



REGISTERED MAIL

SEP 02 2014

Skyway Foundation of Canada
c/o Deana Sakawsky
11746 72nd Ave.
Delta BC V4E 1Z4

Attention: Ms. Deana Sakawsky

BN: 82458 4411 RR0001

File #: 3037943

**Subject: Notice of Intention to Revoke
Skyway Foundation of Canada**

Dear Ms. Sakawsky:

I am writing further to our letter dated October 2, 2013 (copy enclosed), in which you were invited to submit representations as to why the registration of Skyway Foundation of Canada (the Organization) should not be revoked in accordance with subsection 168(1) of the *Income Tax Act* (the Act).

We have now reviewed and considered your written response dated November 2, 2013 (copy enclosed). However, notwithstanding your reply, our concerns with respect to the Organization's activities, failure to issue receipts in accordance with the Act and failure to meet its annual disbursement quota, have not been alleviated. The basis for our concerns is explained below.

1. Failure to Devote Resources to Charitable Activities

Our audit identified that the Organization, based on its activities and resources, was not devoting its resources to entirely charitable purposes. In our view, the Organization's stated purpose, which is to fund other qualified donees, has been side-tracked by its participation in a private tax-planning arrangement. As described in the balance of this letter, and in our letter of October 2, 2013, the Organization's participation in the tax-planning arrangement is in serious breach of the requirements for registration under the *Income Tax Act*, and its registration should be revoked.

Our audit revealed that the majority of the Organization's time and resources were devoted to its involvement in the tax-planning arrangement with little, if any, emphasis placed on supporting other qualified donees. While we acknowledge the Organization did gift to one qualified donee - the one charity noted in the directed cash gift the Organization received - the

Organization issued approximately \$2.6¹ million in tax-receipts for donations of OSE Corporation's shares, as per its participation in the share manipulation tax-planning arrangement². Other than its involvement in the tax-planning arrangement, the Organization did not partake in any notable charitable activity during the audit period nor does it appear to have engaged in further activities post-audit. We therefore find it difficult to conclude that the predominant purpose of the Organization was anything other than its involvement in the tax-planning arrangement.

Regarding the tax-planning arrangement, the audit revealed that in 2008 the Organization received donations of shares from OSE Corporation totaling approximately \$2.6 million. During 2008 the share price of OSE Corporation increased dramatically in value and, subsequently, lost much of this value by early 2009. The sharp increase in OSE Corporation's share price during this time appears to have led to two investigations³ which demonstrated that a group of individuals had undertaken a trading scheme to manipulate or misrepresent the value of the OSE Corporation's shares.

Evidence gathered as a part of the CRA's audit indicates that the three directors of the Organization registered a high volume of share activity in their trading accounts for OSE Corporation shares during 2008, and were not at arm's length to other individuals involved in the trading scheme, the donors of the shares, or certain directors of the OSE Corporation. Further, it was revealed that one of the Organization's directors, either personally or via Xcel Management Consulting Inc., a corporation controlled by her, provided bookkeeping or administrative services for both the Organization and OSE Corporation during the period in question. It is the position of the CRA that the directors of the Organization knew or ought to have known about the trading scheme at the time the donations were made. The directors caused the charity to accept the donations, and issue receipts, knowing that these shares were overvalued. As such, it remains our view that the Organization lent its registration and resources to the purpose of a trading scheme involving the issuance of tax receipts for the benefit of a private group of persons.

At its heart, the tax-planning arrangement involved the donation of shares whose publicly trade share-price had been artificially manipulated (i.e., over-valued) in order to get a larger Charitable Donations Tax Credit (CDTC) for the donors of the shares to the Organization than would otherwise be available to them. Not only did the donors receive a larger tax credit, but they were also not made poorer by making their donations. On the contrary, our calculations have shown the donors benefitted financially by donating the shares as the tax credit received exceeded the donors' actual out of pocket outlay.

Your representations did not provide any additional documentary evidence refuting that the Organization and the donors were not involved in the OSE Corporation's share manipulation tax-planning arrangement. Your principal argument was that the Organization issued the donation receipts based on the then fair market value of the shares (i.e., the publicly traded

¹The Organization received gifts of shares in OSE Corp, a public company whose shares were being traded on the TSX Venture Exchange, of \$2,598,500 and cash donations of \$105,100 in 2008. Virtually all of the cash donations were received with directions that they be directed to

²[http://www.bcsc.bc.ca/comdoc.nsf/0/5fa0d59063c307ec88257baa0077085c/\\$FILE/2013%20BCSECCOM%20131.pdf](http://www.bcsc.bc.ca/comdoc.nsf/0/5fa0d59063c307ec88257baa0077085c/$FILE/2013%20BCSECCOM%20131.pdf)

³http://www.iroc.ca/Documents/2012/59fdca35-0c9d-46c1-89bd-8bef4e375326_en.pdf;
[http://www.bcsc.bc.ca/comdoc.nsf/0/5fa0d59063c307ec88257baa0077085c/\\$FILE/2013%20BCSECCOM%20131.pdf](http://www.bcsc.bc.ca/comdoc.nsf/0/5fa0d59063c307ec88257baa0077085c/$FILE/2013%20BCSECCOM%20131.pdf)

share price) to persons not associated with the Organization. We disagree with your representations and concur with the conclusions of the investigations conducted by the Investment Industry Regulatory Organization of Canada (IIROC) as well as the British Columbia Securities Commission (BCSC) wherein it was revealed directors of the Organization and persons they were related to or affiliated with were involved in the OSE Corporation's share manipulation.

It is our position that by pursuing this non-charitable purpose, the tax-planning arrangement, the Organization has failed to demonstrate it meets the test for continued registration under subsection 149.1(1) of the Act as a public foundation that "operated exclusively for charitable purposes." 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. For this reason alone, there are grounds for revocation of the Organization's registered charity status under paragraph 168(1)(b) of the Act.

2. Failure to Issue Receipts in Accordance with the Act

Pursuant to subsections 110.1(2) and 118.1(2) of the Act, a registered charity can issue tax receipts for income tax purposes for donations that legally qualify as gifts. The Act requires a registered charity to ensure the information on its official donation receipts is accurate. The requirements for the contents of the receipts are listed in Regulation 3501 of the Act. A registered charity could have its registered status revoked under paragraph 168(1)(d) of the Act for failure to issue receipts for gifts in accordance with requirements of the Act.

It remains our position that the Organization has contravened the Act by issuing receipts for transactions that do not qualify as gifts. The Organization issued approximately \$2.6 million in tax receipts as a result of its participation in the tax-planning arrangement and that this amount was significantly inflated.

Per our October 2, 2013 letter, in addition to the use of inflated fair market values to substantiate the value of the donations, we found your receipts deficient in several other areas: improper donation dates, the name "Canada Revenue Agency" omitted and incorrect donor names. Most importantly; however, as indicated in the previous section, we found a definite lack of donative intent on the part of the donors as their primary motive was not to enrich the Organization but rather to benefit themselves financially through the tax credits claimed.

Your representations have not provided any new information or documentation to suggest that our initial findings were incorrect in any material way. Rather, claims of ignorance, and/or a lack of understanding, of the rules and our policies were provided; neither is an acceptable reason for non-compliance.

Accordingly, it is the CRA's position that the Organization issued receipts for transactions that do not qualify as gifts at law and breached Regulation 3501. Under paragraph 168(1)(d), the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the

Act and its Regulations. Issuing a donation receipt where there is no donative intent, no gift, or the information on the receipt is false, is not in accordance with the Act. For this reason alone, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(d) of the Act.

3. Disbursement Quota Shortfall

We have reviewed your representations with respect to the disbursement quota shortfall we re-calculated as a result of our audit; however, your representations did not provide any information that would cause us to alter our position. The Organization failed to disburse, via gifts to qualified donees or expenditures on its own charitable programs, an amount of at least \$2,162,880 in 2009 in order to meet its annual disbursement quota. It has also not carried out any significant expenditures on charitable activities or gifts to qualified donees in subsequent years to make up for this shortfall. Therefore, we maintain that the Organization has failed to meet its disbursement quota obligation as per paragraph 149.1(3)(b) of the Act for the taxation years under audit and this is grounds for revocation.

Conclusion

It is our position that during the audit period, the Organization did not comply with the requirements set out in the *Income Tax Act*. In particular, it was found that the Organization issued donation receipts other than in accordance with the Act or its Regulations, failed to devote resources to charitable activities and failed to meet its annual disbursement quota.

The audit found that the Organization participated in a tax planning arrangement involving the issuance of income tax receipts for donations of artificially inflated shares. During 2008, a private group of taxpayers engaged in transactions designed to artificially inflate the value of publicly traded shares. These shares were subsequently donated to the Organization which, in turn, issued official donation receipts totaling approximately \$2.6 million. Subsequent to the donation, in 2009, these shares lost nearly 95% of their value resulting in a substantial loss to the Organization. It is the position of the CRA that the transfers for which the official receipts were issued did not legally qualify as gifts and that the Organization operated for the non-charitable purpose of facilitating the tax planning arrangement.

For all of these reasons, and for each reason alone, it is the position of the CRA that the Organization no longer meets the requirements necessary for charitable registration and should be revoked in the manner described in subsection 168(1) of the Act.

Consequently, for each of the reasons mentioned in our letter dated October 2, 2013, I wish to advise you that, pursuant to subsections 168(1) and 149.1(3) 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)(d) and 149.1(3)(b) 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	Name
824584411RR0001	Skyway Foundation of Canada Ladner BC

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

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

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

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

Consequences of Revocation

As of the effective date of revocation:

- a) the Organization will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the Act, respectively;
- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the Notice of Intention to Revoke. This revocation tax is calculated on prescribed form 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. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix "A". Form T-2046 and the related Guide RC-4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, are available on our Web site 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*. As a result, the Organization may be subject to obligations and entitlements under the *Excise Tax Act* that apply to organizations other than charities. If you have any questions about your Goods and Services Tax/Harmonized Sales Tax (GST/HST) obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

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

Yours sincerely,



Cathy Hawara
Director General
Charities Directorate

Attachments:

- CRA letter dated October 2, 2013;
- Your letter dated October 31, 2013; and
- Appendix "A", Relevant provisions of the Act

cc: Carol Norris, Director





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Skyway Foundation of Canada
11746 72nd Ave.
Delta, BC V4E 1Z4

Attention: Deana Sakawsky, President

BN: 82458 4411 RR0001

File #: 3037943

October 2, 2013

Subject: Audit of Skyway Foundation of Canada

This letter is further to the audit of the books and records of the Skyway Foundation of Canada (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from February 8, 2008 to December 31, 2009.

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

AREAS OF NON-COMPLIANCE:	
Issue	Reference
1. Issuing official income tax receipts not in accordance with the Act	110.1, 118.1, 149.1(2), 168(1)(d) Reg. 3500, 3501(1), and 3501(1.1)
2. Failure to devote resources to charitable activities	149.1(1), 149.1(3), 168(1)(b)
3. Failure to meet its annual disbursement quota	149.1(3)(b)

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Canada Revenue Agency
Agence du revenu du Canada

The purpose of this letter is to describe the areas of non-compliance identified by the CRA during the course of the audit, as they relate to the legislative and common law requirements applicable to registered charities, and to provide the Organization with the opportunity to make additional representations or present additional information. Registered

charities must comply with the law, failing which the Organization's registered status may be revoked in the manner described in section 168 of the Act.

The balance of this letter outlines relevant background information, and describes the identified areas of non-compliance in further detail.

Background - British Columbia Securities Commission (BCSC)

On August 2, 2012 BCSC issued a *Temporary Order and Notice of Hearing* against five British Columbia residents (the respondents) regarding the manipulation of share prices in OSE Corp. (OSE). One of the respondents named in the BCSC hearing is Mr. Perminder Sihota, currently a director of the Organization.

OSE is a company listed on the TSX Venture Exchange. The share prices of OSE are central to the audit of the Organization, as shares of this corporation have been gifted to the Organization. (OSE is currently under new management and operates under the name Petro Basin Energy Corporation.)

The following facts have been provided by BCSC in its notification:

- The respondents and other individuals, (the group) acquired a dominant share position in OSE by purchasing its shares at \$0.10 - \$0.11/share in two private placements. Information available to the CRA indicates that the group included the three directors of the Organization - Perminder Sihota, Deana Sakawsky and Lynn Norris, as well as the donors of OSE shares to the Organization - [REDACTED]
- By trading through certain brokerage accounts held by the group, OSE's share price was manipulated to a high near \$2.00/share;
- Throughout 2008, the group maintained OSE's share price above \$1.50/share by dominating the buying and selling of OSE shares;
- The group obtained proceeds of \$7,177,305 by selling 4,604,900 more shares on the TSX Venture Exchange than they purchased;
- The respondents engaged in or participated in conduct relating to OSE shares when they knew, or reasonably should have known, that the conduct resulted in or contributed to a misleading appearance of trading activity in, or an artificial price for, OSE shares, contrary to Section 57 of the Securities Act;
- At the conclusion of the manipulation, OSE shares traded at \$0.08/share.

A formal hearing by BCSC into the matter is scheduled for October 28, 2013 at which the Executive Director will tender evidence, make submissions and apply for orders against the Respondents.

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Identified Areas of Non-Compliance

1. Issuing official income tax receipts not in accordance with the Act

It is our position that the Organization has contravened the *Income Tax Act* by accepting and issuing receipts for transactions that do not qualify as gifts by participating in a private tax planning arrangement. The Organization has issued tax receipts exceeding \$2.7¹ million in cash and OSE shares in 2008 as per its participation in the above OSE share manipulation. We have determined that the properties for which the tax receipts were issued were not gifts at law and the received values were grossly inflated.

Pursuant to subsection 118.1(2) of the Act, a registered charity can issue tax receipts for income tax purposes for donations that legally qualify as gifts. The Act requires the registered charity to ensure the information on its official donation receipts is accurate. The requirements for the content of the receipts are listed in Regulation 3501 of the Act. A registered charity could have its registered status revoked under paragraph 168(1)(d) of the Act for issuing tax receipts that contain false information.

It is of particular importance that the registered charity reports the correct value of the gift on the tax receipts. Given the potential uncertainty over their valuation, the Act stipulates that the "fair-market value" (FMV) of a gift of non-cash property to be reported on the tax receipts. The CRA recognizes the complexity of valuating non-cash property and recommends the use of an independent appraiser where a registered charity issues a tax receipt of significant value for gift-in-kind. 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 party². 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.

Additionally, we would like to inform you that certain amendments to the Act were introduced as part of Bill C-33 tabled in Parliament on March 23, 2004, that came into force May 13, 2005. As part of the amendments, a registered charity that issues an official donation receipt that includes incorrect information is liable to a penalty equal to 5% of the eligible amount stated on the receipt. This penalty increases to 10% for a repeat infraction within 5 years.

A registered charity that issues an official donation receipt that includes false information is liable to a penalty equal to 125% of the eligible amount stated on the receipt.

¹ The Organization received gifts of shares in OSE, a public company whose shares were being traded on the TSX Venture Exchange of \$2,598,500 and cash donations of \$105,100 in 2008. Substantially all or \$100 000 of the cash donations were received with directions that they be directed to [REDACTED]

² An independent party is one who is not affiliated with the charity or the originator of the property.

where the total does not exceed \$25,000. Where the total exceeds \$25,000, the charity is liable to a penalty equal to 125% and the suspension of tax-receipting privileges. We do not intend to apply these penalties given the serious nature of other matters of non-compliance. We are therefore pursuing other ends as explained below.

Lack of Donative Intent

In order to qualify as a charitable donation, there must be a true gift at common law. A true gift is a voluntary transfer of property from a donor, who must freely dispose of the property to a donee who receives the property given. The transaction may not result directly or indirectly in any right, privilege, benefit or advantage to the donor or to the person designated by the donor. Any legal obligation of the donor would cause the transfer to lose its status as a gift.

An essential element of a gift is *animus donandi*; meaning, that the donor must be motivated by an intention to give. It must be clear that the donor intends to enrich the donee by giving away property, and to generally grow poorer as a result of making the gift.

It is our position that the OSE shares received by the Organization did not constitute a gift at law. A gift must be a gift at law in order for it to be a valid charitable gift under section 118.1 of the Act.

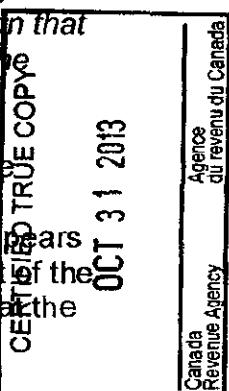
In *Webb v. The Queen*, 2004 TCC 619, [2004] T.C.J. No. 453 at paragraph 16, Bowie J. enlarged on the notion of "donative intent":

*[16] Much has been written on the subject of charitable donations over the years. The law, however, is in my view quite clear. I am bound by the decision of the Federal Court of Appeal in *The Queen v. Friedberg*, among others. These cases make it clear that in order for an amount to be a gift to charity, the amount must be paid without benefit or consideration flowing back to the donor, either directly or indirectly, or anticipation of that. The intent of the donor must, in other words, be entirely donative.*

In *Coombs et al v. The Queen*, 2008 DTC 4004, Woods J. listed the requisite elements of this definition as follows:

[15] First, it is necessary that the gifted property be owned by the donor, second that the transfer to the charity be voluntary, third that no consideration flow to the donor in return for the gift, and fourth that the subject of the gift be property, which distinguishes it from providing services to the charity. These elements reflect the general notion that a taxpayer must have a donative intent in regards to the transfer of property to the charity. [Emphasis added]

It is our finding, based on the transactions outlined by the BCSC as well as those identified by the CRA that the primary motivation of the group was not to enrich the Organization, but rather to make a profit from the tax credits so obtained. The group appears to have acquired the OSE shares either by way of gift or for a minimal price. As a result of the alleged share manipulation, the value of the shares was increased significantly such that the



group obtained substantial charitable donation tax credits offsetting upwards of 80% of the person's taxable income.

As such, it is our view that there was no intention to make a "gift" within the meaning assigned at section 118.1 of the Act. Participants in the private tax planning arrangement were primarily motivated by the artificial manipulation of the tax incentives available rather than a desire to enrich the Organization. In our view, these transactions, given the combination of the excessive or inflated tax credits and other benefits received, lack the requisite *animus donandi* to be considered as gifts.

Fair Market Value (FMV)

Regulation 3501(1.1)(h)(ii) requires every registered charity to report the fair market value of a gift of property on an official income tax receipt.

The Business Equity Valuation (BEV) Division of the CRA has reviewed the tax-receipted values which were used by the Organization for each of the three donations of OSE shares. The equity valuation was completed to determine if the market value of the shares was overstated given the allegations of market manipulation. Based upon the review by the BEV, it is estimated that the FMV of the common shares was \$0.098/share and \$0.0664/share on June 26 and December 1, 2008 respectively whereas the Organization used a value of \$2.08/share and \$1.75/share respectively.

Date of Donations

Regulation 3501(1)(e) requires that the day on which a cash donation is made, must be indicated on the official income tax receipt. Tax receipts #3 and #4 were issued for OSE shares purportedly received on December 1, 2008 yet tax receipt #5 was issued for OSE shares purportedly received on June 26, 2008. The sequencing of the tax receipts raises some concern as to the actual date of the donations.

Regulation 3501(1)(e.1) requires that the day on which a non-cash donation was made, must be indicated on the receipt. Similarly, this information was not reported.

Canada Revenue Agency

Regulation 3501(1)(j) required that the name "Canada Revenue Agency" and its website address (www.cra.gc.ca/charities) be included on each donation receipt. This was not done.

Ten-Year Gifts

As discussed on CRA's website³ when a charity receives a donation that will be held for ten years or more, it is subject to a written trust or direction (see "ten-year gifts"). Written trusts or directions were not provided for OSE shares and reported as enduring property.

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³ (<http://www.cra-arc.gc.ca/char-gvng/char-glssry-eng.html>)

Name of Donor

According to documentation available to the CRA, [REDACTED] made a \$2,500 donation to the Organization; however, the deposit slip was written so that it appeared that the donation was made by an individual donor. This individual was issued a donation receipt in the amount of \$2,500, even though the donation was made by a corporation and not the individual.

Under paragraph 168(1)(d), the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and its Regulations. Issuing a donation receipt where there is no gift, no donative intent or the information on the receipt is incorrect, is not in accordance with the Act. It is our position that the Organization has issued receipts otherwise than in accordance with the Act and the Regulations. For each reason identified above, there may be grounds for revocation of the Organization's charitable status under paragraph 168(1)(d) of the Act.

2. Failure to devote resources to charitable activities

Our audit revealed that the Organization has devoted a significant portion of its resources to the private tax planning arrangement through the issuance of approximately \$2.5 million in receipts for non-cash gifts received in 2008. In 2009, the Organization wrote the shares down to \$140,000 or \$0.10/share for the purposes of reporting the investment on the Organization's T3010, *Registered Charity Information Return*. Additionally, in 2011, the Organization has reported on its T3010 that it has disposed of some of its holdings in OSE.

It is our position that the Organization has operated for the non-charitable purpose of promoting a private tax planning arrangement and has structured its affairs for the benefit of private persons to the detriment of the Organization's charitable mandate.

Trust law imposes on a registered charity's directors the obligation to properly manage the assets of the charity. While it is often difficult for directors to foresee whether an asset they propose to acquire on behalf of the charity will be a good investment, the rules of prudent administration require that they take reasonable steps to ensure that the investment is a wise one which will ultimately be favourable for the charity. It is our view the Organization's directors did not exercise the proper due diligence in acquiring the OSE shares since the total market value of the shares decreased significantly following the donation.

Based on the Organization's limited activities outside of the private tax planning arrangement, a reasonable person could conclude that the creation of a registered charity, the purchase/acquisition of OSE shares and the donation of the shares was entirely orchestrated for the purpose of earning tax credits from the manipulation of OSE shares through the buy and donate transactions of individual donors. In our view, the Organization has not operated as a registered charity, but as a facilitator of a private tax planning arrangement. Further, the three directors were complicit in the private tax planning arrangement and were primarily motivated by personal (financial) self-interest. AS A RESULT, CERTIFIED TRUE COPY the directors have operated/managed the Organization in a manner that is contrary to the purposes for which it was constituted.

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As per subsection 149.1(1) of the Act, a charitable foundation must be constituted and operated exclusively for charitable purposes. It is our position that the Organization engaged in a private tax planning arrangement in order to confer significant tax benefits on private persons. Operating for the benefit of a private person is not a charitable purpose. As such, we believe there is sufficient grounds to revoke the charitable status of the Organization under paragraph 168(1)(b) of the Act.

3. Failure to Meet its Annual Disbursement Quota

In order to maintain its status as a public foundation within the meaning of paragraph 149.1(3)(b) of the Act, a registered charity must, in any taxation year, expend amounts on charitable activities and/or gifts to qualified donees, that are equal to at least 80% of the aggregate amounts for which it issued donation receipts in its immediately preceding taxation year.

Although the 2010 Federal Budget and its accompanying legislation has proposed significant changes to the charitable expenditure part of the disbursement quota (80/20 part A), it does not apply to fiscal years ending before March 4, 2010. We have calculated that the Organization has a significant disbursement quota shortfall due to the fact that, despite classifying the OSE shares as gifts of enduring property in 2008, the Organization did not obtain direction from the donor's to hold the shares as such. As a result, the Organization was required to disburse, via gifts to qualified donees or expenditures on its own charitable programs, at least \$2,162,880 in 2009 in order to meet its annual disbursement quota. The Organization reported no charitable expenditures at line 5000 of the T3010 nor did it report gifts made to qualified donees at line 5050, 5060 or 5070 of the T3010. The Organization has not reported significant expenditures on charitable activities or gifts to qualified donees in 2010 or 2011 to make up this shortfall.

As per paragraph 149.1(3)(b) of the Act, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because it fails to expend amounts at least equal to its disbursement quota for that year. For this reason, it appears to us that there are grounds for revocation of the charitable status of the Organization under paragraph 149.1(3)(b) of the Act.

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The Organization's Options:

a) No Response

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

b) Response

Should you choose to respond, please provide your written representations and any additional information regarding the findings outlined above **within 30 days** from the date of this letter. After considering the representations submitted by the

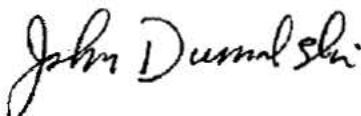
Organization, the Director General of the Charities Directorate will decide on the appropriate course of action, which may include:

- no compliance action necessary;
- the issuance of an educational letter;
- resolving these issues through the implementation of a Compliance Agreement; or
- giving notice of its intention to revoke the registration of the Organization by issuing a Notice of Intention in the manner described in subsection 168(1) of the Act.

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

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

Yours sincerely,



John Dumalski
Audit Division
Vancouver Island Tax Services Office

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Section 149.1 Qualified Donees

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) has, in respect of a class of shares of the capital stock of a corporation, a divestment obligation percentage at the end of any taxation year;
- (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 it has entered into a transaction (including a gift to another registered charity) and it may reasonably be considered that a purpose of the transaction was to avoid or unduly delay the expenditure of amounts on charitable activities;
- (b) of a registered charity, if it may reasonably be considered that a purpose of entering into a transaction (including the acceptance of a gift) with another registered charity to which paragraph (a) applies was to assist the other registered charity in avoiding or unduly delaying the expenditure of amounts on charitable activities;
- (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;
- (d) of a registered charity, if it has in a taxation year received a gift of property (other than a designated gift) from another registered charity with which it does not deal at arm's length and it has expended, before the end of the next taxation year, in addition to its disbursement quota for each of those taxation years, an amount that is less than the fair market value of the property, on charitable activities carried on by it or by way of gifts made to qualified donees with which it deals at arm's length; and
- (e) of a registered charity, if an ineligible individual is a director, trustee, officer or like official of the charity, or controls or manages the charity, directly or indirectly, in any manner whatever.

Section 168:

Revocation of Registration of Certain Organizations and Associations

168(1) Notice of intention to revoke registration

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 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, if

- (a) in the case of a person that is or was registered as a registered charity or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(2) to (4.1), (6.3), (22) and (23);
- (b) in the case of a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.2) and (22); or
- (c) in the case of a person described in any of subparagraphs (a)(i) to (v) of the definition "qualified donee" in subsection 149.1(1), that is or was registered by the Minister as a qualified donee or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.3) and (22).

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

Where the Minister

- (a) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.2) and (22) and 168(1) by the Minister, to a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for registration as a registered Canadian amateur athletic association, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,
- (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,

(a.2) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.3), (22) and 168(1) by the Minister, to a person that is a person described in any of subparagraphs (a)(i) to (v) of the definition "qualified donee" in subsection 149.1(1) that is or was registered by the Minister as a qualified donee or is an applicant for such registration, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,

(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,

(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 person in a case described in paragraph (a), (a.1) or (a.2), the applicant in a case described in paragraph (b), (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.

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),

(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

(d) 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
- (c) 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) or (12) applies

188(4) Transfer of property tax

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” 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” 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.

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 sent 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 particular person in respect of the particular person'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 particular person after the day on which the Minister first assessed that liability and before the particular time to another person that was at the time of the transfer an eligible donee in respect of the particular person, 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 other 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 or registered Canadian amateur athletic association, 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.