choson Kallah Fund of Toronto is purported to be the Organization's "financial support to the third world medical relief program of Choson Kallah [Fund of Toronto]". For its participation in the tax shelter, the Organization agrees to pay "1% + GST of all funds received to WHI for services"⁴, "32.68% + GST of the total funds received to WHI for solicitation of funds and medicines" and to make available the "[b]alance of the total funds received to the trust account of WHI to pay all costs associated with administration, marketing, distribution, shipping and all other costs associated with [the Organization's] third world pharmaceutical relief program including all payments necessary to retire any liens or encumbrances which may be attached to any of the medicines on behalf of [the Organization]". During the audit period, the Organization has paid over \$35.1 million in fundraising fees and \$65.6 million in other expenses for the purported \$407 million received in "funds and medicines" solicited by WHI. By comparison, the Organization's own activity of gifting \$1.4 million to registered charities not participating in the tax shelter is a fraction of the Organization's total purported activities.

Operating as a Conduit:

From the Organization's participation in the CHT program, it is our view the Organization is primarily operating as a conduit for the identified tax shelter and is furthering the for-profit motives of the tax shelter and its promoters. As per above, the Organization was not established nor operated as an international distributor of pharmaceuticals until its participation in the Canadian Gift Initiatives (CGI) or CHT donation arrangements. It is our opinion that, during these years the collateral purpose, if not primary purpose of the Organization was, in fact, to support and promote a tax shelter arrangement. It is clear the

³ The proportion of cash to purported value of the pharmaceuticals fluctuates throughout the calendar year as participants participating earlier in a calendar year are rewarded with "cash discounts". As a result, participants contribute less cash yet receive the same purported value of pharmaceuticals as a participant who participates in the latter part of the year.

⁴ CRA audits have revealed that Choson Kallah Fund of Toronto's alleged third world medical relief program is their involvement in the CHT tax shelter and their corresponding "gift" of pharmaceuticals to the Organization.

⁵ Per the July 19, 2004 contact: "WHI provides fundraising consulting services, including solicitation of donors, administration, record keeping and assistance in the identification of potential allocation charities, organizations, or institutions as well as foundations, charities and organizations which may support the goals of [the Organization]".

Organization had little to no actual involvement in controlling and operating the CHT program; operating for the purpose of promoting a tax shelter arrangement is not charitable at law.

Per our review of the documentation provided, and per discussions with the Organization's representative Mr. Bob Barnett, the Organization has not demonstrated why it chose to enter into such an extensive international pharmaceutical donation program, given its corporate object to essentially maintain and educate on the Niagara Escarpment; how it has negotiated the terms of the agreements entered into; how it evaluated and approved the end recipient organizations; or how it maintains direction and control over the warehousing, shipping and distribution of the pharmaceuticals. Overall, our discussion with Mr. Barnett reveal the Organization has merely relied upon the information provided by CHT and WHI without question and has not sought its own independent opinion or verification of the program presented to the Organization.

The actions and information provided by the Organization, as well as the other participants in the CHT tax shelter lead us to believe that the Organization is merely operating as a conduit for the tax shelter and has agreed to participate in exchange for financial compensation. In the donation arrangement, the Organization agrees to accept the donations of cash and pharmaceuticals from the other participating charities and agrees to purportedly distribute 100% of the pharmaceuticals as part of its own programs while paying WHI a set fee.

The Organization does not appear to have conducted an independent review of the donation program to determine whether the program was compliant with the Act. The Organization, despite being asked to accept and distribute over \$407 million in cash and pharmaceuticals did not seek to *independently* verify the programs the Organization entered into. One cannot rely upon a legal opinion provided to another party as the underlying facts relied upon are unique to each party and therefore may not be specifically attributable to all parties relying upon the opinion. The Organization's failure to demonstrate its own due diligence points to a pattern of active willingness to participate in a scheme designed to produce inappropriate tax benefits.

Mr. Barnett has stated that the terms of the Organization's agreement with WHI were non-negotiable and that the Organization has no control over the distribution of funds donated to it from the cash receipting charities as all distributions from the trust account were covered by the agreement entered into with Daigle & Hancock. Our audit has revealed that the Organization has not exercised any control in reviewing the transactions recorded in the trust account statements to verify completeness nor has it requested, or been provided with, source documentation to verify the expenditures purportedly paid from its trust account, were in fact owing to and paid on behalf of the Organization. For example, the Organization paid the lien attached to each pharmaceutical donation yet has stated it relied upon the Schedule A attached to each donation certificate as proof the lien existed and in the amount stated but has not obtained, nor requested, further documentation to verify the amount as accurate or that the amount has been paid; the Organization relies upon statements made by WHI. Regarding the selection and monitoring of the end recipient organizations, Mr. Barnett told the CRA that he relied upon the opinions of [REDACTED] of [REDACTED] and [REDACTED] of [REDACTED] that [REDACTED] mainly selected the end recipients; and the list of approved recipients was provided to Universal Aide Society (UAS) to arrange for the shipment and distribution of the pharmaceuticals. Mr. Barnett also informed the CRA that no monitoring reports were prepared, requested or provided as all discussions were done

in-person or via telephone calls and that he conducted one monitoring trip a year while relying upon [REDACTED] more frequent trips.

Based on the Organization's income, the Organization is financially dependent on the CHT tax shelter. For the years audited, the Organization has accepted cash and pharmaceutical contributions exceeding \$407 million from participating charities and has accordingly "earned" over \$1 million for its own programs. Additionally, during the years audited, the Organization's tax-receipted donation revenue has been primarily received from the promoters of the donation arrangement/tax shelters the Organization has been a participant in. Of the nearly \$554,000 in total tax-receipted donations reported, the Organization received \$498,000, or nearly 90%, from donation arrangement/tax shelter promoters.

Acting in Concert:

Subsection 149.1(4.1) of the Act permits for the revocation of registered charities who act in concert with each other to unduly delay expenditures on charitable activities. The donation arrangement is structured in such a manner that the cash and pharmaceuticals flow directly from the receipting charity to the Organization almost immediately and do not appear to be property the receipting charities need or utilize in their own programs, except for their participation in the tax shelter. The first and second designated charities each report a "gift" to a qualified donee, the Organization. While the Organization does not issue any official donation receipts for the cash and pharmaceuticals received, its acceptance of this property seemingly provides a level of legitimacy to the tax shelter while enabling the other participating charities to apparently meet their disbursement quota obligations.

It is our view the monies received from the other participating charities are routed through the Organization as "gifts" from another registered charity essentially in an attempt to conceal the true source and nature of the transactions. In actuality, the funds received from the other CHT participating charities are earmarked to be paid to WHI for services rendered and to retire the liens. It is our view that one of the understood purposes of the cash "gifts" from the other participating charities was to disguise the actual relationship between the cash "gift" made and the payments ultimately made by the Organization to WHI. Of the total \$104 million received in cash "gifts" from the other participating charities, substantially all (99%) was paid to parties involved in the promotion of the tax shelter: \$59.2 million was utilized to retire the liens attached to the pharmaceutical donations, \$39.4 million was paid to WHI for fees and \$4.3 million was paid to the in-kind receipting charities. In our view, this clearly demonstrates that the cash "gifts" were used solely to compensate the parties involved in the tax shelter and were not intended to enrich the participating charities beyond the 1% retained by the Organization⁶.

It is our view the Organization enthusiastically lent its resources to support the tax shelter arrangement, with little regard for the legitimacy of the arrangement or the interests of the Organization itself. As above, the overwhelming majority of the property received by the Organization during the years in question was received through tax shelter arrangements -- property the Organization neither saw, valued, or distributed itself, but rather was paid to purportedly accept from other participating charities and to report as being distributed by it.

⁶ The in-kind receipting charities actually only retained, after paying fundraising fees, 0.5% of the cash "gift" received from the Organization.

Additionally, the Organization has amended its objects to accommodate the tax shelter. The Organization, as set out below, cannot be certain that the goods for which it purportedly received from the other participating charities was in fact received or received in the amounts represented. All of these facts point to a pattern of active willingness to participate in a scheme designed to produce inappropriate tax benefits for the participant donors while producing a stream of revenue for the Organization.

By pursuing the promotion of a tax shelter arrangement, the Organization has failed to demonstrate that it meets the test for continued registration under subsection 149.1(1), as it appears not all of its resources were devoted to charitable activities. Under paragraph 149.1(4.1)(b) the Act, the Minister may revoke the registration of any charity where it can reasonably be considered that by accepting a gift from another charity it has acted in concert with that charity, for the purpose of avoiding the application of the disbursement quota. For these reasons and each of these reasons, it appears to us that there may be grounds for revocation of the charitable status of Escarpment Biosphere Foundation under paragraphs 149.1(4.1)(b) and 168(1)(b) of the Act.

b) Failure to Devote all of its Resources to its own Charitable Activities:

As stated above, in order for an organization to be recognized as a charity, it must be constituted and operated exclusively for charitable purposes, and it must devote all of its resources to charitable activities carried on by the organization itself.

Focusing on "devotion of resources", a registered charity may only use its resources (funds, personnel and/or property) in two ways, both inside and outside Canada – for charitable activities undertaken by the charity itself, under its continued supervision, direction and control; and for gifting to "qualified donees" as defined in the Act.

The CRA acknowledges that it is not always practical for a registered charity to become directly involved in charitable activities because of limited financial resources, the size of the project or because the charity lacks the necessary expertise to operate effectively in a particular area of interest. Accordingly, the CRA will consider that a registered charity is involved in its own charitable activities if the charity demonstrates that it maintains the same degree of control and responsibility over the use of its resources by another entity as it would if its activities were conducted by the charity itself.

Where a registered charity chooses to operate through an appointed agent or representative (intermediary), it must be able to substantiate, generally through documentary evidence, that it has arranged for the conduct of certain specific activities on its behalf, and has not simply made a transfer of resources to a non-qualified donee. A charitable organization is not at liberty to transfer funds or resources to other individuals or entities unless the recipient is an employee of the charity, an agent of the charity under contract, or a qualified donee. To this end, the charity must be able to demonstrate to the CRA's satisfaction that it maintains control over, and is fully accountable for, the use of resources provided to the intermediary, at all times.

The existence of an arrangement that demonstrates sufficient and continuing direction and control over, and full accountability for, all resources and related activities, is critical. The arrangement must establish that the activities in question are, in fact, those of the charity.

Apart from an agency agreement or similar type agreement, the CRA also reviews evidence provided by the charity to support its assertion it conducted activities overseas and that these activities were those of the charity. From the documentation provided by the Organization in support of its activities overseas, the documentation fails to substantiate the Organization's active and on-going direction and control of its programs overseas. The audit was unable to reveal the criteria utilized by the Organization to identify and select qualified and competent organizations to work with; the criteria employed to determine which entities would receive goods and in what quantities; the directions provided to the agents for shipping, storage and distribution; and the periodic reports received from the agents supporting its on-going activities undertaken on behalf of the Organization.

The case law supports the position that the existence of an agency agreement alone is not sufficient - in order for an organization to show that it exercises sufficient direction and control over its resources and activities, it must evidence that it effectively implements and enforces the agreement, which the Organization was clearly unable to do.

In *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*,⁷ the organization under review had an agency agreement in place, but was unable to produce sufficient documentary evidence to demonstrate that the agreement was enforced and adhered to. The Canadian Federal Court of Appeal (FCA) upheld the Minister's decision to revoke the organization, based, in part, on the following areas of non-compliance:

"Under the scheme of the [*Income Tax Act*], it is open to a charity to conduct its overseas activities either using its own personnel or through an agent. However, it cannot merely be a conduit to funnel donations overseas. In this case, the Agency Agreement was ignored by the Committee, and the Minister was not satisfied that the Committee's explanations of its conduct overseas were sufficient to overcome his conclusion that the Committee had no direction and control over how funds were spent by its agent. The evidence that was provided would suggest that the Committee was merely acting as a conduit for Canadian donors to overseas donees. For example, the evidence discloses that the Committee sent the majority of the funds it raised to its agent in Israel, but provided little documentary evidence of the Committee's control over how those funds were spent." (paragraph 30)

And,

"While a charity may carry on its charitable activities through an agent, the charity must be prepared to satisfy the Minister that it is at all times both in control of its agent, and in a position to report on the agent's activities. In this case, the Minister's main reasons for revocation are that the Committee could not demonstrate, through documentary evidence, that it exercised a sufficient degree of direction of control over the use of its funds by its agent in Tel Aviv and the Committee did not keep proper books and records of activities carried on by its agent. Even though the Minister's reasons are couched in terms of non-compliance with the Agency Agreement, the requirements under the latter are, in my view, simply a means of ensuring compliance with the [*Income Tax Act*]." (paragraph 40)

⁷ [2002] FCA 72

In the case of Bayit Lepletot⁸, the FCA reiterated that a charity which operates via an agent must be in a position to show that its agent is actually carrying out the activities in question on its [the Organization's] behalf.

"It is open for [a charity] to carry on its charitable works through an agent but it must be shown that the agent is actually carrying on the charitable works. It is not sufficient to show that the agent is part of another charitable organization which carries on a charitable program. The question which remains in such a case, as it does here, is who is carrying on the charitable works. It was incumbent upon the appellant to show that they were being carried on its behalf. On the record before us it was open to Minister to conclude that it had failed to do so." (paragraph 5)

Further support for this position is found in the case of *Canadian Magen David Adom for Israel v. Minister of National Revenue*⁹:

"[A] charitable organization is obliged to carry on its charitable activities itself. If it does not do so, its registration may be revoked. A charitable organization that wishes to operate in a location where it has not officers or employees must somehow act through a person in that location. That could obviously be done by establishing an agency relationship between the charity and the person. Evidence that such a relationship has been established by contract, and that the contract has been adhered to, might well be the most straightforward means of proving to the Minister that a person purporting to carry out the charitable activities of a charity in a particular location is in fact acting on behalf of the charity. It is possible that the same result might be achieved by other means. *However, a charity that chooses to carry out its activities in a foreign country through an agent or otherwise must be in a position to establish that any acts that purport to be those of the charity are effectively authorized, controlled and monitored by the charity.*" (emphasis added).

As such, the existence of an agency relationship and agreement does not suffice. Evidence demonstrating that the agent acted in accordance with the terms of the arrangement, under the charity's continuous instruction and supervision, is also necessary. In the case of the Organization, it has not provided a sufficient basis, by way of documentary evidence, to support its contention that the activities carried on by its purported agent were, in fact, its own.

Assessment of Need

A key element in directing and controlling one's own programs would include an assessment of the needs of the beneficiaries of any charitable program carried on by the charity. Our audit found that the Organization did not make any assessments regarding the needs of the beneficiaries of the programs it purported to carry out, and it did not actively seek the sources to capable to distribute the pharmaceuticals the Organization had as inventory.

We have not been provided with any documentation that would show the Organization assessed or verified the needs of its beneficiaries or the capabilities of its consignee agents.

⁸ Bayit Lepletot v. Minister of National Revenue, [2006] FCA 128

⁹ [2002] FCA 323, at paragraph 66

A charity should be satisfied that its agent has the capacity and capability to carry out the programs for which it has been tasked and therefore able to distribute the goods received as per the charity's directions. The Organization has not shown that its agents have the capacity or capability to do so. As per above, the Organization relied upon [REDACTED] selection of recipients. It is our view that the Organization was advised to ship goods to consignee agents, who would accept bulk shipments of pharmaceuticals and would incur the shipping, duties, taxes or other charges levied in their country or in the country where the pharmaceuticals originated from, to obtain the goods rather than consignee agents who needed the pharmaceuticals to address a specific need.

Direction & Control

As above, the Organization purportedly distributes 100% of the pharmaceuticals received as a result of its participation in the CHT tax shelter internationally and does so by purportedly employing numerous agents to act on its behalf. The Organization required that each consignee, in order to be eligible to receive distributions of pharmaceuticals from the Organization, among other things enter into an appropriate Memorandum of Agreement (MOA) with the Organization. The Organization states it entered into a MOA with Universal Aide Society (UAS) in 2004 and UAS sub-contracted all shipments in 2004 and 2005. In 2006, the Organization entered into MOAs with specific agents. The Organization submits that its books and records demonstrate evidence of control and supervision, in addition to maintaining appropriate agency agreements. Our audit has found that the Organization has not demonstrated its control and supervision over the distribution of the pharmaceuticals. In support of its purported pharmaceutical distributions, the Organization has supplied copies of memorandum of agreements, shipping documents and other program materials from the purported recipient organizations. Our review of the documentation reveals that it is incomplete and fails to demonstrate the Organization's direction and control over the receipt, warehousing, shipping and distribution of the pharmaceuticals to qualified, competent organizations of the Organization's own choosing.

Our review of the documentation provided reveals that an agency agreement or MOA was not implemented for each reported recipient of pharmaceuticals, the MOA were drafts, that acknowledgement letters from reported recipient organizations were signed before agreements to accept goods were signed and so forth. The Organization has also failed to obtain or failed to provide documentation showing the shipment of the pharmaceuticals. The Organization has provided some shipping documentation; however, complete documentation was not provided. Our review of the MOAs also reveal terms of contracts with other entities such as UAS and CPAR.

The Organization has stated that "In certain cases, the version of the Memorandum of Agreement executed by certain consignees retained the word "draft" in error. This was merely a typographical error, however – and had not impact on the enforceability of the Memorandum of Agreement as between the [Organization] and the consignee nor on the performance by each of the [Organization] and the consignee of the Memorandum of Agreement in each case." We can accept that some agreements may not "draft" in error; however, despite the Organization's representations that this error does not impact the enforceability of the MOA, we disagree.

Each MOA entered into by the Organization and its agent, or sub-agent agreement entered into by UAS and its agent, contained the following terms:

"Upon receipt of the shipment(s) [the agent or sub-agent] will forward a letter of Receipt to [the Organization or UAS].

Subsequently, [the agent or sub-agent] will forward to [the Organization or UAS] a status report no later than 90 days after arrival of the shipment(s) at its final destination, and a full distribution report issued by the final institutional consignee on completion of the distribution. Completion of the distribution to be no later than 180 days after arrival unless otherwise specified in the Distribution Plan."

Furthermore, the Distribution Plan contains the following term:

"[The agent or sub-agent] will ensure that the ultimate institutional consignee prepares adequate reports to [the Organization or UAS] as to delivery and disposition of the products."

For each shipment, we found only one letter of receipt acknowledging that the goods had reached this intended recipient and we failed to locate any instances wherein a status report was submitted by the recipient. Where final distribution reports were provided, we found the reports to be vague; the reports contained scant details on the types and quantities of pharmaceuticals received; and how those pharmaceuticals were distributed. The reports state that goods were distributed "by hospitals, clinics, orphanages etc." to "children, elderly and other needy categories". We also found no indication that the Organization followed up with the agents when reports were lacking information or when no reports were obtained.

Additionally, it appears the shipments were turned over to the agents and/or the consignees once the shipments arrived at the destination with no further input or direction from the Organization. Per the Distribution Plan, "The selection of approved consignee will be at the discretion of ____." We found that more often than not, the entity selecting the approved consignee is blank whereas in instances where the information is recorded, UAS or the sub-agent selects the approved consignee:

The CRA acknowledges a slight relaxing of its strict requirements to maintain direction and control in certain circumstances; however, a charity must nonetheless be able to support the use of property purportedly received and distributed by it and the relating amounts reported as charitable expenditures. It is simply not sufficient to state that millions of dollars in relief activities occurred, claiming these as charitable expenditures against the charity's disbursement quota, without sufficient proof as to values, volumes, destinations or ultimate use. Absent such documentation the CRA has no means of determining whether the goods exist, testing what the value of the goods shipped were, or even whether the goods were, in fact, distributed for charitable activities or instead sold, disposed of or sit unused. A charity cannot simply forgo its responsibilities and diligence simply because of the nature of goods being distributed. In the case of the Organization, there is no evidence in support of the status and activities of the recipient, that the donated goods were used for charitable purposes or formed part of the Organization's own activities. In our view, the Organization has not demonstrated that it maintained control over its resources, nor can it demonstrate the ultimate

use and distribution of the goods by its agents, such that it can claim it distributed at least \$303 million of goods on charitable activities carried on by it.

The audit also uncovered certain instances wherein the documentation provided to substantiate the Organization's distribution of the pharmaceuticals overseas failed to do so. For example:

- The documentation provided to support a shipment to the Bahamian Ministry of Health contained a shipping waybill, a packing list and an undated, unsigned undated letter of acknowledgement.
 - The shipping waybill shows drugs being shipped to MedPharm Inc.
 - The pharmaceuticals listed on the waybill correspond to those on the detailed packing listed; however, the detailed packing list refers to "KPI 2006", is dated 21.11.2006 and lists pharmaceuticals differing from those listed in the acknowledgement letter.
 - The acknowledgement letter refers to the 2005 program.
- The Amstelfarma packing list for a 2006 shipment to Malawi contains pharmaceuticals the recipient, Christian Health Association of Malawi (CHAM), does not acknowledge receipt of in its acknowledgement letter. For example, omeprazole 20mg, famotidine (ulcimax) 40 mg, mebendazole 50 mg and rifampicin 150 mg are reported as being shipped yet appears not to have been received by CHAM.
 - The acknowledgement letter also states that CPAR donated the drugs to CHAM.
 - An acknowledgement letter issued by the Malawi Police Service, and another by the Katema Health Unit, thank ADRA for its timely donation of drugs.
 - A letter [REDACTED] of the Lions Sightfirst Eye Unit writes to ADRA International acknowledging receipt of tetracycline and gentamicin; two pharmaceuticals the Organization did not receive per its records.
 - A handwritten note from an unidentified organization also lists items the Organization did not receive nor could have donated such as syringes, cotrimoxole, paracetamol or pairs of gloves.
- A Final Report for Kashmir Earthquake Relief Medical Supplies states that "medicines were purchased by ADRA International and shipped to Pakistan". This is further supported by a Letter of Donation stating ADRA International is donating pharmaceuticals to ADRA Pakistan and a shipping invoice listing ADRA International as the shipper of 40 cartons of pharmaceuticals.
- A number documents were provided to support shipments via agent Christian Aid Ministries to Haiti, Nicaragua and Moldova in 2005 yet our review of the documents reveal a number of non-pharmaceutical relief goods purportedly being distributed on behalf of the Organization; goods which we have no knowledge of the Organization ever receiving let alone distributing. Goods such as x-ray equipment, sewing machines and supplies, non-perishable food items and bags of clothing.
- The same shipping invoice was provided to support distributions of pharmaceuticals via SCI, Imperial College London in 2005 and 2006.
- The Organization's documentation to support a shipment of pharmaceutical to Honduras from its 2006 inventory revealed:
 - Inspection reports from SGS-Nederland B.V. states "In accordance with instructions received we have inspected the parcel prior to shipment, about

which we report the following... Inspection took place 27th July 2007. The inspection report is dated 30 July 2006.

- Shipping documents from ConFlo recording container number CMAU102728-0 laden on board on 09-14-2007. The Cargo Distribution Report refers to container number SMLU782830-8 received on 04-20-2007.
- The acknowledgement letter from World Emergency Relief, dated 31-12-2006 lists the pharmaceuticals purportedly received each year. It has purportedly received goods from the Organization. Per the Amstelfarma packing lists provided for this shipment, pharmaceuticals such as salbutamol, amoxicillin and enalapril were included in the shipment yet World Emergency Relief does not list these items in its acknowledgement letter.

We also found that numerous MOAs were unsigned or undated, in draft format and failed to contain details such as country and region of distribution and segment of the population to benefit from the shipment in the Specific Distribution Plan.

Fair Market Value

The Organization has an obligation to ensure that the pharmaceuticals received from the other participating charities were recorded and reported at their fair market value. Each registered charity is responsible for the accurate reporting of any gift-in-kind it receives, regardless of whether an official donation receipt is issued or not. We recognize that appraisals are not required under the Act or its Regulations; however, it is our view that the onus remains with the charity to ensure the value assigned to non-cash gifts received is reflective of the factual fair market value of the goods being received. For property with a value in excess of \$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 originator of the property. The person determining the fair market value of the item should be competent and qualified to evaluate the particular property being donated, as well as be knowledgeable about the marketplace for the specific property. They 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.

"Fair market value" is not defined by the Act, however, a standard definition generally accepted is, the highest price, expressed in dollars, obtainable in an open and unrestricted market between informed, prudent parties dealing at arm's length and under no compulsion to buy or sell¹⁰.

As outlined by Rothstein, J.A. in *AG (Canada) v Tolley et al 2005 FCA 386*, in applying the Henderson definition of fair market value, the first step is to accurately define the asset whose fair market value is to be ascertained. Rothstein, J.A. discusses the relevance of donating a group of items versus an individual item and states that because the items were only acquired and donated in groups, the relevant asset was the group of items, and not the individual items in the group.

¹⁰ *Henderson Estate & Bank of New York v M.N.R. 73 D.T.C. 5471 et 5476.*

It is our position the conclusion made by Rothstein, J.A. also applies to the donation of pharmaceutical units. Based on the quantities donated, the relevant asset is considered to be the group of goods donated, not the individual items within each group. Rothstein, J.A. continues by stating it is wrong to assume that the fair market value of a group of items is necessarily the aggregate of the price that could be obtained for the individual items in the group.

The second step in applying the Henderson definition is to identify the market in which the merchandise was traded. Rothstein, J. A. identifies this group of items might not be sold in the same market as individual items, and highlights this distinction through a comparison of the wholesale versus retail markets.

In *Klotz v The Queen* 2004 TCC 147, Bowman, A.C.J. stated "It is an interesting questions that I need to consider here whether the price paid for something is truly indicative of fmv [sic- fair market value] where the predominant component in the price paid is the tax advantage that the purchaser expects to receive from acquiring the object."

The Organization did not obtain its own independent and instead relied upon the valuation reports, and figures, provided by the other participating charities "donating" pharmaceuticals to it. Based on our findings, the fair market value on the donation receipts issued by other participating charities is not indicative of the fair market value of the goods donated. The appraised value is based on suggested Ontario retail price. The valuations utilized are based firstly on the Direct Unit Cost in the Ontario Drug Benefit Formulary (ODBF) which permits a 10% mark-up on the Direct Unit Cost and secondarily, if the item is not listed in the ODBF, based on the wholesale catalogue price. Based on the documentation provided, we are unable to identify any pharmaceuticals valued, if any, using the wholesale catalogue price rather than the ODBF calculated price. We are of the opinion the retail market is not the relevant market as the goods were acquired, sold and donated in blocks of goods and that the fair market value of the medicine units is the last known arm's length price paid for the goods.

Additionally, one of the alleged valuers of the pharmaceuticals, [REDACTED] has informed the CRA that he did not conduct a valuation of the pharmaceuticals but rather he was retained by CHT to examine the methodology used by [REDACTED] and not to do an actual valuation. The pharmaceutical receipting charities provided copies of documents entitled Pharmaceutical Valuation stating "this appraisal is a fair market valuation done to establish the value of a pharmaceutical product donated to a registered Canadian charity" and further states, "based upon [REDACTED] findings as set out in [REDACTED] General Methodology dated Oct 5, 2004 [REDACTED] find[s] that the value for this item is:" then goes on to give a value for each of the drugs as of a specific date. [REDACTED] has informed the CRA that he did not prepare this Pharmaceutical Valuation and that he did not permit CHT to use his name or his seal on the document. [REDACTED] was notified by CHT after the fact that his name would be utilized in this manner. Also, [REDACTED] has confirmed that, if he did in fact perform a valuation, that he was retained by CHT and therefore not an independent valuator.

It is our view that by failing to demonstrate the Organization's on-going direction and control of the purported international distribution of the pharmaceuticals donated to it, the Organization has failed to demonstrate that it meets the test for continued registration under 149.1(1) as a charitable organization "...All the resources of which are devoted to charitable

activities". For this reason, it appears to us that there may be grounds for revocation of the charitable status of Escarpment Biosphere Foundation under paragraph 168(1)) of the Act.

3. 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 or designated by the Minister containing:

- 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 indicated the books and records kept by the Organization were inadequate for the purposes of the Act. In the course of the audit, the following deficiencies were noted concerning the Organization's records recording the receipt and distribution of the pharmaceutical goods:

- Per above, the Organization has failed to maintain and/or failed to obtain the necessary documentation to demonstrate its direction and control over the receipt and distribution of the pharmaceuticals. Documentation such as MOA, shipping invoices/waybills, letters of receipt, distribution reports and so forth.
- Mr. Barnett has also stated that the Organization was not provided with, nor did it ask to obtain, copies of the lien agreements attached to each donation of pharmaceuticals. Instead, the Organization relies upon the Schedule A attached to each certificate of donation. The Organization did not provide, nor does it appear to have requested, a reconciliation of the lien amounts purportedly paid. Per the trust agreement with Daigle & Hancock, all funds received from the other participating charities are deposited into the trust account and utilized to pay various expenditures purportedly owing to the Organization. From our review of the trust account statements provided, we are unable to confirm if the withdrawals recorded were for legitimate expenditures owing to the Organizations and for what expenditures as no supporting documentation was provided.

- MedPharm notifies the Organization via written correspondence when it has received notification from WHI that the Organization is the current owner of certain World Health Organization essential medicines. The correspondence includes the specific pharmaceuticals owned by the Organization in Schedule B.

A review and summarization of the type and quantity of pharmaceuticals listed in each Schedule B identifies minor discrepancies. For example, in 2006 the Organization received 442,580 units per the Schedule Bs provided but records 443,254 units being received on the summary chart.

- A reconciliation of the duplicate donation receipts provided revealed discrepancies in the amounts reported as tax-receipted donations on the T3010's, original and amended, filed. Per our findings:

	2004	2005	2006
Total/Donation Receipts Provided	\$345,111	\$106,904	\$145,272
Total/Amended T3010	\$371,061	\$92,723	\$90,072
Total/Original T3010	\$351,390	\$100,905	\$82,075

- A reconciliation of the records provided showing the value of the total pharmaceuticals received differ from the amounts reported on the revised and original T3010s filed. Per our findings:

	2004	2005	2006
Total In-Kind Contributions Received (per Originally Filed T3010)	\$56,047,845	\$135,974,401	\$118,094,449
Total In-Kind Contributions Received (per Revised T3010)	\$63,131,972	\$117,531,388	\$122,379,691
Total In-Kind Contributions Received (per summary provided)	\$77,618,883	\$136,372,892	\$149,502,468

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 Escarpment Biosphere Foundation 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 Escarpment Biosphere Foundation.

4. Failing to File an Accurate 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 an information return with the applicable schedules. The Organization has continually late filed its information return (the T3010) and financial statements. With the exception of one year, the Organization files its T3010 and financial statements approximately five months late (i.e. eleven months after its fiscal period end). A registered charity that fails to file an information return for a taxation year as and when required by subsection 149.1(14) may be liable to a penalty of \$500 by virtue of subsection 188.1(6).

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

The Organization improperly completed the T3010 for the fiscal periods ending December 31, 2004 to December 31, 2007 in that items reported were omitted or inaccurate. Specifically the following items:

FPE December 31, 2004

- Based on a reconciliation of the total tax-receipted donation receipts issued and the T3010 filed, original and amended, at line 4500, the Organization overstated total tax-receipted donations per above.
- Per above, it appears the amount for total gifts from other registered charities at line 4510 is incorrect.

FPE December 31, 2005

- Based on a reconciliation of the total tax-receipted donation receipts issued and the T3010 filed, original and amended, at line 4500, the Organization overstated total tax-receipted donations per above.
- Per above, it appears the amount for total gifts from other registered charities at line 4510 is incorrect.

FPE December 31, 2006

- Based on a reconciliation of the total tax-receipted donation receipts issued and the T3010 filed, original and amended, at line 4500, the Organization understated total tax-receipted donations per above.
- A reconciliation of the amended T3010 and financial statements reveal a discrepancy of \$2,241,765 on line 5000 and a \$200,000 discrepancy on line 5060. Appears Organization failed to include the revised "Gifts in kind program expenses" on the amended T3010 and failed to report the gift of enduring property on its financial statements.
- Per above, it appears the amount for total gifts from other registered charities at line 4510 is incorrect.

FPE December 31, 2007

- The Organization failed to file an amended financial statement with the amended T3010. As such, the figures reported per the financial statement originally filed do not reconcile to either the original or amended T3010. The financial statements originally filed also fail to contain a Balance Sheet.

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 Escarpment Biosphere Foundation.

5. Failure to Meet its Disbursement Quota

In the CHT arrangement, all cash and pharmaceutical "gifts" donated to the Organization are reported as gifts from another charity and as distributions on its own charitable programs. We do not view these "gifts" as valid gifts under the Act nor do we recognize the "gifts" in the values reported by the Organization. First, the "gifts" fail to meet the definition of a gift as they lack an element of voluntariness; second, the Organization has not established that the cash and pharmaceuticals were distributed as part of its own charitable programs; and third, the Organization has recorded receipt of and distribution of the pharmaceuticals at values that, in our opinion, are not reflective of the pharmaceuticals factual fair market value. Additionally, we do not recognize the amounts "gifted" to other participating charities, namely to the in-kind receipting charities, as gifts made to a qualified donee as the amounts were merely payments to compensate these charities for their tax-receipting contributions to the tax shelter program.

We acknowledge that proposed changes to the disbursement quota would eliminate the Organization's disbursement quota obligations; however, the proposed amendments would only 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 Escarpment Biosphere Foundation.

The Organization's Options:

a) No Response

You may choose not to respond. In that case, the A/Director General of the Charities Directorate may issue a Notice of Intention to Revoke the registration of the Charity 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 A/Director General of the Charities Directorate will decide on the appropriate course of action, which may include the issuance of a Notice of Intention to Revoke the registration of the Organization 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 us to discuss your file with that individual.

If you require further information, clarification, or assistance, I may be reached at [REDACTED]
[REDACTED] or by facsimile at [REDACTED]

Sincerely,

[REDACTED]

[REDACTED]
Senior Audit Advisor
Charities Directorate
Charities Directorate
Canada Revenue Agency
320 Queen St. 7th Floor
Ottawa, Ontario K1A 0L5

-cc: Susan Marwaring
c/o Miller Thomson
Scotia Plaza
40 King Street, Suite 5800 P O Box 1011
Toronto, ON M5H 3S1

ESCARPMENT BIOSPHERE FOUNDATION INC.

COMMENTS ON REPRESENTATIONS OF JULY 26, 2010

The audit conducted by the Canada Revenue Agency (CRA) identified that the Escarpment Biosphere Foundation Inc. (Organization), based on the conduct of the Organization and the level of financial activity and resources devoted, is not devoting its resources to exclusively charitable purposes. In our position, the Organization's original charitable purposes, those for the protection and preservation of the environment, have been modified and sidetracked to promote a tax shelter gifting arrangement.

The CRA's audit has concluded that from January 1, 2004 to December 31, 2006, the Organization received cash and property with a purported value of over \$407 million. It is the CRA's position the Organization was paid a fee of approximately \$1 million to facilitate this arrangement – i.e., for reporting that they had received and used these pharmaceuticals in their own charitable programs. It is our position the Organization failed to verify the values of the property purportedly received and failed to exercise direction and control over the property it purportedly distributed. The role of the Organization in facilitating the tax shelter program, in our view, is designed to lend legitimacy to the program by overstating the amount of charitable activity in fact carried out.

It is the CRA's conclusion that the Organization, due largely to its involvement in promoting a tax shelter gifting arrangement, has failed to:

- operate for exclusively charitable purposes;
- devote its resources exclusively to activities under its direction and control;
- maintain adequate books and records; and
- failed to file accurate information returns.

It is our position these each represent a serious breach of the requirements of the *Income Tax Act* and for these reasons the Organization's registration should be revoked.

These reasons are described in greater detail below.

Failure to Devote Resources to Charitable Activities:

Non-charitable purpose:

Per our May 12, 2010 letter, the Organization was registered in 1997 for the purpose of environmental conservation of the Niagara Escarpment. Despite this local environmental focus, beginning in 2004, the Organization modified its purposes to accommodate its participation in a tax shelter gifting arrangement - the Canadian Humanitarian Trust (CHT).

In the Organization's representations, it disagrees with the CRA's position that it amended its objects to accommodate the tax shelter, and submits that it sought simply to "ensure that its corporate documents reflected the new international activities in which the Organization engaged." We disagree with this characterization.

It is clear the reason for the modification to the Organization's objectives was to accommodate the tax shelter arrangement. In other words, but for its role in facilitating the CHT tax shelter arrangement, which, as described later, is a role that simply involves accepting title to property and reporting distribution activities in which it takes no active role, it does not appear the Organization pursues any international humanitarian efforts at all.

The Organization, as per its representations, draws the link between humanitarian aid and the promotion of environmental stewardship through its activities. According to its objects, the Organization distributes pharmaceuticals to "foster and recognize a bridge between a healthy ecology and a healthy environment" and to "educate the public about the inter-relationship of health, the environment, conservation of the landscape, ecology and wildlife and to support research and efforts dedicated to improving communities where poverty and/or lack of understanding about conservation result in damage to the world biosphere." While these are laudable objectives, apart from entering into agreements for the distribution of pharmaceuticals, there is no evidence that the Organization does any of this.

We are aware of no evidence that the Organization uses any of its actual earned funds to carry out international humanitarian efforts. Apart from gifts to Escarpment Biosphere Conservancy Inc. (of the 1% of the total of all funds received by the Organization and to which it is beneficially entitled, substantially all is gifted to the Escarpment Biosphere Conservancy Inc.), the Organization only "gifted", as contractually obligated, to other participants in the CHT program. Accordingly, from 2004 to 2006 the Organization gifted \$4.7 million to the Choson Kallah Foundation, a formerly registered charity involved in the relief of poverty in Canada.

It is our position, the Organization does not truly pursue purposes relating to humanitarian aid and international environmental protection. The Organization has modified its objects and activities such that it could, for a fee, lend its charitable registration and justify its participation in the CHT tax shelter arrangement.

With regard to the manner in which the Organization has arranged its financial affairs during the audit period, as noted in our previous letter, it is equally clear that the Organization structured its financial affairs in accordance with tax shelter promoters' instructions to accommodate the tax shelter arrangement for the promoters' benefit.

The Organization entered into a contract wherein World Health Initiatives (WHI), the promoter of the CHT arrangement, was engaged to solicit funds and medicines on behalf of "EBF's pharmaceutical relief program". Under this agreement, the Organization was entitled to retain only 1% of any funds received and committed to pay all costs associated with the administration and marketing of this program. Approximately \$100 million in cash was received by the Organization during the audit period. The Organization, in fact, paid:

- an amount equivalent to 1.57% of the value of all medicines received to the Choson Kallah Foundation, a formerly registered charity participating in the arrangement, and
- the balance (approximately 97.43% of all funds received) was transferred to WHI.

The amounts transferred to WHI, were for:

- consulting fees (1%),
- solicitation of funds and medicines (32.68%), and
- "the balance of total funds" for various other costs associated with the program.

Little detail is provided as to the nature of these costs, particularly in terms of invoices supplied by WHI. The Organization did not seek a detailed accounting of these costs.

It is our position that it is difficult to characterise these contracts, and the conduct of the Organization, otherwise than for the primary benefit of the tax shelter promoters, and for the purposes of promoting a tax shelter arrangement.

The Organization represents that these payments are appropriate because they resulted in the reception and distribution of over \$300 million in gifts-in-kind (i.e., the pharmaceuticals). However, as described in our previous letter, the Organization did not maintain adequate documentation or control and direction over the reception and distribution of the pharmaceuticals to be able to substantiate the volumes, destination or ultimate use of the property purportedly distributed. Further, the Organization took no steps to independently assess the values represented and, as described in our previous letter, we remain of the position that the proper value to be attributed to these pharmaceuticals is, in fact, the much lower wholesale value.

It is our position the Organization simply agreed to conduct its affairs as instructed by the tax shelter promoters and other participants by accepting their representations that the property it purportedly received, largely sight-unseen, was of the value and quantity represented and that the services it paid for were, in fact, provided. It accepted these assurances without question because, in return for little or no actual effort or involvement by the Organization, it would receive a 1% commission. As described in our previous letter, the approximately \$1 million received by the Organization for its participation pales in comparison to the \$35.1 million in fundraising fees and \$65.6 million in other expenses paid to WHI.

Acting as a Conduit:

We remain of the position that the Organization has simply agreed, for the purposes of facilitating the tax shelter arrangement, to act as a conduit for property received through the tax shelter program. The Organization's representations do not appear to deny its role as a conduit organization. It merely stated that it did not operate as conduit to further the for-profit motives of the program and its promoters. In fact, the submitted legal opinion from Harvey Savage appears to acknowledge the "flow through" role played by the Organization.

It is clear the Organization's role in this arrangement is not one where it is an active and controlling party carrying on its own charitable activities, but one where it is paid to

receive and move money and property purportedly gifted to it as directed and without question. We take this position for the following reasons.

The Organization reports that it received and distributed over \$300 million in pharmaceuticals through a network of sub-agents in over 27 different countries. According to our audit, the Organization's role in this activity is largely limited to agreeing to the list of end-recipient organizations. The Organization conducted little to no independent review of these organizations. We have not been provided with evidence to demonstrate that the Organization had any active role in directing or supervising the activities of its agents and sub-agents.

The Organization has never itself taken physical possession of the pharmaceuticals, as they are not allowed into Canada. These pharmaceuticals were received by way of gift from other charities. The Organization did not conduct any independent verification of the property it purportedly received, nor did it seek to verify the values associated with the property. The Organization accepted, at face value, the amounts represented by these charities and simply reports these as expended on its own charitable programs.

It is acknowledged that the Organization engaged the services of Zippharm International Inc. to conduct on-site inspections of some, but not all of the pharmaceuticals received by the Organization. However, we note that for the inspection purportedly conducted on January 1, 2005, no detailed inventory list of the Organization's stock was provided and the Organization's property had already been combined with that of other Canadian charities. As such, we are unconvinced that an accurate inspection could have been conducted that could differentiate between the pharmaceuticals owned by the Organization and those owned by other participants.

The Organization did not control the distribution of the pharmaceuticals. The Organization entered into a master Memorandum of Agreement with the Universal Aide Society (UAS), a formerly registered charity, engaging the latter as Agent for the purpose of distributing these pharmaceuticals. UAS, in turn, entered into Memoranda of Agreement with a number of sub-agents for the distribution of these pharmaceuticals. As noted in our previous letter, many of these Memoranda of Agreement were unsigned, undated, or in draft format.

In its July 26, 2010 submission, the Organization argues that the presence of the word "draft" on these agreements does not affect their enforceability. The Organization further argues that the fact that the agreements were not documented in writing until after the distribution had taken place is not fatal to the existence or enforceability of the agency relationship particularly given that "the agreements were in fact carried out according to their terms."

We cannot agree that these agreements were duly carried out or enforced according to their terms. For example, despite provisions in these agreements providing for regular reporting by the agents and sub-agents, the Organization effectively took no steps to monitor these activities or enforce these provisions (discussed in further detail below). The Organization accepted, based on the representations of the tax shelter promoters that the pharmaceuticals were distributed to end-recipients and used in the delivery of charitable programs. In our view, the lack of diligence exercised by the Organization with respect to its

agreements with its agents and sub-agents is further proof of its role as a passive conduit of property.

The Organization received over \$100 million in cash and transferred 99% of this cash to tax shelter promoters and other participants in this arrangement for solicitation of funds and medicines (32.68% plus GST), as well as the balance of the total funds for costs associated with "administration, marketing, distribution, shipping, and all other costs...". These payments were, as noted in our previous letter, made pursuant to this agreement through a trust account with law firm Daigle & Hancock, a trust account over which the Organization had no control. The July 26, 2010 letter, submits that the disbursements were at all times controlled by the Organization, but provides no evidence to support this fact. While documentation surrounding the repayment of liens has been submitted, the Organization at no time sought to obtain information or review the services provided and the cost for which it was obligated to pay with the balance of total funds.

As such, it remains our position the Organization is operating collaterally, if not primarily for the non-charitable purpose of promoting a tax shelter arrangement. The Organization has modified its original charitable mandate to accommodate its participation in this tax shelter arrangement and, in our view, does not genuinely pursue charitable purposes relating to the promotion of health. In this regard, the Organization has entered into contracts overwhelmingly for the benefit of the tax shelter promoters and structured its financial affairs in accordance with the promoters' instructions to accommodate this arrangement. In return for a 1% commission, the Organization agreed to act as a passive conduit for tax shelter property, reporting purported expenditures on charitable activities it had neither verified, nor played an active role in.

Under paragraph 168(1)(b) of the Act, the Minister may, by registered mail, give notice to the organization that the Minister proposes to revoke its registration because it ceases to comply with the requirements of the Act related to its registration as such. It is our position that the Organization has not operated for exclusively charitable purposes and devoted its resources exclusively to charitable activities and for this reason alone there are grounds to revoke its charitable status.

Failure to devote its resources to its own charitable activities

Our audit has revealed that the Organization did not devote its resources exclusively to charitable activities carried on by the organization itself. As detailed in our previous letter, where a registered charity chooses to operate through an appointed agent or representative (intermediary), it must be able to substantiate, generally through documentary evidence, that it has arranged for the conduct of certain specific activities on its behalf, and has not simply made a transfer of its resources to a non-qualified donee.

Direction and Control

We have reviewed your responses contained in your submission of July 26, 2010, and must advise that our concerns with respect to the lack of control and direction exercised by the Organization have not been alleviated.

As stated above, the Organization represents that during the audit period, it distributed approximately \$300 million in pharmaceuticals to charitable beneficiaries through a network of sub-agents in 27 different countries. Throughout 2004 and 2005, the Organization purportedly carried out these activities through the Universal Aide Society. In 2006, the Organization represents that it engaged agents directly so as "to ensure greater accountability and control over its international projects". In support of these activities, the Organization entered into a series of memoranda of agreement (MOA) with its agents. In its July 26, 2010 letter, the Organization notes that these MOAs included all the information required by the CRA.

As noted in our previous letter, while there is no obligation under the Act for a charity to have a written agency agreement, the CRA often recommends this practice, as it helps the registered charities to demonstrate in part, how they exercise proper control and direction over their charitable activities carried out through intermediaries. On the other hand, the mere existence of an agency agreement is not in and of itself sufficient to demonstrate that the organization is carrying on its own charitable activities, as opposed to acting as a conduit of property to non-qualified donees. It is the actual conduct of the charity in any given situation which will determine whether it is exercising proper control and direction over its agents such that it can be considered to be carrying on its own charitable activities as required under the Act.

We agree the Organization was involved, although mildly, in the selection of the end-recipients of the pharmaceuticals and, to this end, entered into MOAs with various organizations for the purpose of distributing pharmaceuticals. However, it is our position, based on our audit and a review of the documentation that this is largely where the Organization's role in these activities ended. After signing the agreements, the Organization had little involvement in the pharmaceutical distribution program, carried out very minimal monitoring of its agreements, and appears to have had no active role in the actual delivery of pharmaceuticals to charitable beneficiaries.

Through its contract with WHI, all arrangements for the actual acquisition, shipping and delivery of pharmaceuticals were arranged by the tax shelter promoters with little involvement by the Organization. As stated above, the Organization paid the costs purportedly associated with these activities, but made little effort to monitor or verify the legitimacy of these payments. It is acknowledged that considerable documentation (e.g., shipping documents) was received by the Organization. However, in our view, simply receiving documentation associated with the shipment of purportedly hundreds of millions of dollars in pharmaceuticals is insufficient to demonstrate that the Organization was an active participant in this program or adequately monitoring these activities. Per our previous letter, in many instances the documentation received and maintained by the Organization was incomplete, contained inaccurate information and letters of acknowledgement addressed not to the Organization itself, but to other parties. While the Organization has, as a result of this audit, sought to reconcile and obtain information for the CRA and seek explanations for a number of these issues, this is not sufficient to demonstrate that the Organization was actively monitoring and supervising its programs during the period under review.

As stated above, the delivery of pharmaceuticals to the consignees was, in 2004 and 2005, delegated to UAS through a written agreement and in 2006, the Organization entered

into agreements with consignees directly.¹ The Organization represents that these activities were carried out through MOAs providing that these agents and sub-agents would distribute pharmaceuticals, on its behalf, according to the distribution plan. However, little evidence has been submitted to demonstrate that the Organization carried out any monitoring and supervision of its agents or its sub-agents. Despite representations that the agreements were carried out according to their terms, this is not in fact the case.

For example, under the agreement with UAS, the Organization was to receive a letter of receipt, following the shipment of pharmaceuticals, and subsequently a status report "no later than 90 days after arrival of the shipment" and a full distribution report prepared by the consignee on completion of distribution "no later than 180 days after arrival". As described in our previous letter, these provisions were clearly not complied with, nor are we satisfied the Organization took steps to enforce these provisions. The Organization has supplied copies of letters of acknowledgement from some, but not all of its sub-agents. In most of these instances, the distribution reports (which would demonstrate how the particular agent/sub-agent distributed the Organization's property in fulfillment of the agreement) were not provided at all, or were not provided within the timeframes specified within the MOA - often being provided several years after the fact.

It is acknowledged the Organization's executive director visited a small number of locations where the activities of its agents and sub-agents were carried out. However, in our view, conducting occasional on-site visits of organizations involved in medical relief is insufficient to establish that an agency or sub-agency relationship exists between these entities and the Organization. The July 26, 2010 submission, also argues that "As the distribution of medicine constitutes a discrete, short term project, on-going progress reports were not generally appropriate, and a final report was sufficient. The [Organization] received confirmation of the delivery of pharmaceuticals." This argument is advanced despite the fact that the various MOAs entered into by the Organization specifically required regular and detailed reporting. We also disagree with the statement that the "distribution of medicine constitutes a discrete, short term project" given the magnitude of the project and the quantity of pharmaceuticals to be distributed.

Based on our audit, the Organization has failed to demonstrate that it was an active and controlling participant in the activities it purports to have carried out. The majority of activities (i.e., acquisition, shipment, and distribution) have been delegated to third-party organizations. The Organization has not engaged in sufficient monitoring of these entities such that it can substantiate, to the satisfaction of the CRA, that the volume (and corresponding value) of pharmaceuticals it purports to have distributed were, in fact distributed to the "consignees". The Organization, apart from creating MOAs, exercised no on-going direction and control over these agents and sub-agents, even to the extent agreed to in these same agreements. The Organization assumes, but cannot substantiate, that the pharmaceuticals were distributed by these entities in accordance with the "detailed distribution plan". As such, we remain of the stance the Organization has not exercised sufficient control and direction over those that it engaged to carry out activities as is required by the Act.

¹ As noted previously, a number of these agreements were unsigned, in draft form or contained uncompleted information.

Finally, in the Organization's July 26, 2010 submission, it references a number of interpretive guidelines issued by the CRA with respect to the disposition of property to non-qualified donees. Again, per our previous letter, the CRA acknowledges a certain relaxing of the rules with respect to direction and control in circumstances where the nature of the property itself means that it could only be used for charitable purposes. However, a charity must nonetheless be in a position to support, through documentary evidence, the activities which it claims to have carried out and demonstrate that the property was, in fact, used in charitable programs.

As stated above, the Organization did not, at any given time, have physical possession of the pharmaceuticals. The Organization did not itself warehouse, ship or distribute the pharmaceuticals to consignees, and has provided incomplete and inaccurate documentation to support the claim that it distributed over \$300 million in pharmaceuticals. The Organization neither conducted any independent verification of the "consignees" which purportedly distributed the pharmaceuticals on its behalf, nor did it, in the majority of cases, follow up with these organizations to ensure that the pharmaceuticals were actually distributed to those in need. While the CRA is prepared to accept that some pharmaceuticals were delivered to third-party organizations to support health-related activities carried on by those groups, we are not satisfied that the Organization has demonstrated that these activities were carried out on its behalf or that sufficient documentation has been provided to support the volumes and values claimed by the Organization as charitable activity.²

In our view, the Organization has, through its participation in the tax shelter arrangement, abdicated its responsibility to maintain direction and control over the use of its resources. The Organization has transferred approximately \$100 million in cash to third-parties for a variety of activities and costs relating to the acquisition, shipping and distribution of pharmaceuticals, but has failed to adequately verify, monitor or supervise these activities and their costs. During the audit period, the Organization reports the distribution of \$300 million in pharmaceuticals to charitable beneficiaries in 27 countries through a network of sub-agents, but has not maintained proper documentation to support these activities, nor are we satisfied that the Organization has been an active participant in these activities.

Accordingly, it is our position that the Organization has not devoted its resources exclusively to charitable activities carried on by the organization itself and for this reason alone there are grounds to revoke its charitable status. Under paragraph 168(1)(b) of the Act, the Minister may by, registered mail, give notice to the organization that the Minister proposes to revoke its registration because it ceases to comply with the requirements of the Act related to its registration as such.

Failure to Maintain Adequate Books and Records

It remains our position that the Organization's books and records were inadequate to demonstrate that it maintains direction and control over the distribution of the pharmaceuticals. Our position is fully explained as per above.

² In many cases the documentation provided indicates that the pharmaceuticals were provided by multiple organizations, further complicating the process of determining the Organization's particular contribution to the activity.

Per our letter of May 12, 2010, the Organization failed to provide a reconciliation to support that the withdrawals from the trust account with Daigle & Hancock were used to pay the lien amounts. In its July 26, 2010 submission, the Organization provided documentation from the lien holder to support that it had made payments to WHI to discharge the liens. The documentation provided consists of copies of final discharge notices and notifications of receipt of funds issued by KP Innovispharm Ltd. (KPI) to Crunin Investments Inc. (Crunin) confirming the repayment of the principal of promissory notes owed by the latter. Our records indicated that the liens were placed on the pharmaceuticals as security for the promissory notes owed by Crunin to KPI. As per its own submissions, the Organization was only responsible for the payment to discharge the liens, which were valued at 18% of the underlying promissory notes. There was no indication the Organization was responsible for the principal repayment of the promissory notes owed by Crunin. Therefore, we fail to see how the documentation provided, which ostensibly confirmed the principal repayment of the promissory notes, can serve as evidence for the lien payments made by the Organization. Further, the final discharge notices suggest that the liens were discharged as a result of the settlement of the terms of the underlying promissory notes, which puts into question the need for the Organization to make separate payments to discharge the liens. For these reasons, our concerns with respect to this issue had not been alleviated by the Organization's representations.

Our letter of May 12, 2010, identified the discrepancies in the value of pharmaceuticals received as reported on the T3010 returns and as per the summary provided by the Organization. In its July 26, 2010 submission, the Organization explained that the amount reported on its T3010 returns represented the gross amount (per summary) net of the liens on the pharmaceuticals. Using the total values of the liens as per Tab 15 of the July 26, 2010 submission, we recalculated the net amount of the received pharmaceuticals as follows:

	2004	2005	2006
Total In-Kind Contributions Received (per summary provided)	\$77,618,883	\$136,372,892	\$149,502,468
Total Liens (per Tab 15)	\$(13,767,840)	\$(21,702,720)	\$(23,814,720)
Adjusted In-Kind Contribution Received	\$63,851,043	\$114,670,172	\$125,687,748
Total In-Kind Contributions Received (per Revised T3010)	\$63,131,972	\$117,531,388	\$122,379,691
Discrepancy with T3010	\$719,071	-\$2,861,216	\$3,308,057

As shown in the above table, there still remain significant discrepancies between the amounts as reported on the T3010 returns and per the summary after adjusting for the liens.

The Organization did not dispute our findings on the discrepancies in the donation receipts issued in 2004-2006 and the quantity of pharmaceuticals reported as held by MedPharm.

Given the above, it remains our position that the Organization failed to comply with the provisions of section 230 of the Act with respect to its 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 for failing to comply with section 230 of the Act.

Failure to file an Accurate Information Return

The Organization did not dispute our assertions that it failed to file the T3010 return within the timeframe as mandated by subsection 149.1(14) of the Act nor our finding of the filing error on lines 5000 and 5060 of the 2006 T3010 return. Our position on the inaccuracies with respect to lines 4500 and 4510 had been addressed above.

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.

Failure to Meet its Disbursement Quota

While we remain of the opinion that the amounts reported as received and distributed by the Organization are neither accurate nor supported by sufficient documentation to be considered as expenditures on the Organization's own charitable activities, we are no longer proposing failure to meet the Organization's disbursement quota as grounds for revocation.

Appropriateness of Revocation:

Finally, we note that your letter argues that revocation is not appropriate in the circumstances. We respectfully disagree.

As detailed in our previous letter, the Organization participated in a pharmaceutical donation program wherein individuals "donate" cash and over-valued pharmaceuticals to registered charities. The Organization has during the period under review, operated to facilitate this arrangement.

Despite not being responsible for the issuance of tax receipts itself, the Organization accepted over \$100 million in cash from other charities and flowed approximately 97.43% of these funds out to WHI to discharge liens and pay a variety of other fees and costs associated with this program. Per our audit and the documentation submitted, the Organization made little effort to verify the validity of these payments, agreeing as it did to transfer "*the balance of the total funds received*" to the tax shelter promoters. The Organization itself was content to retain only 1% of these amounts.

The Organization has not sought to independently verify the values associated with the pharmaceuticals which it claims in its charitable programs and for which it has paid substantial fundraising fees. The Organization reports the distribution of over \$300 million in pharmaceuticals during the audit period in question, but has not maintained any basic control and direction over this property, nor has it maintained sufficient documentation to support these activities. The Organization is, in our view, satisfied to simply report the information provided to it by the tax shelter promoters because, for little to no effort, it was entitled to collect a fee for its participation.

It therefore remains our position that the Organization has conducted its affairs in a manner designed primarily to benefit private individuals and has, for a fee, facilitated a tax

shelter arrangement by reporting activities it has little involvement in and no control over. It is the CRA's position that, as described in this letter, these are serious contraventions of the Act and warrant revocation of the Organization's registered status.

Section 149.1: [Charities]

149.1(2) Revocation of registration of charitable organization

The Minister may, in the manner described in section 168, revoke the registration of a charitable organization for any reason described in subsection 168(1) or where the organization

- (a) carries on a business that is not a related business of that charity; or
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the organization's disbursement quota for that year.

149.1(3) Revocation of registration of public foundation

The Minister may, in the manner described in section 168, revoke the registration of a public foundation for any reason described in subsection 168(1) or where the foundation

- (a) carries on a business that is not a related business of that charity;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;
- (c) since June 1, 1950, acquired control of any corporation;
- (d) since June 1, 1950, 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; or
- (e) at any time within the 24 month period preceding the day on which notice is given to the foundation by the minister pursuant to subsection 168(1) and at a time when the foundation was a private foundation, took any action or failed to expend amounts such that the Minister was entitled, pursuant to subsection (4), to revoke its registration as a private foundation.

149.1(4) Revocation of registration of private foundation

The Minister may, in the manner described in section 168, revoke the registration of a private foundation for any reason described in subsection 168(1) or where the foundation

- (a) carries on any business;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;
- (c) since June 1, 1950, acquired control of any corporation; or
- (d) since June 1, 1950, 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.

149.1(4.1) Revocation of registration of registered charity

The Minister may, in the manner described in section 168, revoke the registration

- (a) of a registered charity, if the registered charity has made a gift to another registered charity and it can reasonably be considered that one of the main purposes of making the gift was to unduly delay the expenditure of amounts on charitable activities;
- (b) of the other charity referred to in paragraph (a), if it can reasonably be considered that, by accepting the gift, it acted in concert with the registered charity to which paragraph (a) applies; and
- (c) of a registered charity, if a false statement, within the meaning assigned by subsection 163.2(1), was made in circumstances amounting to culpable conduct, within the meaning assigned by that subsection, in the furnishing of information for the purpose of obtaining registration of the charity.

Section 168: Notice of intention to revoke registration

168(1) Where a registered charity or a registered Canadian amateur athletic association

- (a) applies to the Minister in writing for revocation of its registration,
 - (b) ceases to comply with the requirements of this Act for its registration as such,
 - (c) fails to file an information return as and when required under this Act or a regulation,
 - (d) issues a receipt for a gift or donation otherwise than in accordance with this Act and the regulations or that contains false information,
 - (e) fails to comply with or contravenes any of sections 230 to 231.5, or
 - (f) in the case of a registered Canadian amateur athletic association, accepts a gift or donation the granting of which was expressly or impliedly conditional on the association making a gift or donation to another person, club, society or association,
- the Minister may, by registered mail, give notice to the registered charity or registered Canadian amateur athletic association that the Minister proposes to revoke its registration.

168(2) Revocation of Registration

Where the Minister gives notice under subsection (1) to a registered charity or to a registered Canadian amateur athletic association,

- (a) if the charity or association has applied to the Minister in writing for the revocation of its registration, the Minister shall, forthwith after the mailing of the notice, publish a copy of the notice in the *Canada Gazette*, and
- (b) in any other case, the Minister may, after the expiration of 30 days from the day of mailing of the notice, or after the expiration of such extended period from the day of mailing of the notice as the Federal Court of Appeal or a judge of that Court, on application made at any time before the determination of any appeal pursuant to subsection 172(3) from the giving of the notice, may fix or allow, publish a copy of the notice in the *Canada Gazette*,

and on that publication of a copy of the notice, the registration of the charity or association is revoked.

168(4) Objection to proposal or designation

A person that is or was registered as a registered charity or is an applicant for registration as a registered charity that objects to a notice under subsection (1) or any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) may, on or before the day that is 90 days after the day on which the notice was mailed, serve on the Minister a written notice of objection in the manner authorized by the Minister, setting out the reasons for the objection and all the relevant facts, and the provisions of subsections 165(1), (1.1) and (3) to (7) and sections 166, 166.1 and 166.2 apply, with any modifications that the circumstances require, as if the notice were a notice of assessment made under section 152.

Section 172: Appeal from refusal to register, revocation of registration, etc.**172(3) Appeal from refusal to register, revocation of registration, etc.**

Where the Minister

- (a) refuses to register an applicant for registration as a Canadian amateur athletic association,
- (a.1) confirms a proposal, decision or designation in respect of which a notice was issued by the Minister to a person that is or was registered as a registered charity, or is an applicant for registration as a registered charity, under any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) and 168(1), or does not confirm or vacate that proposal, decision or designation within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal, decision or designation,
- (b) refuses to accept for registration for the purposes of this Act any retirement savings plan,
- (c) refuses to accept for registration for the purposes of this Act any profit sharing plan or revokes the registration of such a plan,
- (d) refuses to issue a certificate of exemption under subsection 212(14),
- (e) refuses to accept for registration for the purposes of this Act an education savings plan,
- (e.1) sends notice under subsection 146.1(12.1) to a promoter that the Minister proposes to revoke the registration of an education savings plan,
- (f) refuses to register for the purposes of this Act any pension plan or gives notice under subsection 147.1(11) to the administrator of a registered pension plan that the Minister proposes to revoke its registration,
- (f.1) refuses to accept an amendment to a registered pension plan, or
- (g) refuses to accept for registration for the purposes of this Act any retirement income fund, the applicant or the organization, foundation, association or registered charity, as the case may be, in a case described in paragraph (a) or (a.1), the applicant in a case described in paragraph (b), (d), (e) or (g), a trustee under the plan or an employer of employees who are beneficiaries under the plan, in a case described in paragraph (c), the promoter in a case described in paragraph (e.1), or the administrator of the plan or an employer who participates in the plan, in a case described in paragraph (f) or (f.1), may appeal from the Minister's decision, or from the giving of the notice by the Minister, to the Federal Court of Appeal.

Section 180: Appeals to Federal Court of Appeal

180(1) Appeals to Federal Court of Appeal

An appeal to the Federal Court of Appeal pursuant to subsection 172(3) may be instituted by filing a notice of appeal in the Court within 30 days from

- (a) the day on which the Minister notifies a person under subsection 165(3) of the Minister's action in respect of a notice of objection filed under subsection 168(4),
- (b) the mailing of notice to a registered Canadian amateur athletic association under subsection 168(1),
- (c) the mailing of notice to the administrator of the registered pension plan under subsection 147.1(11),
- (c.1) the sending of a notice to a promoter of a registered education savings plan under subsection 146.1(12.1), or
- (c) the time the decision of the Minister to refuse the application for acceptance of the amendment to the registered pension plan was mailed, or otherwise communicated in writing, by the Minister to any person,

as the case may be, or within such further time as the Court of Appeal or a judge thereof may, either before or after the expiration of those 30 days, fix or allow.

Section 188: Revocation tax

188(1) Deemed year-end on notice of revocation

If on a particular day the Minister issues a notice of intention to revoke the registration of a taxpayer as a registered charity under any of subsections 149.1(2) to (4.1) and 168(1) or it is determined, under subsection 7(1) of the Charities Registration (Security Information) Act, that a certificate served in respect of the charity under subsection 5(1) of that Act is reasonable on the basis of information and evidence available,

- (a) the taxation year of the charity that would otherwise have included that day is deemed to end at the end of that day;
- (b) a new taxation year of the charity is deemed to begin immediately after that day; and
- (c) for the purpose of determining the charity's fiscal period after that day, the charity is deemed not to have established a fiscal period before that day.

188(1.1) Revocation tax

A charity referred to in subsection (1) is liable to a tax, for its taxation year that is deemed to have ended, equal to the amount determined by the formula

$$A - B$$

where

A is the total of all amounts, each of which is

- (a) the fair market value of a property of the charity at the end of that taxation year,
- (b) the amount of an appropriation (within the meaning assigned by subsection (2) in respect of a property transferred to another person in the 120-day period that ended at the end of that taxation year, or
- (d) the income of the charity for its winding-up period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 as if that period were a taxation year; and

B is the total of all amounts (other than the amount of an expenditure in respect of which a deduction has been made in computing income for the winding-up period under paragraph (c) of the description of A, each of which is

- (a) a debt of the charity that is outstanding at the end of that taxation year,
- (b) an expenditure made by the charity during the winding-up period on charitable activities carried on by it, or
- (c) an amount in respect of a property transferred by the charity during the winding-up period and not later than the latter of one year from the end of the taxation year and the day, if any, referred to in paragraph (1.2)(c) to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

188(1.2) Winding-up period

In this Part, the winding-up period of a charity is the period, that begins immediately after the day on which the Minister issues a notice of intention to revoke the registration of a taxpayer as a registered charity under any of subsections 149.1(2) to (4.1) and 168(1) (or, if earlier, immediately after the day on which it is determined, under subsection 7(1) of the Charities Registration (Security Information) Act, that a certificate served in respect of the charity under subsection 5(1) of that Act is reasonable on the basis of information and evidence available), and that ends on the day that is the latest of

- (a) the day, if any, on which the charity files a return under subsection 189(6.1) for the taxation year deemed by subsection (1) to have ended, but not later than the day on which the charity is required to file that return,
- (b) the day on which the Minister last issues a notice of assessment of tax payable under subsection (1.1) for that taxation year by the charity, and
- (c) if the charity has filed a notice of objection or appeal in respect of that assessment, the day on which the Minister may take a collection action under section 225.1 in respect of that tax payable.

188(1.3) Eligible donee

In this Part, an eligible donee in respect of a particular charity is a registered charity

- (a) of which more than 50% of the members of the board of directors or trustees of the registered charity deal at arm's length with each member of the board of directors or trustees of the particular charity;
- (b) that is not the subject of a suspension under subsection 188.2(1);
- (c) that has no unpaid liabilities under this Act or under the Excise Tax Act;
- (d) that has filed all information returns required by subsection 149.1(14); and
- (e) that is not the subject of a certificate under subsection 5(1) of the Charities Registration (Security Information) Act or, if it is the subject of such a certificate, the certificate has been determined under subsection 7(1) of that Act not to be reasonable.

188(2) Shared liability — revocation tax

A person who, after the time that is 120 days before the end of the taxation year of a charity that is deemed by subsection (1) to have ended, receives property from the charity, is jointly and severally, or solidarily, liable with the charity for the tax payable under subsection (1.1) by the charity for that taxation year for an amount not exceeding the total of all appropriations, each of which is the amount by which the fair market value of such a property at the time it was so received by the person exceeds the consideration given by the person in respect of the property.

188(2.1) Non-application of revocation tax

Subsections (1) and (1.1) do not apply to a charity in respect of a notice of intention to revoke given under any of subsections 149.1(2) to (4.1) and 168(1) if the Minister abandons the intention and so notifies the charity or if

- (a) within the one-year period that begins immediately after the taxation year of the charity otherwise deemed by subsection (1) to have ended, the Minister has registered the charity as a charitable organization, private foundation or public foundation; and
- (b) the charity has, before the time that the Minister has so registered the charity,
 - (i) paid all amounts, each of which is an amount for which the charity is liable under this Act (other than subsection (1.1)) or the Excise Tax Act in respect of taxes, penalties and interest, and
 - (ii) filed all information returns required by or under this Act to be filed on or before that time.

188(3) Transfer of property tax

Where, as a result of a transaction or series of transactions, property owned by a registered charity that is a charitable foundation and having a net value greater than 50% of the net asset amount of the charitable foundation immediately before the transaction or series of transactions, as the case may be, is transferred before the end of a taxation year, directly or indirectly, to one or more charitable organizations and it may reasonably be considered that the main purpose of the transfer is to effect a reduction in the disbursement quota of the foundation, the foundation shall pay a tax under this Part for the year equal to the amount by which 25% of the net value of that property determined as of the day of its transfer exceeds the total of all amounts each of which is its tax payable under this subsection for a preceding taxation year in respect of the transaction or series of transactions.

188(3.1) Non-application of subsection (3)

Subsection (3) does not apply to a transfer that is a gift to which subsection 188.1(11) applies.

188(4) Idem

Where property has been transferred to a charitable organization in circumstances described in subsection (3) and it may reasonably be considered that the organization acted in concert with a charitable foundation for the purpose of reducing the disbursement quota of the foundation, the organization is jointly and severally liable with the foundation for the tax imposed on the foundation by that subsection in an amount not exceeding the net value of the property.

188(5) Definitions

In this section,

"net asset amount"

"net asset amount" of a charitable foundation at any time means the amount determined by the formula

$A - B$

where

A is the fair market value at that time of all the property owned by the foundation at that time, and

B is the total of all amounts each of which is the amount of a debt owing by or any other obligation of the foundation at that time;

"net value"

"net value" of property owned by a charitable foundation, as of the day of its transfer, means the amount determined by the formula

$A - B$

where

A is the fair market value of the property on that day, and

B is the amount of any consideration given to the foundation for the transfer.

Section 189**189(6) Taxpayer to file return and pay tax**

Every taxpayer who is liable to pay tax under this Part (except a charity that is liable to pay tax under section 188(1)) for a taxation year shall, on or before the day on or before which the taxpayer is, or would be if tax were payable by the taxpayer under Part I for the year, required to file a return of income or an information return under Part I for the year,

- (a) file with the Minister a return for the year in prescribed form and containing prescribed information, without notice or demand therefor;
- (b) estimate in the return the amount of tax payable by the taxpayer under this Part for the year; and
- (c) pay to the Receiver General the amount of tax payable by the taxpayer under this Part for the year.

189(6.1) Revoked charity to file returns

Every taxpayer who is liable to pay tax under subsection 188(1.1) for a taxation year shall, on or before the day that is one year from the end of the taxation year, and without notice or demand,

(a) file with the Minister

(i) a return for the taxation year, in prescribed form and containing prescribed information, and

(ii) both an information return and a public information return for the taxation year, each in the form prescribed for the purpose of subsection 149.1(14); and

(b) estimate in the return referred to in subparagraph (a)(i) the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year; and

(c) pay to the Receiver General the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year.

189 (6.2) Reduction of revocation tax liability

If the Minister has, during the one-year period beginning immediately after the end of a taxation year of a person, assessed the person in respect of the person's liability for tax under subsection 188(1.1) for that taxation year, has not after that period reassessed the tax liability of the person, and that liability exceeds \$1,000, that liability is, at any particular time, reduced by the total of

(a) the amount, if any, by which

(i) the total of all amounts, each of which is an expenditure made by the charity, on charitable activities carried on by it, before the particular time and during the period (referred to in this subsection as the "post-assessment period") that begins immediately after a notice of the latest such assessment was mailed and ends at the end of the one-year period

exceeds

(ii) the income of the charity for the post-assessment period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 if that period were a taxation year, and

(b) all amounts, each of which is an amount, in respect of a property transferred by the charity before the particular time and during the post-assessment period to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

189(6.3) Reduction of liability for penalties

If the Minister has assessed a registered charity in respect of the charity's liability for penalties under section 188.1 for a taxation year, and that liability exceeds \$1,000, that liability is, at any particular time, reduced by the total of all amounts, each of which is an amount, in respect of a property transferred by the charity after the day on which the Minister first assessed that liability and before the particular time to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the total of

- (a) the consideration given by the person for the transfer, and
- (b) the part of the amount in respect of the transfer that has resulted in a reduction of an amount otherwise payable under subsection 188(1.1).

189 (7) Minister may assess

Without limiting the authority of the Minister to revoke the registration of a registered charity, the Minister may also at any time assess a taxpayer in respect of any amount that a taxpayer is liable to pay under this Part.