[redacted]

SEP 15 2014

REGISTERED MAIL

Attention: [redacted]

BN: 89110 6841RR0001
File #: 0744540

Subject: Notice of Intention to Revoke
Theanon Charitable Foundation

Dear [redacted]:

I am writing further to our letter dated January 17, 2013 (copy enclosed), in which you were invited to submit representations as to why the registration of Theanon Charitable Foundation (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 March 15, 2013. 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".

Additionally, as per our letter of March 24, 2014, we have considered the Organization's request for voluntary revocation and we are not in a position to grant your request due to the seriousness of the non-compliance revealed during our audit.

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 failed to devote resources to charitable purposes by making gifts to non-qualified donees and providing undue benefits, carrying on an unrelated business, issuing donation receipts that were not in accordance with the Act and/or its Regulations and failing to maintain adequate books and records.

The audit found that the Organization participated in tax planning arrangements which were designed to confer undue benefits on the parties involved. In 2005, the Organization, along with three other charities, participated in two corporate farm sale

arrangements where shares of the corporations were purchased for $6.7 million. The corporations' assets, of equivalent value, were then donated to the Organization and the other participating charities who in turn issued official donation receipts. The corporations used the official donation receipts obtained to offset the capital gain taxes otherwise payable on the sale of their shares. Subsequent to the donations, the shares declined substantially in value leaving the Organization and the other charities with a minimal profit or participation fee. It is the position of the Canada Revenue Agency (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 arrangements for a participation fee.

Furthermore, the Organization acquired control, other than by donation, of a corporation which is not permitted for charitable foundations such as the Organization. Additionally, the Organization acquired fifty-six lots for residential development and sale which we do not consider to be a related business as it is not linked or subordinate to its charitable purposes.

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 January 17, 2013 I wish to advise you that, pursuant to subsection 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 168(1)(e), subsection 149.1(1), and paragraphs 149.1(3)(a) and 149.1(3)(c) 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**
891106841RR0001	Theanon Charitable Foundation Vancouver 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

A copy of the revocation notice, described above, will be published in the *Canada Gazette* after the expiration of 90 days from the date this letter was mailed. The Organization's registration will be revoked on the date of publication, unless the CRA receives an objection to this Notice of Intention to Revoke within this timeframe.

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

Consequences of Revocation

As of the effective date of revocation:

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

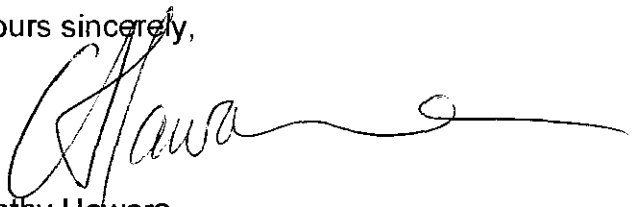
b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the Notice of Intention to Revoke. This revocation tax is calculated on prescribed form T-2046, *Tax Return Where Registration of a Charity is Revoked* (the Return). The Return must 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 "B". 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 1-800-959-8287.

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 January 17, 2013;
- Representation letter dated March 15, 2013;
- Appendix "A", Comments on Representations; and
- Appendix "B" Relevant Provisions of the Act

c.c.: Blake Bromley, Director
Theanon Charitable Foundation
Suite 1250, 1500 West Georgia St,
Vancouver BC V6G 2Z6

CANADA REVENUE AGENCY | AGENCE DU REVENU DU CANADA

REGISTERED MAIL

Theanon Charitable Foundation
Suite 1555, 1500 West Georgia Street
Vancouver, BC V6G 2Z6

BN: 891106841 RR0001
File #: 0744540

Attention: Blake Bromley, Director

January 17, 2013

Subject: Audit of Theanon Charitable Foundation

Dear Mr. Bromley:

This letter is further to the audit of the books and records of Theanon Charitable Foundation (the Organization) conducted by the Canada Revenue Agency (the CRA). The audit initially related to the operations of the Organization for the period of May 1, 2004 to April 30, 2006. The audit has since been expanded to include fiscal periods ending April 30, 2007 to April 30, 2009.

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

AREAS OF NON-COMPLIANCE:		
	Issue	**Reference**
1.	Failure to Devote Resources to Charitable Purpose – Gifting to Non-Qualified Donees and undue benefits	149.1(1), 149.1(3)(c), 168(1)(b)
2.	Carrying on an unrelated business	149.1(3)(a)
3.	Issuing receipts not in accordance with the Act and/or its Regulations	168(1)(d), Reg. 3501
4.	Failure to maintain adequate books and records	168(1)(e), 230(2)

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

Vancouver Island Tax Services
1415 Vancouver Street
Victoria BC

Mailing Address:
Vancouver Island Tax Services
c/o 9755 King George Hwy.
Surrey, BC V3T 5E1

Services fiscaux de l' Île de Vancouver
1415, rue Vancouver
Victoria, C-B

l'adresse postale :
Services fiscaux de l' Île de Vancouver,
A/S 9755 Aut. King George
Surrey, C-B V3T 5E1

Canada

070-1

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 identified areas of non-compliance in further detail.

Identified Areas of Non-Compliance

1) Failure to Devote its Resources to Charitable Activities

In order for an organization to be recognized as a charitable foundation, it must be constituted exclusively for charitable purposes[1]. In the Supreme Court decision of *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.* [1999] 1 S.C.R. 10, Lacobucci J. speaking for the majority, summarized the requirements for charitable registration at paragraph 159, as follows:

> *"In conclusion, on the basis of the Canadian jurisprudence, the requirements for registration under s. 248(1) come down to two:*
>
> *(1) the purposes of the organization must be charitable, and must define the scope of the activities engaged in by the organization; and*
>
> *(2) all of the organization's resources must be devoted to these activities."*

The term "charitable" is not defined in the Act; therefore it is necessary to rely on the jurisprudence in the common law. The courts have recognized four general categories of charitable purposes: (1) the relief of poverty; (2) the advancement of religion; (3) the advancement of education; and (4) other purposes beneficial to the community as a whole (or a sufficient section thereof) in a way that the law regards as charitable. This last category identifies an additional group of purposes that have been held charitable at law rather than qualifying any and all purposes that provide a public benefit as charitable.

As per subsection 149.1(1) of the Act, "charitable foundation" means a corporation or trust that "operated exclusively for charitable purposes, no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settler thereof". Under the Act, this means a charitable foundation should only use its resources (funds, personnel and/or property) in two ways, both inside and outside Canada – for charitable activities undertaken by itself or under its continued supervision, direction and control; and for gifting to "qualified donees", as defined in the Act. A charitable foundation must be able to show through documented evidence and proper books and records that all its operations are in furtherance of its charitable purposes. 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, including those provided to intermediaries, if any, at all times.

[1] Vancouver Society of Immigrant & Visible Minority Women v. Minister of National Revenue, [1999] 1 S.C.R. 10, at page 110 (paragraph 152, 154, 156)

The Organization's Purposes and Activities

The Organization was registered as a public foundation, effective September 22, 1986, to receive and manage funds for the exclusive purpose of making gifts to qualified donees.

While the purposes can generally be considered charitable at law, it is a question of fact whether the Organization operates exclusively for charitable purposes. The Organization must also demonstrate through its activities, actions, and programs that it operates exclusively for charitable purposes[2].

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 a preponderance of the Organization's effort and resources are devoted to participating in various tax-planning arrangements that were designed to confer significant undue private benefits to individuals and other persons. Operating to confer undue private benefits is not a charitable purpose at law. It is our view that the Organization primarily operated for the purpose of promoting private tax planning schemes and has structured its affairs for the benefit of private individuals to the detriment of the Organization's charitable mandate.

570129 BC Ltd. /Vision Poultry Ltd.

In 2005, the Organization purportedly transferred funds to three charities to assist their purchase of all the outstanding shares of 570129 BC Ltd. On the same day, 570129 BC Ltd. purportedly transferred farm assets valued at $3,460,000 to the Organization and was issued an official donation receipt for the amount of $2,020,000 ($3,460,000 net of an outstanding debt of $1,440,000 assumed by the Organization). Subsequently, the Organization purportedly sold the farm assets of 570129 BC Ltd. for $3,460,000. A detailed summary of the transactions is provided in the attached Appendix A.

In our view, the transactions were designed to give the appearance of routing the farm assets of 570129 BC Ltd. through the participating registered charities under the guise of investments and gifts, to facilitate the avoidance of taxes otherwise payable on the disposition of these assets, rather than to genuinely enrich the charities involved. As indicated in Appendix A, an agreement was already in place to sell the farm assets to an outside purchaser, the Brandmas, before the purported donation to the Organization took place. If 570129 BC Ltd. sold the assets directly to the outside purchaser, the sale would have been subject to a capital gains tax. Dividend taxes would also be applicable when the sales proceeds are withdrawn from 570129 BC Ltd. by Mr. H. Dekker and his spouse Ms. M. Vogel (its original shareholders). By purportedly gifting the farm assets to the Organization before the eventual sale, 570129 BC Ltd. was able to offset the capital gains tax otherwise payable with the tax receipt issued by the Organization. Furthermore, the net proceeds from the sale of the farm assets purportedly received by the Organization approximately equal the cash transfers it made to the three charities that purchased the shares of 570129 BC Ltd. five days prior. Effectively, the three charities and the Organization routed to its original shareholders

[2] Vancouver Society of Immigrant & Visible Minority Women v. Minister of National Revenue, [1999] 1 S.C.R. 10, at page 131 (paragraph 194)

on a tax-free basis the proceeds from the sale of 570129 BC Ltd.'s farm assets under the guise of a share purchase, as the original shareholders were able to offset the capital gains tax on the sale of the 570129 BC Ltd. shares with the capital gains exemption on farm property. We note that while the original shareholders and 570129 BC Ltd. achieved significant tax savings from these transactions, it does not appear that the Organization received any benefit from its participation.

The facts as outlined in Appendix A indicate that the Organization played a crucial role in facilitating these transactions by issuing the official donation receipt for 570129 BC Ltd. and funnelling the proceeds from the sales of farm assets to the original shareholders. It is our position that the primary, if not exclusive, purpose of the transactions as outlined was to facilitate a tax planning arrangement to confer undue private benefits rather than furthering the Organization's charitable purpose. It is therefore our position that the Organization did not operate exclusively for charitable purposes during the years under audit.

Dekker Poultry Ltd (DPL)

On May 26, 2005, the Organization and two other charities purportedly purchased all the outstanding shares of DPL from the [redacted] for $3,275,300. [redacted] had purportedly purchased all of the outstanding shares of DPL for $3,034,025 less liabilities earlier on the same day. Four days later, DPL purportedly gifted its assets valued at $3,298,400 to the Organization and the two other charities. The Organization and the other two charities issued official donation receipts for the total amount of $3,298,400 to DPL. A detailed summary of the transactions are provided in the attached Appendix B.

In our view, the transactions were designed to give the appearance of routing the farm assets (including BC egg quotas and livestock) of DPL through the participating registered charities, under the guise of investments and gifts, to facilitate the avoidance of taxes otherwise payable on the disposition of these assets, rather than to genuinely enrich the charities involved. As indicated in Appendix B, agreements were already in place to sell the farm assets to various individuals and corporations before they were purportedly donated to the Organization and two other charities. If DPL sold the assets directly to the outside purchasers, the sales would have been subject to capital gains taxes. Dividend taxes would also be applicable when the sales proceeds are withdrawn from DPL by [redacted] and [redacted] (its original shareholders). By purportedly gifting the farm assets to the Organization and the other two charities before the eventual sale, DPL was able to offset the capital gains tax otherwise payable with the tax receipt issued by the charities. Furthermore, the net proceeds from the sale of the farm assets purportedly received by the Organization and the other two charities approximately equalled the purported consideration they paid for the purchase of shares of DPL. Effectively, the Organization and the two charities routed to the Dekkers, on a tax-free basis, the proceeds from the sale of DPL's farm assets under the guise of a share purchase, as the Dekkers were able to offset the capital gains tax on the sale of the DPL shares with the capital gain exemption on farm property.

The facts as outlined in Appendix B indicate that the Organization and the other two charities played a crucial role in facilitating these transactions by issuing the official donation receipts for DPL and funnelling the proceeds from the sales of farm assets to the Dekkers. It is our

position that the primary, if not exclusive, purpose of the transactions as outlined was to facilitate a tax planning arrangement to confer undue private benefits rather than furthering the Organization's charitable purpose. It is therefore our position that the Organization did not operate exclusively for charitable purposes during the years under audit.

[redacted]

On January 12, 2005, the Organization purchased 82,598 preferred shares of [redacted], with redemption value of $550,000, paid-up capital (PUC) of $15, and adjusted cost base (ACB) of $550,000, from the [redacted] ([redacted]) for $539,000. The same preferred shares were redeemed by [redacted] on January 26, 2005 for $550,000.

Although this series of transactions seems to have resulted in a gain of $11,000 for the Organization, we do not believe the purpose of the series was exclusively charitable. In our view, the series of transactions were designed to utilize the tax exempt status of the Organization to allow the [redacted] to receive the proceeds from the redemption of the preferred shares of [redacted] on a tax-free basis. We observe that if [redacted] had redeemed the preferred shares while they were held by the [redacted] the [redacted] would have been subject to a tax on deemed dividends equal to the amount by which the redemption value of $550,000 exceeds the PUC of $15. By selling the preferred shares to the Organization for $539,000, the [redacted] was able to receive the redemption proceeds less a small discount of $11,000 and report a capital loss rather than a deemed dividend. Since the Organization was tax exempt, it was not subject to a tax on the deemed dividends from the redemption of the preferred shares while it was the holder of such shares. In essence, the [redacted] paid an $11,000 fee, in the form of a discount on the preferred shares, to the Organization in exchange for significant tax savings on receiving the proceeds from the redemption of preferred shares that were held originally by the [redacted]

In our view, the Organization accepted an $11,000 service fee to facilitate this series of transactions that was designed to confer a significant undue private benefit, which is not a charitable purpose. It is our position, therefore, that the Organization failed to operate exclusively for charitable purposes.

[redacted].

Our audit indicated that the Organization participated in an arrangement that involved the transactions of a number of assets originally belonging to [redacted].

In fiscal period ending 2002, [redacted] transferred 16,063,637 publicly traded common shares of [redacted]. ([redacted] shares) to the Organization. The shares were valued at $1.90 per share for an aggregate amount of $30,520,910.30. An official donation receipt for $30,520,910.30 was issued to [redacted] by the Organization. Eight days later the Organization gifted the shares to [redacted] sold the [redacted] shares to [redacted] in 2005 in exchange for the latter's royalty interest in mining operations known as "[redacted]" (royalty interest). [redacted] eventually transferred the royalty interest to the [redacted] a

private foundation controlled by [redacted]. A summary of these transactions are provided in the attached Appendix C.

In our view, the transfer of the [redacted] shares to the Organization and the related transactions as summarized in Appendix C were never intended to benefit the Organization nor further its charitable purposes. While the Organization's charitable purpose is to make gifts to qualified donees, it is our position that the transfer of the [redacted] shares by the Organization to [redacted] does not fit under this purpose. The facts, as summarized in Appendix C, indicate that the [redacted] shares were pre-ordained to be transferred to [redacted], as the Organization had no discretion regarding their use and only acted as a conduit to route the property to [redacted] while issuing a donation receipt for [redacted]. As explained in Mr. Blake Bromley's June 29, 2006 letter to the CRA, [redacted] had intended for [redacted] to receive the [redacted] shares but routed the property through the Organization solely to prevent [redacted] from losing its designation as a charitable organization[3]. In other words, one of the intended purposes of these transactions, in which the Organization played a crucial role, was to help [redacted] circumvent certain provisions of the Act.

Mr. Bromley also stated that the purpose of transferring the [redacted] shares to [redacted] was to allow [redacted] to use the [redacted] shares to secure loans to assist in the construction of the [redacted]. However, our records indicate that [redacted] never used the [redacted] shares to secure any loan during the time it held the shares. It is our view, therefore, that neither the Organization's nor [redacted]s charitable purposes were ever furthered by their participation in this arrangement.

On the contrary, it is our view that the arrangement conferred significant benefits on [redacted] and persons related to [redacted]. We note that, as a result of the transactions in the arrangement, [redacted] received a donation receipt of $30,520,910 from the Organization for the [redacted] shares but ultimately retained possession of this property. While [redacted] re-acquired the [redacted] shares from [redacted] with the royalty interest, the Blusson Foundation subsequently received the royalty interest with no consideration. Furthermore, [redacted] would only have to report 25% of the capital gains from the disposition of the [redacted] shares to the Organization because of its status as a public foundation[4]. Yet, by acquiring them back, the ACB of the shares has been increased to $31,324,092. Finally, it is our view that another purpose of the arrangement was to avoid the application of the "loanback" provision under subsection 118.1(16) of the Act. Our records indicated that the [redacted] used the royalty interest as consideration to acquire 27,500 Class B non-voting shares of [redacted] ([redacted] shares) from the [redacted] on December 31, 2005. The [redacted] shares are considered non-qualifying securities (NQS) of [redacted] immediately after that time, as [redacted] owns 100% of the common shares of [redacted]. Therefore, if [redacted] had received a donation receipt

[3] Mr. Blake Bromley, in his letter of June 29, 2006 to the CRA, advised: "It was in the interests of [redacted] that these shares not be donated directly to it by [redacted] because such a donation would cause [redacted] to subsequently lose its status as a charitable organization because 50% of the capital would have been contributed by a single donor. This potential problem was avoided because [redacted] received the donation from a public foundation."

[4] See paragraph 38(1)(a) of the Act, as amended by S.C. 2002, c.9, s. 22(1), applicable to dispositions that occur after 2001.

directly from the [redacted] within 5 years before December 31, 2005, the amount of the donation receipt would have to be reduced by the fair-market value of the [redacted] shares under subsection 118.1(16) of the Act. However, the arrangement was structured to avoid this provision by having the Organization issue the donation receipt for the [redacted] shares and later substitute the [redacted] shares with the royalty interest, which was not tax-receipted, before the latter was transferred to the [redacted]. Accordingly, the arrangement would have conferred significant tax savings on [redacted] by preventing the application of subsection 118.1(16) of the Act.

It is our view that the Organization participated in this arrangement to confer undue private benefits on an individual while helping another charity circumvent certain provisions of the Act. It is therefore our position that the Organization did not operate exclusively for charitable purposes.

Independent World Television Foundation (IWTF)

In 2007, the Organization loaned $4,000,000 to IWTF, which was at the time a registered charity but whose status has since been revoked, with the intent that the funds would flow through to a US organization related to IWTF. The loan was set up to provide an interest rate of 20% per annum plus 5% term interest. The annual interest is payable on March 31st of each year, whereas the term interest is due and payable upon repayment of the principal, on or before January 1, 2012. The Organization expected to receive payments of $800,000 per year and annual accrued term interest of $200,000; however, the Organization has not received any interest income from IWTF as of April 30, 2009.

In our view, the Organization has jeopardized its resources by loaning these funds to IWTF. IWTF's ability to pay the 20% annual interest is contingent on its ability to raise income[5] and according to Mr. Jay, one of the directors of IWTF, an unwritten agreement existed wherein it was understood by the parties involved that the 20% annual interest was not payable until IWTF raised sufficient income. From our review of IWTF's publicly available annual information returns up to the time of its revocation, it appeared they did not have the means to make the annual payments let alone the ability to repay the loan at the end of its term. Additionally, it is unclear whether IWTF repaid the loan and the interest accrued therein upon cessation of its operations[6].

While the Act does not expressly prohibit the loaning of funds by an Organization, the Act does require a registered charity to devote all its resources to charitable activities. In our view, the purpose of the loan was to ultimately transfer the funds to a US organization related to IWTF rather than a *bona fide* investment. It is in this regard, that we view the Organization to have not devoted its resources to charitable activities.

In light of the above information, it is our view that the Organization has failed to operate exclusively for charitable purposes in compliance with the requirements of the Act. As a

[5] IWTF's ability to repay the loan is also a concern given its demonstrated inability to meet the annual interest payment obligation so far.
[6] IWTF was voluntarily revoked August 7, 2010.

result, the Organization does not meet the definition of a charitable foundation under subsection 149.1(1) of the Act.

[redacted]

According to the Organization's 2008 general ledger, the Organization transferred $500,000 to a [redacted] based corporation, as a security deposit. In November 2008 it appears the Organization made a decision not to go forward with the project because the security deposit was returned to the Organization. It is not clear what the deposit was for or how it relates to the Organization's charitable mandate. According to [redacted] website, it "[redacted]"

In the absence of details provided by the Organization, it can reasonably be argued that the $500,000 transferred to [redacted] in 2008 was a gift made to a non-qualified donee. While we recognize that the amount was subsequently returned to the Organization, it appears the Organization was contemplating making a gift to a non-qualified donee; another potential example of non-compliance with the *Income Tax Act*.

[redacted]

In 2006, the Organization acquired control of [redacted] as a means to hold land it acquired under a court order bankruptcy sale which is a direct contravention of paragraph 149.1(3)(c) of the Act. According to Mr. Bromley, "[The Organization] purchased land under a court ordered bankruptcy sale. It subsequently rolled the land into a new corporation it acquired" and it "did not purchase an operating corporation or the corporation which previously held the land." Paragraph 149.1(3)(c) of the Act specifically prohibits a public foundation from acquiring control of any corporation. The Organization is the sole shareholder of [redacted] and it appears that [redacted] assets (land, building and docks) were leased to [redacted] over a five year period.

Additionally, in 2007, the Organization loaned $1,500,000 to [redacted] with no specific terms of repayment or stated interest rate. According to Mr. Blake Bromley's letter of May 10, 2010, "[redacted] as you are well aware, holds property and exists specifically to set itself apart from [redacted] and [redacted] is independent as indicated by Theanon being the sole shareholder. Theanon has been actively trying to divest itself of [redacted] and repay its loan and the most likely purchaser will be one of the aforementioned entities. However, given the current economic conditions they have not been able to raise the capital to purchase [redacted]."

It is our view this arrangement is another instance of the Organization failing to devote its resources to the charitable objects for which it was registered. The Organization has contravened paragraph 149.1(3)(c) of the Act in addition to loaning funds to a corporation without any guarantee the corporation will or can repay its debt. In our view, this is not a prudent use of the Organization's funds.

Due Diligence of Directors

We note with concern, with respect to the activities of the Organization and the safeguarding of assets, that the directors have demonstrated a lack of due diligence. It is our opinion that the Organization's directors failed to demonstrate due diligence by using the Organization to transact a series of complex transactions for the benefit of other organizations and individuals, allowing its receipting privilege to be used for the benefit of other individuals and organizations, authorizing expenditures unrelated to the Organization's activities to be paid by it, and simply accepting the decisions of one of the directors with regard to a number of transactions without written, documented evidence of full board acceptance and understanding.

Directors of a not-for-profit corporation are fiduciaries and are generally subject to the same common law fiduciary obligations as directors of a business corporation. A fiduciary is a person having a legal duty to act primarily for another person's benefit and is a person who (a) owes another person the duties of good faith, trust, confidence, and candor; and (b) must exercise a high standard of care in managing another's property. As a general matter, fiduciary duties are imposed by the law to protect those who are vulnerable from those who have power over them. Being a fiduciary means the directors will be held to high standards of good faith, fair dealing and loyalty regarding the organization. The duties of the directors include decision making, investing charitable property, performing corporate governance and the active management and protection of charitable assets. The fiduciary duties of the directors go beyond furthering the charitable objects of the charity, and the interests of the charity should be put ahead of the interest of the directors.

Charity law also dictates that a charity's assets are to be managed so as to obtain the best return within the bounds of prudent investment principles. In our view, the Organization has failed to enter into prudent investments of its resources as follows:

- The purchase of shares in the following transactions are not considered to be prudent investments because it resulted in a loss in the value of the shares as follows:

  [redacted] Shares – In December 2006, the Organization purchased 3,115,000 [redacted] shares from [redacted] valued at $3.25/share for total consideration of $10,123,750. The consideration for the purchase of shares was a promissory note. In April 2009, [redacted] bought the shares from the Organization for $0.81/share, for total consideration paid of $2,523,150 resulting in a loss to the Organization's investment in [redacted] of $7,600,600. The shares had previously been donated to [redacted] by [redacted]. At the time of sale to [redacted], the Organization owed [redacted] $7,235,661 (after paying interest of $712,911.30 and principal of $2,887,018.70).

  A historical review of [redacted] stock market prices between the purchase in December, 2006 and the sale in April 2009 revealed that the Organization sold the shares to [redacted] when the stock was at its lowest price in more than two years.

It appears that the sale of the asset at this price and time period was strictly for the benefit of [redacted] at the detriment of the Organization. The Organization reported a loss of $7,600,600 on this transaction and remains to have a liability of $7,235,661 owing to [redacted].

- The Organization transferred funds to other charities involved in the tax planning transactions so that the charities could purchase shares/assets of the farms involved and complete the transaction as preordained for the personal benefit of corporations and individuals. As per Appendix A attached, the Organization transferred $665,000 to Gateway; $665,000 to Essential and $570,000 to Prescient to acquire the shares of Vision.

Conclusion

From a purely financial standpoint, an overwhelming majority of the Organization's resources were devoted to and received from its participation in these tax planning arrangements and the manner in which the Organization permitted the transactions to occur, became an end in itself. Operating for the purpose of facilitating tax planning arrangements is not a charitable purpose at law and, for this reason, we are of the position that the Organization does not operate for exclusively charitable purposes as required by the definition of "charitable foundation" under subsection 149.1(1) of the Act.

Under subsection 149.1(3) of the Act, the Minister may revoke the registration of the registered charity in the manner as described at paragraph 168(1)(b) of the Act because the registered charity has failed to comply with the requirements of the Act for its registration as such. As outlined above, there appears to be sufficient grounds for revocation of the charitable status of the Organization under paragraphs 149.1(3)(c) and 168(1)(b) of the Act.

2) Carrying on an Unrelated Business

Under paragraph 149.1(3)(a) of the Act, a public foundation may have its charitable registration revoked if it carries on a business that is not a related business. It is our view that the Organization has carried on a business that is not a related business in a venture wherein it purchased residential lots with the intention of resale for profit.

A business involves commercial activity, deriving revenues from providing goods or services, undertaken with the intention to earn profit. The facts and circumstances surrounding the Organization must be considered in the light of criteria discussed by the courts in *Stewart v. Canada*, 2002 SCC 46 as follows:

- The intended course of action: Is the rationale to earn a profit, and if so, the activity is likely a business.
- The potential to show a profit: If the activity did not earn a profit but has the capability of earning a profit, it may be a business because it is the intention and capacity to make a profit that is relevant.
- The existence of profits in the past years: If the activity has been carried out for some time, a history of it earning a profit would generally indicate that a business exists.
- The expertise and experience of the person or organization that undertakes the activity: Review the knowledge, skill or experience of the person making the decisions with regard to the activity as this may indicate that the activity is commercial in nature and may be a business.

The definition of "business" in subsection 248(1) of the Act includes a reference to an "adventure or concern in the nature of trade". While the latter phrase was not defined in the Act, CRA has summarized its common law definition in the Interpretation Bulletin IT-459, *Adventure or concern in the nature of trade.* Furthermore, the factors for determining whether a sale of real property is considered an "adventure or concern in the nature of trade" were outlined in IT-218, *Profits, capital gains and losses from the sale of real estate, including farmland and inherited land and conversion of real estate from capital property to inventory and vice versa.* Although Interpretation Bulletins published by CRA do not have legal authority in general, we note that both IT-459 and IT-218R have been explicitly referenced by the courts in considering whether a transaction is an "adventure or concern in the nature of trade". For example, the Supreme Court of Canada, in *Friesen vs. The Queen (95 DTC 5551),* dealt with the issue of whether a parcel of land purchased for resale at a profit should be considered an "inventory" and the whole venture a "business", or more precisely, an "adventure in the nature of trade". The majority opinion in *Friesen* referenced both IT-459 and IT-218R in its analysis of whether the venture should be considered "an adventure in the nature of trade" pursuant to the definition of business in subsection 248(1) of the Act. The majority opinion first determined that the venture must "involve a 'scheme for profit-making'", and proceeded to highlight the following factors outlined in IT-218R:

(i) The taxpayer's intention with respect to the real estate at the time of purchase and the feasibility of that intention and the extent to which it was carried out. An intention to sell the property for a profit will make it more likely to be characterized as an adventure in the nature of trade.

(ii) The nature of the business, profession, calling or trade of the taxpayer and associates. The more closely a taxpayer's business or occupation is related to real estate transactions, the more likely it is that the income will be considered business income rather than capital gain.

(iii) The nature of the property and the use made of it by the taxpayer.

(iv) The extent to which borrowed money was used to finance the transaction and the length of time that the real estate was held by the taxpayer. Transactions involving borrowed money and rapid resale are more likely to be adventures in the nature of trade.

It is our position that these factors as applied in *Friesen* should serve as the framework for determining whether the Organization had engaged in an "adventure or concern in the nature of trade" within the meaning of the definition of "business" under subsection 248(1) of the Act.

On May 1, 2007 the Organization purchased fifty six residential lots in the District of Squamish, British Columbia from Sea to Sky Foundation (SSF) for $9,000,000. The intent was to sell the lots to build no more than seventy eight housing units on the property. The Organization sold four lots at a profit in the audit period. As well, it appears that the Organization held mortgages for at least two of the lots sold. Mr. Bromley's letter dated May 10, 2010 indicated the land was purchased by the Organization to provide needed liquidity to [redacted] and in the future the Organization would sell further lots for a profit.

The Organization hired [redacted] of [redacted] and [redacted] of [redacted] to direct and manage the sales and marketing program affiliated with the sale of lots. It appears that the parties have been hired to market and sell the lots on an ongoing and continuous basis. According to Mr. Bromley's letter of May 10, 2010, the Organization would continue to sell lots at a profit.

It is our view that the purchase and sale of residential lots by the Organization fits the definition of "business" under subsection 248(1) of the Act based on the factors as applied in *Friesen*. First, we note that the Organization never disputed that it was its intention to make a profit from this venture, as evident by Mr. Bromley's letter of May 10, 2010. This was further reinforced by fact that the Organization had already sold four lots at a profit during the audit period. Second, the Organization's associates, [redacted] in this venture are persons for whom the purchase and sale of residential lots are very much related to their core businesses. Third, the nature of the property in question being residential lots made it unlikely that the Organization could generate a profit by merely holding them. Therefore, the only way the Organization can profit from these lots is to resell them at a profit. Fourth, as indicated above, the Organization had engaged in borrowing to finance at least two of the lots. It also seems that the Organization is only intending to hold these lots for a relatively short term before resale, as four of the lots purchased in 2007 were resold within two years. Finally, an overview of the venture, as supported by the information provided by the Organization, indicates that it involves a "scheme for profit-making" pursuant to *Friesen*.

For the purpose of applying paragraph 149.1(3)(a) of the Act, it is our position that the purchase and sale of residential lots is a business carried on by Organization as opposed to a one-time, isolated business transaction. In *Tara Exploration and Development Company Ltd v MNR (ECC)*, the court explained the phrase "to carry on" as something that "involves continuity of time or operations". As indicated above, the Organization purchased 56 residential lots for resale at a profit but had only sold 4 up to the end of the 2009 fiscal year. It seems reasonable to conclude that the Organization would have to engage in repeated and regular sales transactions in subsequent years in order to fully realize the profit it intended to generate from all 56 lots. We suggest that one of the reasons that the Organization engaged real estate advisors and developers to be its associates for this venture was that it realized the venture is a business to be carried on for multiple years. As such, it is our position that the Organization has carried on a business for the purposes of paragraph 149.1(3)(a) of the Act.

The purchase and sale of lots in this case cannot be considered related business activity because:

- the business is not run substantially by volunteers; and
- the business is not linked to the Organization's charitable purpose and subordinate to that purpose.

It is our opinion that the purchase and sale of lots and the holding of mortgages for the purchasers is not a business activity which is linked and subordinate to the Organization's charitable purpose because it:

- is not specifically necessary for the effective operation of the Organization's charitable programs or to improve the quality of service delivered in its programs;
- is not an asset that occurs as a by-product of the Organization's charitable programs;
- is not a use of existing excess capacity which stems from the Organization's usual charitable activities; and
- is not carried on to advertise, promote, or symbolize the charity or its objects.

Moreover, to be considered a related business, the business activity must clearly be subordinate to the overall charitable programming conducted by a charity. In the absence of any significant charitable activity undertaken by the Organization, its business activities do not meet this test.

A public foundation that carries on an unrelated business is liable to a penalty equal to 5% of its gross revenue for a taxation year from any unrelated business that it carries on in the taxation year. This penalty increases to 100% and the suspension of tax-receipting privileges for a repeat infraction within five years. Although we have considered applying penalties in this regard, we do not believe that this is an appropriate alternative, given the serious nature of the matter of non-compliance.

Conclusion

In light of the above, it is our position that the Organization has carried on a business that is not a related business. As such, there appears to be sufficient grounds to revoke the Organization's registration under paragraph 149.1(3)(a) of the Act.

3) Failure to Accept Valid Gifts in Accordance with the Act

It is our opinion that the Organization has contravened the *Income Tax Act* by issuing receipts for transactions that do not qualify as gifts under section 118.1 of the Act. We offer the following explanations to support our position.

No *Animus Donandi*

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 real or personal 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 a right, privilege, benefit or advantage to the donor or to the person designated by the donor. Any legal obligation on the payor would cause the transfer to lose its status as a gift.

The courts[7] have also established that an essential element of a gift is *animus donandi* - that the donor must be motivated by an intention to give. It must be clear that the donor intends to enrich the donee, by giving away property, and to generally grow poorer as a result of making the gift.

It is our view that Organization issued significant donation receipts for the following transactions even though they lacked the requisite donative intent of a gift at law:

- Receipt # P-027 to [redacted] for [redacted] shares at $30,520,910
- Receipt # P-036 to 570129 BC Ltd. for farm assets at $2,020,000
- Receipt # P-037 to [redacted] for farm assets at $1,154,440

As explained previously, it is our position that the primary purpose of the donor in each case was not to enrich the Organization or the other participating charities but, through a series of transactions, to avoid certain provisions of the Act and taxes otherwise payable. As outlined above, these transactions were pre-arranged by the donor, as the Organization merely acted as a conduit to issue donation receipts and funnel cash and tax-receipted property to achieve the desired tax effects. In each case, the financial positions of the Organization and other charities involved did not improve by nearly as much as the tax-receipted amount, if at all. At best, the Organization was lending its tax-receipting priviledge for a fee.

It is our position that there is no donative intent behind the aforementioned transactions. As such, the property purportedly received by the Organization in each case did not qualify as a gift under section 118.1 of the Act. It is our position, therefore, that the Organization had failed to issue donation receipts in accordance with the Act.

Directed Gift – [redacted] Shares

As outlined above, the donor had intended to transfer the [redacted] Shares to [redacted] but feared that doing so would cause [redacted] to lose its status as a charitable organization. It was for this reason alone that the [redacted] shares were routed through the Organization, which then shortly re-directed the property to [redacted]. According to an executed Option Agreement between [redacted] and [redacted] dated January 8, 2002, "Theanon anticipates that it will in the future assign and transfer 16,063,637 [redacted] common shares to [redacted]". The shares were transferred from the Organization to [redacted] January 10, 2002. Therefore, it is our position that

[7] For example, see *Friedberg v The Queen 89 DTC 5115*

the transfer of the [redacted] shares to the Organization was not a gift to the Organization, as it merely acted as a conduit to route the property to its intended recipient.

Conclusion

Under paragraph 168(1)(d) of the Act, the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt other than in accordance with the Act and its Regulations. It is our opinion the Organization issued receipts for transactions that do not qualify as gifts at law. For this reason, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(d) of the Act.

4) Failure to Maintain Adequate Books and Records

Subsection 230(2) of the Act requires that every registered charity maintain adequate books and records, and books of account, at an address in Canada recorded with the Minister. In addition to retaining copies of donation receipts, as explicitly required by subsection 230(2), subsection 230(4) provides that "Every person required by this section to keep records and 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 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 of account relate."

The policy of the CRA relating to the maintenance of books and records, and books of account, is based on several judicial determinations, which have held that:

- it is the responsibility of the registered charity to prove that its charitable status should not be revoked;[8]
- a registered charity must maintain, and make available to the CRA *at the time of an audit,* meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required documentation and records subsequent thereto;[9] and
- the failure to maintain proper books, records and records of account in accordance with the requirements of the Act is itself sufficient reason to revoke an organization's charitable status.[10]

[8] The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen, 2002 FCA 72 (FCA)
[9] Supra, footnote 3; The Lord's Evangelical Church of Deliverance and Prayer of Toronto v. Canada (2004) FCA 397
[10] (College Rabbinique de Montreal Oir Hachaim D'Tash v. Canada (Minister of the Customs and Revenue Agency, (2004) FCA 101; Act section 168(1)

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The Act requires a registered charity to maintain information in such a form as to determine whether there are grounds for the revocation of its registration under the Act and jurisprudence has stated that the records of a charity should prove why its charitable status should not be revoked.

As described above, the Organization was involved in various arrangements which, in our opinion, appeared to be unrelated to its charitable purposes and were aimed at conferring undue private benefits. Given the reportedly significant values of the assets and the complexity of the transactions involved, it is reasonable to expect that the directors of the Organization would have conducted extensive discussion regarding the approval of such transactions. However, our audit indicated a lack of records of such discussions. For instance, we found no Board minutes nor planning documents with respect to the transactions of the shares of DPL and 570129 BC Ltd. Further, it would seem prudent for the Organization to review the transactions and the associated expenditures on a continual basis. Here again, our audit indicated the Organization did not retain adequate records to support these expenditures. For instance, the Organization reported incurring significant legal fees seemingly related to the transactions of DPL and 570129 BC Ltd. shares on its accounting records, but the supporting documents did not fully explain specifically what type of legal services were provided nor how the total fees were calculated.

Additionally, a review of the invoices recorded in the books and records indicated that amounts were incurred by other individuals and/or organizations in relation to these transactions and yet paid by the Organization. For example

- In 2005 invoices for legal and consulting expenses totalling $86,576 were paid in relation to Dekker and Vision Poultry transactions.
- In 2005 and 2006 travel expenses were paid totalling $35,949 including $26,774 for expenses related to a conference in Brussels and Amsterdam and a meeting in Alberta.
- In 2006 a $30,000 invoice from [redacted] was paid for solicitor-client privileged legal communication.[11]

As we do not consider the poultry transactions to be a charitable activity, the related charges by individuals and corporations cannot be considered to be incurred in carrying out the Organization's charitable purposes. Similarly, the Brussels trip does not appear to have any relevance to the Organization's activities as, to our knowledge, the Organization has no activity in Brussels that would warrant these expenditures.

Conclusion

It is our view that the Organization failed to maintain adequate books and records and to provide complete access to its records for our inspection. 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

[11] The Organization inaccurately treated this transaction as a gift to a qualified donee. The cheque stub indicates the cheque was to cover legal fees. No further information was made available.

dealing with books and records. It is our position the Organization has failed to comply with and has contravened section 230 of the Act. For this reason alone there may be grounds to revoke the registered status of the Organization under paragraph 168(1)(e) of the Act.

The Organization's Options:

a) No Response

If you choose not to respond, please advise us in writing of your intent. 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.

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 the undersigned at the numbers indicated below.

Yours sincerely,

[redacted]

Jeanne Effler, CGA
Audit Division
Telephone [redacted]
Facsimile (250) 363-3862

cc: Robert Kruse
Christopher Richardson

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Summary of 570129 BC Ltd./Vision Poultry Ltd. Transactions

Summary of Entities

Vision Poultry Ltd was incorporated in British Columbia on January 14, 1988. Prior to February 2005, it was owned by 570129 BC Ltd. It owned various assets including bird quota, real estate and equipment. 570129 BC Ltd. and Vision were amalgamated under the name of 570129 BC Ltd on March 1, 2005.

570129 BC Ltd was incorporated in British Columbia on August 13, 1998. Prior to February 2005, it was owned by Herman Dekker and Riet (Maria) Vogel.

Theanon Charitable Foundation (Theanon) was incorporated under the British Columbia Society Act on September 22, 1986. It is a registered charity.

Essential Grace Foundation (Essential) was incorporated under the BC Society Act. It is a registered charity.

Prescient Foundation (Prescient) was incorporated under the BC Society Act. It is also a registered charity.

Gateway Benevolent Society (Gateway) was incorporated under the BC Society Act. It is also a registered charity.

Philanthropy Without Frontiers (PWF) was incorporated under the BC Society Act. It is also a registered charity.

Herman Dekker is the spouse of Riet (Maria) Vogel. They are [redacted] residents of [redacted]

[redacted] is a real estate company in [redacted] specializing in farm property. It is a Canadian corporation operated by [redacted]

[redacted] is a law firm that acted for various charities.

[redacted] is a law firm that acted for Mr. Dekker and his spouse.

S mary of Transactions

November 15, 2004
Listing agreement was signed between [redacted] and [redacted] and 570129 BC Ltd. whereby [redacted] agreed to sell property owned by 570129 BC Ltd. for a commission. The property included real estate, 30,050 BC egg hatching quota and equipment.

December 14, 2004
Contract of Purchase and Sale was signed whereby [redacted] offered to purchase property from 570129 BC Ltd. for $3,460,000. A deposit of $50,000 was to be paid once conditions were removed.

January 24, 2005
All conditions of the December 14th agreement were removed. This agreement was transferred from [redacted] to Steve and Krista Brandsma (the Brandsmas).

January 25, 2005
A cheque from the [redacted] to [redacted] in Trust was written in the amount of $50,000. The [redacted] is the name of the Brandsma's business.

February 8, 2005
A share purchase agreement was signed between Gateway and Mr. Dekker and his spouse, the shareholders of 570129 whereby Gateway agreed to purchase all of the shares of 570129 BC Ltd. for $3,460,000. The deal was to close February 9th, although there is no evidence that it did.

February 14, 2005
Theanon purportedly gifted $1,100,000 to Philanthropy Without Frontiers (PWF).

February 25, 2005
Theanon purportedly gifted $90,000 to PWF. PWF purportedly lent 570129 BC Ltd. $1,440,000 for the purpose of paying off amounts owing to the Bank of Montreal (BMO). A cheque was written in this amount from Legacy to [redacted] a law firm acting on behalf of Mr. Dekker and his spouse.

Theanon purportedly made the following "Specified Gifts"

- $665,000 to Gateway
- $665,000 to Essential
- $570,000 to Prescient

These gifts were purportedly disbursed through [redacted] trust account. A total of $3,332,000 was deposited into a trust account at [redacted] The funds were purportedly from the charities and PWF.

February 28, 2005
A payment was made to Bank of Montreal in the amount of $1,086,955.38 from the Trust account of [redacted]

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T' charities purportedly purchased all the outstanding shares of 570129 BC Ltd. from Mr. Dekker and his spouse for $3,370,000 as per an Agreement for Sale. The purchase price was reduced by $1,440,000 to account for the outstanding loan, resulting in a net purchase price of $1,930,000. (According to the charities, this transaction actually happened on February 25, 2005).

A cheque was received by [redacted] from [redacted] in the amount of $350,000. The letter accompanying this cheque states that it is a charitable gift from Herman Dekker to Theanon.

March 1, 2005
570129 BC Ltd. and Vision amalgamated and continued as 570129 BC Ltd.

570129 BC Ltd. purportedly gifted all its assets to Theanon. Assets transferred purportedly included a broiler breeder bird's quota, land and improvements (at [redacted], [redacted] poultry, machinery and equipment and miscellaneous inventory in addition to livestock.

570129 BC Ltd. received a donation receipt in the amount of $2,020,000 from Theanon.

The amount due to PWF by 570129 BC Ltd. appears to have been assumed by Theanon in this transaction. It recorded a liability of $1,440,000.

Theanon purportedly sold the former 570129 BC Ltd. assets to the Brandsmas for proceeds of $3,460,000. Theanon purportedly took back a mortgage in the amount of $350,000 secured by the assets.

March 2, 2005
A document titled "Assignment Loan & Security" purportedly assigned the Brandsma mortgage to Mr. Dekker and his spouse in exchange for $350,000. This document, however, was apparently not signed by any of the parties involved.

Payment of $3,109,152.98 was received from the Brandsma's lawyer representing the amount owing for the assets purchased.

March 3, 2005
The following cheques were written from the [redacted] trust account:

- $3,002,852.98 to [redacted] (in trust for Theanon)
- $96,300.00 to [redacted] (regarding commissions plus GST)
- $1,563,917.89 to Mr. Dekker and his spouse

May 9, 2005
A mortgage transfer was registered with Land Titles. This document purportedly records the transfer of the Brandsma mortgage from Theanon to Mr. Dekker and his spouse. Its Terms indicate that consideration paid for the mortgage was $350,000.

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Summary of Dekker Poultry Ltd (DPL) Transactions

Parties Involved

[redacted] A [redacted] incorporated [redacted] All shares owned by [redacted].

Dekker Poultry Ltd (DPL) was incorporated January 4, 1999. Prior to May 25, 2005 the common shares were owned 50% by [redacted] (the Dekkers). It owned land and buildings and some chickens. It held a permit and quota issued from the BC Chicken Marketing Board and permit and quota from the BC Egg Hatching Commission.

[redacted] ([redacted] is a real estate company in [redacted]. specializing in farm property. It is a Canadian corporation operated by [redacted].

Theanon Charitable Foundation (Theanon) was incorporated under the BC Society Act on September 22, 1986. Blake Bromley, Robert Kruse and Kenneth Woods are directors. It is a registered charity.

Essential Grace Foundation (Essential) was incorporated under the BC Society Act on October 4, 2004. The directors are Jhordan Stevenson, Paul Mancuso and Ronnie Negus. It is a registered charity.

Gateway Benevolent Society (Gateway) was incorporated under the BC Society Act on July 3, 2000. The directors are John Glazema, Ivor Venema and Paul Mancuso. It is a registered charity.

[redacted] ([redacted] a [redacted] in [redacted] acting for the Dekkers.

The Dekkers are [redacted] residents living in [redacted]

[redacted] are [redacted] residents living in [redacted]

[redacted] is a [redacted] corporation.

[redacted] is a [redacted] corporation.

[redacted] is a [redacted] resident living in [redacted]

([redacted] [redacted] and the [redacted] are referred to as third party purchasers).

[redacted] is Blake Bromley's [redacted]

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F ts and Assumptions

Feb 08, 2005
An exclusive listing contract was signed between [redacted] and DPL. [redacted] agreed to list property owned by DPL. The property mentioned is real estate, but we assume it includes other farm property owned by DPL as well.

Listing price was $3,300,000. DPL owned land and buildings, livestock and had license to work a BC Hatching Egg quota from the BC Broiler Hatching Egg Commission (the Commission) and a quota from the BC Chicken Marketing Board.

March 17, 2005
The Dekkers entered into a "Contract of Purchase and Sale of Shares" to sell their shares of DPL to Gateway. The purchase price was to be $3,034,025 and on April 8th, 2005 a deposit of $55,000 was made to [redacted] in trust. There is no evidence that this deal went through, although nothing in writing cancels it either.

It is assumed that there was a side agreement to this contract whereby if Gateway were to subsequently sell the quota for more than $103 a bird, then 50% of the excess would be added to the sale price of the shares. The other 50% would go to commissions. This deal was referred to as the "quota lift."

March 30, 2005
A contract of Purchase and Sale was signed between the [redacted] and DPL in which the [redacted] agreed to purchase 15,000 BC Hatching Egg Quota from DPL for a total of $1.65 million dollars. A deposit of $60,000 was paid to [redacted] The deal was to close May 30th, 2005. An application was made April 8th, 2005 to the Commission for transfer of quota.

March 31, 2005
A contract of Purchase and Sale was signed between [redacted] ([redacted]) and DPL in which [redacted] agreed to purchase 5,400 BC Egg Hatching Quota from DPL for a total of $594,000. A deposit of $27,000 was paid to [redacted] in trust. Deal was to close May 30th, 2005. An application was made April 8th, 2005 to the Commission for the transfer of quota.

A contract of Purchase and Sale was signed between [redacted] and DPL in which [redacted] agreed to purchase chickens. Total price was to be $55,000. A $5,000 deposit was paid to [redacted] in trust. The deal was to close April 15, 2005.

April 4, 2005
A contract of Purchase and Sale was signed between [redacted] and DPL in which [redacted] agreed to purchase 3,050 BC Hatching Egg Quota from DPL for a total of $329,400. A deposit of $15,000 was paid to [redacted] in trust. An application was made April 8, 2005 to the Commission re transfer of the quota. The deal was to close May 30th, 2005.

May 26, 2005
Agreement for Purchase and Sale purportedly signed between the Dekkers and [redacted]. [redacted] agreed to purchase the shares in the capital of DPL. Purchase price was to be $2,979,025 less $1,235,745 total liabilities (all owing to the Bank of Montreal). A deposit of $55,000 was agreed to have been already paid.

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C[redacted]ing date was May 26, 2005. The remainder of the purchase price was to be paid by way of a promissory note.

Promissory note purportedly issued to the Dekkers from [redacted] in the amount of $725,000.

The Dekkers purportedly resigned as directors of DPL.

[redacted] purportedly agreed to be a new sole director of DPL.

[redacted] purportedly subscribed to an additional 100 common shares of DPL in consideration of $1,235,745. [redacted] signed a statement directed to DPL that it assumes the debt owing to the bank by DPL in the amount of $1,235,745. Neither party informed the bank of this. DPL's assets were security for this loan.

[redacted] purportedly sold all its purported DPL shares to Gateway (35%), Essential (30%) and Theanon (35%). (These entities are hereafter referred to collectively as 'the foundations'). Purchase price was to be $3,275,300. Purchase price was to be paid by way of promissory note.

May 30, 2005
DPL purportedly gifted to the foundations all of its assets. Donation receipts totalling $3,298,400 were received.

DPL purportedly declared that it was holding the land and buildings as a "bare trustee and mere nominee" for the benefit of the foundations.

"Bills of Sale" were purportedly drawn up and signed by DPL regarding the sales of quota to the [redacted], [redacted] [redacted] and [redacted]

Official donation receipts were issued to DPL by Essential, Gateway and Theanon.

May 31, 2005
A "General Conveyance" between the foundations as the sellers and the Dekkers as the buyers was purportedly drawn up. The Dekkers purportedly purchased land and building from the foundations for $725,000.

An "Agreement of Purchase and Sale" between the foundations and the Dekkers was purportedly signed. The Dekkers purportedly purchased shares of DPL for $1.00.

DPL declared that it held the land and building as bare trustee for the Dekkers.

$1,235,745 was paid to the Bank from the [redacted] trust account.

June 1,2005
The Dekkers were paid $971,552.63 from [redacted] trust account.

June 3, 2005
A cheque was issued to [redacted] trust account for $250,350.

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June 6, 2005
Two commission cheques totalling $39,512 were issued from the [redacted] trust account. Both cheques were identified as "quota lift".

June 16, 2005
Proceeds from the sale of assets were used to repay the loans from [redacted] by Essential, Gateway and Theanon.

June 29, 2005
$8,000 in legal fees were transferred from the [redacted] account to another account.

September 2005
[redacted]

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APPENDIX C

TRANSFER OF SHARES OF [redacted]

Parties Involved

[redacted] ([redacted] is a publicly traded company whose shares are traded on the Vancouver Stock Exchange. [redacted] is involved in the mining and exploration business. The majority of the shares from 1997 to 1999 were held by [redacted]; he was the owner of 94% of the issued and outstanding shares (44,909,677/47,699,293). The authorized share capital of [redacted] was 100,000 common shares, no par value and there were no other classes of shares.

[redacted]
In 1999, [redacted] donated 28,571,430 shares of [redacted] to [redacted].

Theanon Charitable Foundation (Theanon) was registered as a public foundation effective September 22, 1986. The directors for the years 2000 through 2007 were Blake Bromley, Robert Kruse and Kenneth Woods. In 2008 Christopher Richardson replaced Kenneth Woods as director. The members were Blake Bromley (September 22, 1986 to present), Marion Bromley (May 20, 1998 to present) and Pam Lushington (October 29, 1995 to March 1, 2005).

[redacted]

[redacted]

[redacted]

C & R Foundation (C & R) was registered as a private foundation effective December 1, 1999. The directors since registration have not changed – Greg Kerfoot, Lisa Kerfoot and Sandra Hancock.

[redacted]

Blake Bromley – [redacted], a [redacted] incorporated [redacted]. Blake Bromley, a [redacted] and director of the charities involved in

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tl share transaction, worked with [redacted] and other legal representatives to implement the plan.

Facts and Assumptions

1999

[redacted] gifted 28,571,430 shares of [redacted] to [redacted] as part of a donation arrangement.

December 31, 2001

[redacted] gifted the balance of his [redacted] common shares (16,063,637) to Theanon. The shares were valued at a price of $1.90 per share for an aggregate amount of $30,520,910.30. Deed of Gift between [redacted] and Theanon dated December 31, 2001 was executed. Official donation receipt was issued by Theanon to [redacted] for 16,063,637 [redacted] shares in the amount of $30,520,910.30.

January 8, 2002

An Option Agreement between [redacted] and [redacted] was executed. According to the Agreement

- Theanon anticipates that it will in the future assign and transfer 16,063,637 [redacted] common shares to [redacted];
- [redacted] grants [redacted] an irrevocable right to purchase at any time and from time to time up to and including November 30, 2005 all or any of the shares at the option price of $1.90 on or before November 30, 2003 and $1.95 after November 30, 2003 and before December 1, 2005 (price was to be reduced by any dividends paid on the shares during the time of the option agreement);
- [redacted] may at any time assign his obligation under this Agreement to [redacted].

January 10, 2002

Deed of Gift was executed by Theanon to [redacted] whereby Theanon transferred by way of gift all of its right, title and interest in the 16,063,637 shares of [redacted]. The shares were reported on line 103 (received from other registered charities) of the T3010 completed by [redacted].

August 11, 2003

[redacted] loaned [redacted] $2,000,000 on August 11, 2003. [redacted] provided collateral of 1,060,000 [redacted] shares valued at $1.95 per share. Promissory Note was executed indicating an interest rate of 18% per annum. Interest of $900,000 was to be prepaid on August 12, 2003. On the same day, [redacted] gifted $900,000 to [redacted]. Principal amount was to be paid by November 30, 2005.

March 15, 2004

Loan Agreement executed between [redacted] as lender and [redacted] as borrower - $6,500,000. The interest rate is 15% per annum with an additional $1,000,000 in interest to be paid at the end of the three year term. The collateral for the loan is 4,000,000 [redacted] common shares owned by [redacted]

According to the Loan Agreement, [redacted] is to loan $3,000,000 to C & R. Foundation to be used specifically to repay the principal of an amount outstanding under a C & R. Loan

070-21

A ement and the balance of the loan ($3,500,000) is to be used to pay operating costs incurred in connection with the "Project". According to Section 1.1 Definitions of the March 15, 2004 Loan Agreement, the "Project" means the proposed construction of the [redacted] by or for the benefit of the [redacted]

June 29, 2005
[redacted] Directors' Resolution approved transfer of [redacted] shares to [redacted] pursuant to his notice of exercise of option.

July 1, 2005
[redacted] issued a Notice of Exercise of option to purchase the 16,063,637 shares of [redacted] at a price of $1.95 per share. Shares purchased.

An Agreement was entered into between [redacted] and [redacted] for [redacted] to sell his royalty interest in mining operations known as "[redacted]" ("royalty interest"). The purchase price for the royalty interest was $31,200,000. [redacted], as purchaser, issued a promissory note for the entire purchase price with terms of 5% interest per annum, compounded semi-annually, payable 30 days after demand.

August 17, 2005
An Agreement was entered into by [redacted] and [redacted] regarding their promissory notes to each other, with a new promissory note issued by [redacted] to [redacted] for the balance of $24,092.15. Copies of all promissory notes attached.

The new promissory note amount ($24,092.15) was paid off by cheque by [redacted], a company in which [redacted] holds a controlling interest.

A Deed of Gift was executed on the same date transferring the royalty interest (right, title and interest in and to the [redacted]) from [redacted] to [redacted] as a specified gift. It was reported as such on line 5070 of the 2005 T3010 Charity Return - $31,300,000. The Deed of Gift included a copy of the Agreement of Purchase and Sale between [redacted] and [redacted] dated July 1, 2005 whereby [redacted] sold the royalty interest in the [redacted] to [redacted] for $31,300,000.

Note: On December 31, 2005, 27,500 of [redacted] were sold by [redacted] to [redacted] in exchange for the above- mentioned royal interest for the same amount - $27,500,000.

Receipt #021 issued by [redacted] in the amount of $35,750,000 to [redacted] for 11,000,000 shares of [redacted]. At a share price of $3.250 per share.

[redacted] sells 2,500 Class B shares for $2,750,000

070-27

S' MARY OF TRANSFER OF SHARES OF NOR-WEST ROTORS LTD.

Parties Involved

[redacted] ([redacted] is a private corporation incorporated [redacted] under the [redacted] It was struck from the corporate register [redacted] but restored [redacted] [redacted] owns 100% of the Class A voting, non-participating shares of the company and as such controls the company. On December 28, 2005 200,000 Class B non-voting, participating shares of the company were issued to [redacted] at an issue price of $200,000,000. There are no other issued shares of this company.

[redacted]

1) ("mining interest") – [redacted] had a 10% participating interest in the [redacted] The interest is described as all of [redacted] right, title and interest in and to the [redacted] and the assets used in the [redacted] described in the [redacted] – [redacted] made between [redacted] and dated effective [redacted]

On the same date as the 200,000 Class B shares were issued, [redacted] purchased [redacted] s mining interest in the [redacted] and all assets used in the [redacted] According to the notes to the [redacted] financial statements, the fmv of the assets received by [redacted] was equal to the issue price of the Class B shares.

2) ("buffer zone") – [redacted] owned a participating interest in the buffer zone joint venture which has mineral claims in the [redacted] By agreement dated [redacted] the buffer zone was sold to [redacted] Consideration for the acquisition was the issuance of 40,000,000 common shares of [redacted] at a deemed value of $70,000,000 ($1.75 per share).

3) ("royalty interest") – [redacted] owned all the rights and interest in and to a royalty interest, including all payments due to [redacted] in respect of mining operations in the area known as [redacted].

On July 1, 2005 the royalty interest was sold to [redacted] for $31,300,000 in exchange for a promissory note.

[redacted]

[redacted]

070-28

[redacted]

Blake Bromley – [redacted] of [redacted], a [redacted] Blake Bromley, [redacted] and director of at least one of the charities involved in the share transactions, worked with [redacted] and other legal representatives to implement the plan.

Facts and Assumptions

December 28, 2005

[redacted] transferred his 10% participating interest in the [redacted] (mining interest) to [redacted] ([redacted].

Consideration for mining interest is 200,000 Class B non-voting participating shares of [redacted] (issue price of $200 million @ $1,000 per share). The stated fair market value of the mining interest is $200 million although no valuation was available to support the FMV as reported.

On the same date, as part of a series of transactions, [redacted] donated 110,000 Class B shares to four different registered charities as follows:

Registered Charities	# of Donated Shares of [redacted]
[redacted]	65,000
	30,000
	10,000
	5,000
Total	110,000

The balance of the [redacted] B shares (90,000) were sold by [redacted] to the [redacted] by agreement dated January 3, 2006 for $90,000,000. Consideration given for the purchase was a promissory note.

[redacted] exchanged shares for cash as per option agreement - $4 million as of October 2008. $700,000 fee paid to Blake Bromley.

[redacted] exchanged shares for cash as per option agreement - $3 million as of October 2008. Fees paid?

[redacted] exchanged shares for $65 million – consideration was interest receivable on loans

[redacted] exchanged 27,500 Class B shares valued at $27,500,000 for royalty interest valued at same amount.

[redacted] sells 2,500 Class B shares valued at $2,750,000.

[redacted]

DATE March 15, 2013

FROM [redacted]

PHONE [redacted]

FAX [redacted]

E-MAIL [redacted]

TO	FAX	PHONE
Ms. Jeanne Effler **Audit Division, Charities Directorate** **Canada Revenue Agency**	**250-363-3862**	[redacted]

Re: Theanon Charitable Foundation
BN 891106841 RR0001
Your File No. 0744540

Please see attached.

[redacted]

[redacted]

[redacted]

March 15, 2013

BY FAX 250-363-3862

[redacted]

Ms. Jeanne Effler
Audit Division
Charities Directorate
Vancouver Island Tax Services
Canada Revenue Agency
1415 Vancouver Street
Victoria, B.C.

Dear Ms. Effler:

Re: Theanon Charitable Foundation ("Theanon")
BN891106841 RR0001
Your File No. 0744540

Further to our letter of January 13 to Ross Thackray and your letter of February 22, granting an extension until March 15 to reply to your letter of January 17, we are now replying on behalf of Theanon.

You have alleged four specific areas of non-compliance, namely:

1. failure to devote resources to charitable purposes by making gifts to non-qualified donees and providing undue benefits;

2. carrying on an unrelated business;

3. issuing receipts that were not in accordance with the Income Tax Act (the "ITA") or the regulations;

4. failure to maintain adequate books and records.

For the reasons set out below, we do not agree with your analysis and conclusions. In particular, we do not agree that Theanon failed to devote its resources to charitable purposes, made gifts to a non-qualified donee, conferred undue benefits within the meaning in the ITA (or perhaps private benefits that are not "undue" benefits) or acquired control of a corporation as contemplated in the ITA. We also do not agree that Theanon carried on an unrelated business, issued receipts that were not in accordance with the ITA or failed to maintain adequate books and records, as required by the ITA.

[redacted]

Overview

Unless otherwise stated, we use the definitions in your letter and schedules. [redacted]

We hope that this approach is not a suggestion or perhaps an allegation that there is some type of inappropriate conspiracy or nefarious purpose involving some or all of those parties in carrying out transactions that you have described as "tax-planning arrangements", with an implication that tax planning, in and of itself, is somehow improper, inappropriate or not permitted, if it involves a registered charity in any way. We are not aware of any principle of law or any provision in the ITA that suggests a registered charity cannot participate in its own tax planning or be involved in transactions where others, particularly donors, carry out their own tax planning, or where there are collateral benefits for third parties that do not emanate from the charity, as long as a registered charity complies with the requirements in the ITA. The ITA contains extensive anti-avoidance rules, including a general anti-avoidance rule ("GAAR") and recent amendments have dealt with the specific anti-avoidance rules relating to registered charities, in subsections 149.1(4.1), 188.1(11) and 188.1(12). We note that subsection 207.1(5), which applies to exempt organizations including registered charities, addresses situations in which there is an agreement to acquire a share of a corporation (other than from the corporation itself), at a price that differs from the fair market value of the share at the time the share may be acquired. In that regard, we submit that it is implicit and confirmed by this provision that public foundations in particular can and do buy and sell securities. Indeed, many public foundations hold endowment funds, which require them to make investments and thus buy and sell shares and other securities. We note as well that subsection 100(1) deals with situations in which an interest in a partnership is transferred to a person that is exempt from tax, including a registered charity. These rules clearly indicate that the Department of Finance is aware of potential abuses and has enacted specific rules to address them as they relate to registered charities. We are not aware of any overall policy or any professed object and spirit of the provisions in the ITA that would prevent a registered

[redacted]

charity from engaging in activities, consistent with its charitable purposes, that enable it to raise funds to carry out its charitable purposes, simply because it engages in transactions with other registered charities, donors, or third parties with whom it is dealing at arm's length which do not confer any benefit on its own members, directors or other officials.[1]

In *Remai*[2], a registered charity participated in an arrangement that assisted a donor in achieving a beneficial tax result. Promissory notes owned by the charity were non-qualifying securities. The charity co-operated with the donor and a "friendly" third party to carry out an arrangement under which those notes were sold for notes issued by the third party. This "cleansed" the original notes and permitted the original donor to claim the intended tax relief. The reported decision does not suggest that the charity was criticized by CRA for participating in the transaction that resulted in the substitution of "old" notes for "new" notes. The old notes had been donated subject to a 10 year retention direction, under the former "enduring property" rules. The court said the transaction did not provide any monetary benefit to the third party because the new notes were for identical amounts and for the same rates of interest as the old notes and the third party did not charge any fee for entering into the transaction. The court also said that regardless of the face amount of a note, its value depends on the ability of the issuer to honour it. It added that if a charity that receives a note as a donation disposes of it to a third party in an arm's length transaction, the valuation problem is largely solved, since it can be assumed that the third party will have investigated the financial position of the issuer to ensure that it can honour the note at its face value. The court also said that if the third party purchases the note for its face value, the Minister can assume that this is what it is worth. We submit that the same principle applies to shares or assets given to a charity and sold by it.

The decision in the Tax Court[3] states that the donor's adviser felt the charity had a "moral obligation" to make an otherwise non-qualifying security a qualifying security so it would result in the resolution of the donor's tax problem. It is clear that the charity engaged in a transaction solely to provide a collateral benefit to a third party and without any monetary benefit to itself. It appears that applying your analysis, that charity should be criticized for having devoted any of its resources to assisting the donor in carrying out a transaction that resulted in a clear tax benefit to him.

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[1] As discussed below, there are also anti-avoidance rules dealing with gifting arrangements and tax shelters.
[2] *The Queen v. Remai*, 2009 DTC 5188 (FCA). The donor died and the issue became one for his estate.
[3] 2008 DTC 4567

We have some other general observations, based on information provided to us by Theanon. With reference to the comments under the heading "The Organization's Purposes and Activities", we are advised that it is incorrect to allege that a preponderance of the effort and resources of Theanon were devoted to participating in various tax planning arrangements. We are advised that in its T3010 returns Theanon disclosed gifts to qualified donees in the total amount of approximately $11.3 million during the period of the audit, in addition to the approximately $1.9 million donated to Prescient, Essential Grace and Gateway in connection with the purchase of shares by them. The T3010 returns filed by Theanon disclosed that in the three fiscal periods subsequent to the audit, Theanon made additional grants worth approximately $39.7 million to qualified donees.

We submit that the alleged tax-planning arrangements involving the Dekkers and [redacted] were not carried out to the detriment of Theanon's charitable mandate, because Theanon made a profit from each arrangement. You refer to undue benefits, but it appears you have not relied on subsection 188.1(5) of the ITA and you have not identified any particular transactions that allegedly fall within the meaning of that term. This is discussed more fully below. Looking at the audit as a whole from the perspective of overall fairness, we submit that it is not appropriate not to refer to the fact that the Dekkers donated $350,000 to Theanon, which was in addition to the "profit" that it and other charities made from the arrangements.

We submit that the rules in Part V dealing with conferral of undue benefits are not open-ended. Subsection 188.1(5) states that an undue benefit conferred on a person (the "beneficiary") includes a disbursement by way of gift or the amount of income, rights, property or resources that is paid, payable or assigned or otherwise made available for the personal benefit of a person, provided that the person meets certain tests. Specifically, the person must be a proprietor, member, shareholder, trustee or settlor of the charity who has contributed or otherwise paid more than 50% of the capital to the charity or who deals not at arm's length with such a person or with the charity. Neither the Dekkers nor the [redacted] fall within that definition. The definition also includes any benefit conferred on a "beneficiary" (as defined above) by another person, at the direction of or with the consent of the charity in certain circumstances. We submit that the person on whom the benefit is conferred must be a "beneficiary", which is limited to a specific class of persons and no such undue benefits were conferred by Theanon.

Your main concern appears to be that Theanon was involved in transactions as a result of which unrelated third parties achieved a tax advantage despite the fact that there was also a benefit to Theanon. We do not know the nature or extent of any tax advantage that unrelated third parties are alleged to have received as a result of simply having sold shares to Theanon or another charity and having received no advantage compared to a sale to any other unrelated purchaser. However, it seems to be implicit in your

[redacted]

approach that this, in and of itself, is contrary to carrying on a charitable activity or a charitable purpose, even if the activity is not itself a purpose and even if the activity raised revenue that Theanon used to pursue its charitable purposes. In effect, it appears to us that you are importing a form of anti-avoidance rule into the ITA in circumstances in which Parliament chose not to enact this form of anti-avoidance rule. In the context of a requirement to devote all resources to charitable activities, you have mentioned the concept of due diligence of directors. You note that directors are fiduciaries. We do not agree that there is necessarily a lack of due diligence or a failure to carry out fiduciary duties simply because a registered charity undertakes activities, for its own benefit, that result in collateral benefits to third parties, as long as those benefits do not confer an undue benefit for purposes of the ITA and do not impoverish the charity.

More generally, your references to the failure of Theanon to devote its resources to charitable purposes seems, with respect, to be confusing the requirements for a charitable organization, which is that it must devote all of its resources to its own charitable activities, and the requirements for a charitable foundation, which is that it must be constituted and operated exclusively for charitable purposes. We submit that there is a clear distinction between a requirement to devote resources to charitable activity and a requirement to engage in exclusively charitable purposes. We further submit that there is a fundamental difference between an activity and a purpose, as the Supreme Court of Canada has noted in the *Vancouver Society* case and in the *Towle* case, referred to in that case.

On page 7, you state that while the ITA does not expressly prohibit the loaning of funds, it does require a registered charity to devote all its resources to charitable activities. As noted, this is an incorrect description of the requirements imposed on a public foundation, rather than on a charitable organization. The definition of "charitable purposes" includes a disbursement to a qualified donee. We submit that it is therefore clear that making a loan to a qualified donee must necessarily be regarded as a devotion of resources to charitable activities, to the extent that you feel it is relevant. You make a similar statement about a failure of Theanon to devote its resources to its charitable objects for which it was registered, in the final paragraph on page 8. Again, we submit that this confuses the requirement imposed on a charitable organization to devote all of its resources to its own charitable activities and the requirement imposed on a public foundation to ensure that it is constituted and operated at all times for exclusively charitable purposes. We gather that you are alleging Theanon failed to ensure that it was operated for its charitable purposes when it undertook various activities. We would be grateful if you would confirm our understanding of the true nature of your allegation.

[redacted]

Another comment about devotion of resources appears in the first paragraph under the heading "Conclusion" on page 10, where you state that an overwhelming majority of the resources of Theanon were devoted to and received from its participation in tax-planning arrangements and the manner in which Theanon permitted the transactions to occur had become an end in itself. You state that operating for the purpose of facilitating tax planning arrangements is not a charitable purpose. If in fact Theanon had operated for the purpose of facilitating tax planning arrangements, we might be inclined to agree with you. In that regard, we note that the ITA contains rules dealing with "gifting arrangements".[4] The definition is subsection 237.1(1) confirms that Parliament addressed its mind to what it perceived to be abusive tax planning. It appears to us that the definition is sufficiently broad that it could include, for instance, an arrangement under which a registered charity receiving a gift from a donor makes a gift to another qualified donee. As far as we are aware, CRA does not take the position that this constitutes a gifting arrangement or a tax shelter. We do not agree that Theanon was operating for the purpose of facilitating tax planning arrangements. We submit that Theanon was not engaged in any activities that engaged the provisions dealing with gifting arrangements or tax shelters and at all times was undertaking activities that fell short of becoming a purpose, with a view to raising funds so that it could carry out its charitable purposes.

The extensive schedules to your letter appear to be fairly generic and we assume you are using them in connection with audits of some or all of the other registered charities identified in those schedules. We note in particular that the schedule relating to [redacted] does not involve Theanon. This seems to suggest an element of "guilt by association", since Theanon participated in discrete and clearly identified transactions and we submit that it should not be tarred with any brush that might involve other parties, whether they were donors, purchasers, sellers or other registered charities. In our view, the question is whether Theanon was constituted and operated at all times for charitable purposes and did not contravene any provisions in the ITA.

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[4] We discuss gifting arrangements in more detail below. We also note the anti-avoidance rule in section 46, dealing with "excluded property" which is defined as property acquired in circumstances in which it is reasonable to consider that the acquisition relates to an arrangement that is promoted by another person under which it is reasonable to conclude that the property will be the subject of a gift to a qualified donee. We note as well subsection 110.1(1.2) which is intended to prevent "trafficking" in charitable donation deductions if control of a corporation is acquired by a person or group of persons and that corporation has a carry forward for donations made in previous years.

[redacted]

Our specific comments in response to your letter are set out below:

Dekker Poultry Transactions

We submit that a number of the statements made your letter with respect to 570129 B.C. Ltd./Vision Poultry Ltd. are not reasonable based on the facts. For instance:

1. you repeatedly use the "purportedly" when describing transactions that were the subject of your audit and that are also mentioned in the Crown's Memorandum of Fact and Law filed in the Prescient appeal, but without such coloured language;

2. we submit that it is not reasonable or correct to assume that when a husband and wife are each entitled to claim an exemption for capital gains if they sell shares of a farming corporation, they would instead deliberately choose to sell the corporation's assets and pay more tax than if they had engaged in legitimate tax planning to take advantage of the capital gains exemption;

3. we submit that it is not correct to say that Theanon does not appear to have received any benefit from its participation in the transactions when, based on the facts in your letter, it made specified gifts of approximately $1.9 million to facilitate the purchase of shares, received a donation of approximately $2 million and received an additional $350,000 from the individuals who had sold their shares;

4. we are advised that Blake Bromley has never communicated with or spoken to or met either Mr. or Mrs. Dekker in connection with the Dekker Poultry transaction or the Vision Poultry transaction. We submit that it is unreasonable to suggest Theanon is responsible for tax and business decisions made by the Dekkers in connection with their dealings with Theanon;

5. we submit that the value of shares can be legitimately reduced to a nominal amount if assets of a corporation are sold, tax is paid and dividends are paid to a shareholder out of retained earnings. This is not an unusual situation with respect to the type of transaction described in your letter. This is the same result with respect to the value of the shares that would occur if the corporation donated its assets, paid tax and paid a dividend to its shareholder;

[redacted]

6. we are advised that the Dekker Poultry transaction and the Vision Poultry transactions were substantially the same, except that Prescient did not participate and the Dekker family members involved sold their shares to a taxable corporation and not to a registered charity in that situation.

[redacted]

It appears to us that your approach of the [redacted] transactions imposes on Theanon responsibility for tax planning undertaken by other parties. In reality, Theanon simply purchased shares at a discount and arranged to have them redeemed. The redemption resulted in a profit and a benefit to Theanon and we submit that no "undue benefit" was conferred on any person (and in particular on any "beneficiary" as discussed more fully below), because Theanon paid "reasonable consideration" for the shares.

You state at page 5 that Theanon accepted a fee to facilitate a series of transactions that was designed to confer a significant undue private benefit which is not a charitable purpose. It is not clear if you are referring to an undue benefit as contemplated in subsection 188.1(5) or you feel that, notwithstanding the provisions in the ITA, any collateral benefit that happens to accrue to a third party is sufficient to permit revocation of registration of a charitable organization. We submit that the introduction of the rules dealing with conferral of undue benefits indicates that Parliament intended to narrow the situations in which undue benefits put the status of a registered charity at risk, where there is no issue about overall public benefit and overall charitable purposes.

As stated above, there is an exception from the rules dealing with a conferral of undue benefits where reasonable consideration is paid to or by a registered charity. We submit that Theanon did not pay anything other than a reasonable amount for any of the shares in question.

[redacted]

We submit that the detailed analysis of the [redacted] transactions is not relevant or reasonable, since the donation of approximately 16 million shares of [redacted] occurred well before the beginning of the Theanon audit period. Theanon was not involved in the subsequent transactions relating to the shares. In any event, we submit that [redacted] was impoverished as a result of the donation of shares, as is evident from your own description of the documents and the transactions. We submit that the value credited to [redacted] for the sale of the [redacted] was approximately $27.5 million, whereas we are advised that the Royalty has to date produced approximately that much in revenue for the charity that owns it and that charity is legally entitled to a further $24 million in compensation. As a result, we submit that [redacted] was

[redacted]

impoverished by almost twice the amount recorded in the donation receipt that he received from Theanon and the overall benefit to the charitable sector was in excess of $50 million. We submit that when viewed from an overall perspective, the transactions resulted in a significant benefit to the registered charities and the fact that other taxpayers may have obtained collateral benefits that did not impoverish or emanate from the charities, is not in and of itself a reason to suggest that the registration of any of the registered charities should be revoked or that they were engaged in any improper activity.

We submit that your approach is wrong in both law and fact to the extent that it suggests that [redacted] received a greater tax benefit as a result of donating to Theanon rather than to [redacted]. We understand that [redacted] has at all relevant times been a charitable organization and [redacted] received the same benefit from donating to Theanon that he would have received had he donated to any other public foundation.

In that regard, we submit that whatever benefit may have resulted from a donation by Theanon to [redacted], it did not result in any benefit to [redacted]. We submit that as a matter of tax policy, the ITA does not put small charitable organizations at risk of loss of status as a charitable organization simply because they receive one large donation if that donation did not come from an individual taxpayer or private foundation. The rules in section 149.1 expressly permit public foundations to make gifts to charitable organizations without requiring the charitable organizations to change their designation to private foundations. We submit that it is not reasonable to focus on a single example of tax planning as cause for revocation of registration of Theanon.

We submit that the transfer of shares of [redacted] from Theanon to [redacted] was carried out in furtherance of a charitable purpose within the meaning of "charitable purposes" as defined in subsection 149.1(1). We do not agree with any implied or express suggestion of a nefarious or improper plan when one registered charity issues a donation receipt to another registered charity, when the property that is donated might ultimately be sold by the transferee charity to a third party, even if that party has been involved in other transactions with the charity. In our experience, CRA frequently acknowledges that such transactions take place through many different charities and does not suggest this is grounds for revocation. For instance, we understand that [redacted] has transferred in excess of $300 million on this basis to other registered charities, on the direction of its donors. We think it is inappropriate to omit reference to the fact that during the audit period, [redacted] made nine additional gifts to Theanon with a total value of approximately $16 million, which were not challenged on the audit. Those gifts were made in cash or shares of publicly traded corporations, of which only about $700,000 was based on the value of shares of [redacted]. Theanon issued official donation receipts which have not been challenged on this audit or other audits of Theanon or, as far as we are aware, on any audits of [redacted].

[redacted]

We are aware of many situations in which pre-arranged sale transactions have been carried out, based on advance tax rulings issued by CRA, involving flow-through shares. Typically, a registered charity, a publicly traded company and a promoter arrange transactions so that a donor acquires shares of the company and donates them to the registered charity. The value of those shares is agreed upon, on the understanding that the charity will immediately sell those shares to a "liquidity provider" at an agreed upon price which the charity uses to determine the value of the gift. As far as we are aware, CRA has never questioned these arrangements or suggested that the registered charity is acting as a mere conduit or funnel between the donor and the ultimate purchaser of the shares. We enclose a copy of a ruling issued in 2009 by CRA in connection with a flow-through share offering. In the Theanon transactions, we submit that all transfers that were characterized as gifts were legally gifts and should be recognized as such at common law and for purposes of the ITA.

We are also aware that in [redacted] invites donors to identify other registered charities to which "gifts" will be transferred after deducting a fee. This seems to be similar to the [redacted] arrangement. The [redacted] clearly undertakes to a donor that it will treat the gift as a directed gift and in effect act as a conduit. While the [redacted] issues the official receipt, there is no doubt that donated funds, net of a service charge, will be transferred to the other registered charity. This is not a wish but a command. We understand CRA does not object to this approach, since both the [redacted] and the other registered charity are qualified donees, a gift is made to a qualified donee and whether [redacted] acts as a conduit or is a principal and then in turn makes a gift to the other registered charity is of little practical consequence. We understand the [redacted] and [redacted], on the one hand, and the other recipient charities, on the other hand, treat these transactions as a gift to [redacted] or [redacted] by the donor and a gift by [redacted] or [redacted] to the other registered charity for purposes of their T3010 return, but we have no direct information in that regard.

In our view, it is inconsistent for CRA to accept arrangements such as those involving [redacted] and [redacted] and object to arrangements involving smaller charities such as Theanon, as if they are improper or non-compliant. You say [redacted] did not want to transfer the [redacted] shares to [redacted] because doing so might cause it to lose its designation as a charitable organization and become designated as a private foundation. We understand you think Theanon effectively conspired with [redacted] and [redacted] to act as a conduit. We do not understand how this arrangement is any different from those involving [redacted] or [redacted]

We submit further that it is not correct to say [redacted] never used the [redacted] shares to secure any loan. Schedule C to your letter refers to three separate loans that were secured by [redacted] shares. In addition, we submit that your letter is not correct in its

[redacted]

reference to the possible application of subsection 118.1(16). In that regard, we note that in Schedule C it is clear that the [redacted] issued the tax receipt on which your theory seems to be based, and that this had nothing to do with Theanon.

Independent World Television Foundation

We submit that your analysis of the loan to IWT is unreasonable and does not form a basis for revocation, for the following reasons:

1. making a loan to a qualified donee is permissible as a charitable purpose as contemplated in the ITA;

2. there is nothing improper when a registered charity lends money to another registered charity on terms such that interest need not be paid until money is available to pay it;

3. it is unreasonable and incorrect to suggest that Theanon did not want the loan to be repaid. We are advised that Mr. Jay represented that he would cause the loan to be repaid by IWT and in November, 2009, IWT did repay $3 million as a combination of interest and principal on the loan;

4. it is unreasonable and incorrect to allege that the purpose of the loan was to transfer funds to a US organization. On the contrary, to the extent that funds were transferred to a US organization, the transfer did not involve Theanon but was based on the actions of IWT. We understand that CRA did not revoke the registration of IWT which is the charity that transferred those funds to a US organization;

5. Theanon was aware that there was an exempt US 501(c)(3) organization related to IWT because Mr. Jay represented to Theanon that he expected to raise more money in the US than in Canada;

6. Theanon was influenced much more by the fact that the principals of IWT were applying to CRA to have a Canadian organization registered as a charitable organization. Since Theanon was aware that the Internal Revenue Service had registered a similar organization in the US, it fully expected that CRA would grant registration to the related charity in Canada.

[redacted]

[redacted]**Non-Transaction**

We are advised that Theanon had intended to invest in [redacted] and transferred $500,000 to it as a deposit, but after Theanon completed its due diligence, it decided not to invest and the funds were returned to it. We submit that it is incorrect to suggest that it can reasonably be argued that the $500,000 transferred by Theanon to [redacted] was a gift to a non-qualified donee. There was no intent to make a gift, which is a legal prerequisite. You state that you recognize the amount was subsequently returned to Theanon but you then state that it appears Theanon was contemplating making a gift to a non-qualified donee. We are alarmed and surprised that you would suggest the mere consideration of a course of action is tantamount to having carried out that course of action. We trust you do not really mean to say that a registered charity can risk losing its registered status if it merely considers an act that, if completed, might not be permissible, but does not carry out that act.

[redacted]

We submit that your analysis of this transaction is incorrect for the following reasons:

1. you state that it was a direct contravention of paragraph 149.1(3)(c) of the ITA for Theanon to acquire control of [redacted] We note, first of all, that the Minister has discretion to revoke registration but is not compelled to do so. As a result, we disagree that there is a "contravention", as opposed to an event that exposes a registered charity to a possible revocation;

2. we are advised that Theanon acquired land and sea leases to hold fish farming tanks and concluded that it was prudent to transfer those assets to a corporation to limit its liability if claims should arise from third parties. It is not unusual for separate corporations to be used as a shield for limited liability purposes. We note as well that in its guidance on related businesses, CRA says that registered charities may form wholly-owned subsidiaries to avoid carrying on an unrelated business. This structure also offers the benefit of limited liability from a commercial perspective. We submit that this step should be recognized as an indication of prudence and not as cause for revocation;

3. you state that Theanon did not purchase the shares of [redacted] and in fact the shares were donated to it. As a result, consistent with our opining comments, we submit that the prerequisite for an acquisition of control was not met. Paragraph 149.1(12)(a), specifically excludes acquisitions that are not a result of a purchase or other acquisition for consideration;

[redacted]

4. we submit that it is incorrect to allege that the loan itself was grounds for revocation. Since the shares of [redacted] were owned by Theanon, we submit that it was effectively lending money to itself by making the loan and this was in furtherance of the charitable purposes of Theanon and enabled [redacted] to complete the purchase. We are advised that [redacted] has a mortgage on the purchased land and that the loan from Theanon is fully secured in any event.

Due Diligence

As noted above, we submit that the directors acted with due diligence at all times and carried out their fiduciary duty as a matter of law. We submit that it is not the role of CRA to second-guess commercial decisions of directors of registered charities. There is an extensive body of case law including cases dealing with the former concept of "reasonable expectation of profit" which have held that it is not the role of CRA or the courts to substitute their decisions for legitimate, commercial decisions of taxpayers, as long as there is no "personal" element. Those cases have typically dealt with deductibility of a loss claimed from an investment property, such as a condominium unit. For instance, in Shaughnessy[5] the judge stated that "the Minister or the court should not, with the benefit of hindsight, second-guess the business acumen of a taxpayer who embarks upon a business venture in good faith". We submit that the principle applies equally to investments made by a charity in good faith and is not limited to situations involving losses and businesses. The judge also stated that the losses were disallowed "on the basis of the Minister's ceremonial chanting of the rubric identified by the acronym REOP (reasonable expectation of profit), a gloss on the statute that, as applied by the CRA as a free-standing test, cannot withstand rational scrutiny". We submit that in charity audits, and in particular the audit of Theanon, due diligence (which is a matter of charity law and corporate governance, but is often raised as a basis for alleged non-compliance) is a matter better left to other regulators and is, in and of itself, not relevant in determining whether a public foundation has been constituted and operated exclusively for charitable purposes.

In *Stewart*, the Supreme Court held that the issue is whether there is a source of income and not whether there is a reasonable expectation of profit from that source. We submit that it is not the role of CRA to use hindsight to analyze legitimate commercial decisions made by directors of registered charities. In that regard, we submit that the fact that the desired results may not have been attained is not an indication of lack of due diligence or failure to carry out fiduciary duty. We submit that directors should not be held to a standard that requires them to guarantee that activities,

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[5] *Shaughnessy v. The Queen*, 2002 DTC 1272 (TCC)

investments or other steps taken on behalf of a registered charity or require anything of them other than the usual standard of due diligence.

We submit that the directors of Theanon, did not intend to and did not in fact confer any private benefit or any undue benefit for purposes of Part V and at all times acted to ensure that Theanon was operating to carry out its charitable purposes. As noted above, we submit that the tax planning transactions (as you have described them) were a means used by Theanon to raise money for its charitable purposes and were not a purpose in and of themselves. This is the distinction made in *Vancouver Society* and *Towle*.

We submit that the purchase of the [redacted] shares from [redacted] provided [redacted] with immediate liquidity so that it could construct an academic building. This also enabled [redacted] to receive matching funds from the [redacted] and from the Province of British Columbia. We submit that any amounts paid by Theanon to acquire the [redacted] shares were paid to [redacted] as vendor and did not confer any benefit on [redacted]. If Theanon did pay more than the fair market value to [redacted] for the [redacted] shares (which is not admitted), the "beneficiary" of that overpayment was [redacted] and not [redacted] You state that the shares were sold to [redacted] at a price that was the lowest in two years. We point out that on the date of your letter, the [redacted] shares were trading at virtually the same price for which they were sold in 2009. In addition, we submit that you have ignored the fact that in 2009 there was a very serious slump in the stock markets globally and resource industry shares were particularly hard hit. We understand that the public company that owned the diamond mining rights on the property adjacent to the primary asset of [redacted] is the [redacted] and that in the same two year period it shares decreased in value from about $47 to about $2.50, with the low point being approximately one month before Theanon sold its [redacted] shares. We understand as well that the [redacted] corporation that owned the property [redacted] of the [redacted] property was owned by [redacted] a major mining company based in [redacted] and the shares of [redacted] went from a high in 2007 of about $86 to about $36 two months before Theanon sold its [redacted] shares. We note that even the shares of [redacted] dropped from about $127 to about $36 and the shares of the [redacted] dropped from about $58 to about $22 in the same period. We submit that it is unreasonable to treat a loss realized by Theanon on the [redacted] shares as being unique to [redacted] or Theanon.

As a result, and as stated above, we submit that it is wrong and unreasonable to conclude that from a purely financial standpoint an overwhelming majority of the resources of Theanon were devoted to and received from its participation in tax planning arrangements.

[redacted]

We submit that the directors of Theanon acted with due diligence in protecting its assets when making investment decisions and that this is evident from the fact that Theanon had locked in the proceeds from the sale of the assets, following the sale of shares. We submit that Theanon received a significant profit without incurring any risk associated with purchasing assets or shares and there was no element of speculation. Similarly, we submit that the directors acted at all times with due diligence by not proceeding with the investment in [redacted] and in moving the assets into [redacted] and securing them with a mortgage. As stated above, we submit that it is permissible for a registered charity to make investments that further its purposes and the loan to IWT was intended to provide a return to Theanon commensurate with the risk and to assist IWT to raise the capital that it needed to launch its charitable activities. We submit that there is no requirement that a charitable purpose must include the immediate receipt of interest income and we submit further that the loan, which provided for deferred interest was reasonable in the circumstances.

Carrying on an Unrelated Business

You have alleged that Theanon carried on an unrelated business and purchased residential lots from Sea to Sky Foundation in the course of carrying on a business that was not an adventure in the nature of trade.

The cases such as *Tara* establish that an adventure in the nature of trade is not tantamount to carrying on business. We submit that even if Theanon was involved in a business (which is not admitted) it was at most an adventure in the nature of trade, which does not constitute carrying on a business. Even if Theanon engaged in an adventure in the nature of trade, we submit that this did not constitute carrying on any business, let alone a business that was not related, at any relevant time. *Tara* has been followed in a number of cases, including as you have noted, *Friesen*. Other cases have dealt with whether a partnership exists where two or more parties are acting in concert and whether they are carrying on business in common with a view to profit. The principles are similar and in our submission, there must be a continuous activity rather than simply a motive to make a profit. As a result, even if the lots in question constituted inventory as part of an adventure in the nature of trade (which is not admitted), we submit that this did not constitute carrying on an unrelated business. In that regard, we note that all of the remaining lots have subsequently been donated by Theanon to another registered charity, and Theanon is no longer capable of carrying on any business in that regard.

In CPS-019, CRA acknowledges the difference between a business and a business that is "carried on". At paragraph 9, the guidance states that "carrying on" a business implies that the commercial activity is a continuous or regular operation and at paragraph 10 states that a charity can engage in some business-like transactions,

[redacted]

provided they are not operated regularly or continuously. We submit that the actions of Theanon in connection with the lots did not have any degree of continuity or regularity that would be required in order to constitute "carrying on" a business.

In any event, we submit that even if Theanon had carried on an unrelated business at any time, that business was not significant in the overall circumstances and should not be grounds for revocation of registration.

Requirements for a Gift

You have referred to the requirements for a gift. The courts have consistently held that whether a gift was made should be determined using common law principles. We submit that in each case in which the parties intended a gift to be made, all of the requirements were met. These include intention, delivery and acceptance. We submit that there was no "advantage" in any situation that would vitiate the gift, which was otherwise valid. We submit that Theanon did not issue any improper receipts, either because there was no gift or because the information set out in the receipt was not correct. We submit that all amounts recorded on receipts accurately reflected the value of the property received. In particular, we submit that Theanon received full value in the form of cash or property for the amount reflected in each receipt, particularly in the share transactions, after the property was sold.

You have used pejorative terms such as "conduit" and "funnel" and suggest that because the "financial position" of Theanon did not improve by nearly as much as the tax-receipted amount, if at all, Theanon was lending its tax-receipting privilege for a fee. We disagree with your analysis and conclusion. We note that the only tax receipt issued by Theanon to the Dekkers was for a cash gift of $350,000 and no tax receipts were issued by Theanon to the [redacted] and we submit that Theanon did not act as a conduit or funnel at any time, that it acted at all times in its own best interest and that at all times it engaged in activities in furtherance of its own charitable purposes and not with a view to conferring any private benefit or conferring any undue benefit as contemplated in Part V.

In a recent decision[6], the British Columbia Supreme Court stated that the loss of a tax benefit did not enrich the charity, rather it enriched the government as a result of the fact that the "donor" was required to pay more tax then had been intended. In addition,

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[6] *Neville v. National Foundation for Christian Leadership and The Queen and the Province of British Columbia*, 2013 BCSC 183, under appeal to the Court of Appeal of British Columbia

[redacted]

the Federal Court of Appeal held in *Friedberg*[7], that the tax benefit to a donor from making a gift to a qualified donee is not a benefit that vitiates the gift itself.

We understand that CRA has taken the position that the proposed amendments dealing with split-receipting and in particular subsection 248(30) of the ITA are applicable at this time, as if they were law. In that event, it is difficult to understand how a transfer would not be regarded as a gift for purposes of the ITA because of any alleged advantage, since we submit that the value of any such advantage would not exceed 80% of the fair market value of the property and there clearly was an intention to make a gift. As you may be aware, the Federal Court of Appeal recently was very critical of the position taken by CRA with respect to these amendments and the long delays on the part of the Department of Finance in enacting them. In *Edwards*[8], the court said that there seems something fundamentally unfair in CRA's administration of proposed amendments to the ITA for the past 10 years as if they were already law. The court further stated that a taxpayer is not able to challenge a decision by the CRA that the proposed amendments do not apply to the circumstances of the taxpayer. We agree with the statements in *Edwards*.

Directed Gift – [redacted] Shares

You have alleged that there was not a gift of the [redacted] shares to Theanon because it in effect acted as a conduit or agent on behalf of [redacted]. In that event, we submit that there was no harm from a fiscal perspective, because [redacted] was nevertheless a qualified donee and whether the donation was made to Theanon or to [redacted], the donor should have been entitled to tax relief and there was no harm from a tax perspective. We refer to comments above about the anti-avoidance rules in subsections 149.1(4.1) and Part V, that are designed to prevent them from "playing games". Consequently, we submit that it is not correct to allege that Theanon was not the true recipient of a gift of the [redacted] shares but we further submit that, even if your view is correct, there are no legitimate grounds for revoking the registration of Theanon as a result of that particular transaction.

We have commented earlier in this letter on the other reasons why the transactions involving the [redacted] shares did not constitute a directed gift and Theanon did not act as a conduit or funnel but on the contrary acted as a principal, receiving a gift and in turn making a gift, as is the case with the [redacted] and [redacted], and is the case in transactions involving pre-arranged sales of flow-through shares.

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[7] *Friedberg v. The Queen*, 92 DTC 6031 (FCA)
[8] *Edwards v. The Queen*, 2013 DTC 5028 (FCA)

[redacted]

Failure to Maintain Books and Records

You have alleged that Theanon did not maintain proper books and records in the form of minutes of meetings of directors. We submit that there is no express requirement for such minutes to be maintained. We understand that the transactions were fully documented by the lawyers involved and the document binder for each transaction was very comprehensive. We find it difficult to understand how those voluminous documents do not meet the requirements of the ITA, since we understand they contain all of the information required to carry out an audit. We are advised as well that those documents establish that amounts paid for legal fees to arm's length law firms by Theanon in connection with the transactions were reasonable.

You have also alleged that Theanon has not provided you with adequate planning documents. We submit that there is no requirement in the ITA that a registered charity prepare any planning documents. It is the documents related to the transactions that were actually implemented that are relevant. In many cases, planning does not bear fruit. This is evident from the potential investment in the [redacted] that was never made, as discussed above.

We submit that the provisions in the ITA are specific to the extent that they refer to "records and books of account" and "vouchers" and it is a question of law whether those words apply to planning documents or minutes of meetings of directors. We also submit that there is a legitimate question as to whether any such planning documents would be the subject of solicitor-client privilege. We understand that Theanon asserts privilege to the extent necessary.

You have referred to expenses for travel to Brussels. We understand that all of those expenses were clearly documented and disclosed in the books and records of Theanon. We understand that Theanon is a member of the European Foundation Centre based in Brussels, and it is not unreasonable for it to have sent a director to attend a conference put on by that organization for the benefit of Theanon. We submit that it is not reasonable to allege that Theanon had no activity in Brussels that justified those travel expenses, since there was no requirement for Theanon to engage in any activity in Brussels and the purpose of the travel was to enhance the ability of Theanon to carry out is charitable purposes in Canada.

Issuing Improper Receipts

For the reasons outlined above, we submit that all receipts issued by Theanon complied with the requirements in the ITA and regulations.

[redacted]

Conclusion

For all of the reasons set out above, we submit that:

5. at all relevant times, Theanon was constituted and operated exclusively for charitable purposes and did not confer any undue benefits;

6. your references to the devotion of resources to charitable purposes are not consistent with the requirements in the ITA;

7. Theanon did not carry on any unrelated business at any relevant time;

8. Theanon did not acquire control of a corporation at any relevant time for purposes of the ITA;

9. Theanon did not issue any receipts that were not in accordance with the ITA or the regulations;

10. Theanon maintained adequate books and records as required by the ITA.

Yours very truly,

[redacted]

Per:

[redacted]

[redacted]

Enclosure

[redacted]

Source:
CCH Tax/Federal Income Tax/News Tracker/Past News/Tax Window/Tax Window Files/2009-0316961R3 DONATION OF FLOW-THROUGH SHARES. Whether a donation of flow-through shares constitutes a gift for income tax purposes.

Past News

LANGIND E
DOCNUM 2009-031696IR3
REFDATE 09XXXX
SUBJECT Donation of flow-through shares
SECTION ITA 110.1; 118.1; 38(a.1); 248(32); XXXXXXXXXX

Please note that the following document, although believed to be correct at the time of issue, may not represent the current position of the CRA. Prenez note que ce document, bien qu'exact au moment émis, peut ne pas représenter la position actuelle de l'ARC.

PRINCIPAL ISSUES: Whether a donation of flow-through shares constitutes a gift for income tax purposes.
POSITION: Yes, in this particular case.
REASONS: Based on the facts and having regard to the caveats provided in the Ruling, it is our view that the donation would constitute a gift for income tax purposes and that the CEE renounced to the donor and any investment tax credit or focused flow-through share tax credit claimed pursuant to the flow-through share financing will not constitute an advantage under the draft split-receipting rules.

XXXXXXXXXX 2009-031696

XXXXXXXXXX, 2009

Dear XXXXXXXXXX:

Re: Advance Income Tax Ruling Request
XXXXXXXXXX

This is in reply to your letter of XXXXXXXXXX, in which you requested an advance income tax ruling on behalf of the above named taxpayers. We also acknowledge the information provided in subsequent correspondence and during our various telephone conversations in connection with your request (XXXXXXXXXX).

We understand that, to the best of your knowledge and that of the taxpayers involved, none of the issues involved in the ruling request:

A. is in an earlier return of the taxpayers or a related person;
B. is being considered by a Tax Services Office or Taxation Centre in connection with a previously filed tax return of the taxpayers or a related person;
C. is under objection by the taxpayers or a related person;
D. is before the courts or, if a judgment has been issued, the time limit for appeal to a higher court has not expired; or
E. is the subject of a ruling previously issued to the taxpayers, other than ruling 2007-024236, by the Directorate.

Unless otherwise stated, all references to a statute are to the Income Tax

Regulations ("the Regulations") have the meaning given in such definition unless otherwise indicated.

Our understanding of the relevant definitions, the facts, proposed transactions and the purpose of the proposed transactions is as follows:

Definitions

"ACO" means XXXXXXXXXX , a securities dealer;

"BCO" means XXXXXXXXXX ., a securities dealer through which the Donors will subscribe for the Shares;

"Agents" means the syndicate of securities dealers which will participate in the private offering of the Shares of Resource Company, which syndicate includes ACO (as lead) and BCO;

"Arrangement" means the transactions as described in 9 to 27 below;

"CEE" means Canadian exploration expenses as defined in subsection 66.1(6);

"Charity" means each charity listed in Schedule A, individually, and "Charities" means such charities collectively;

"Corporation" means XXXXXXXXXX ;

"CRA" means the Canada Revenue Agency;

"Donor" means each donor listed in Schedule A, individually, and "Donors" means such Donors collectively;

"Exchange" means the XXXXXXXXXX Stock Exchange;

"Liquidity Provider" means each liquidity provider listed in Schedule B, individually, and "Liquidity Providers" means such entities collectively;

XXXXXXXXXX

"Resource Company" means XXXXXXXXXX ; and

"Share" means a flow-through common share of Resource Company as described in 11 below.

Facts

1) The Corporation was incorporated on XXXXXXXXXX , under the Business Corporations Act (XXXXXXXXXX). It is a "taxable Canadian corporation" as defined in subsection 89(1). Its tax services office is the XXXXXXXXXX TSO and its tax centre is the XXXXXXXXXX Tax Centre. It has a fiscal year ending on XXXXXXXXXX .

2) The Corporation is registered with the XXXXXXXXXX as a limited market dealer. It also carries on the business of providing consulting services to individual and corporate philanthropists and registered charities.

3) The Corporation has applied for and received tax shelter identification number XXXXXXXXXX in respect of the Arrangement in accordance with and pursuant to subsection 237.1(2).

of "Canadian-controlled private corporations" as defined in subsection 125(7), and that the Donors are not traders or dealers in securities and do not hold securities as inventory. The Donors are all resident in Canada.

5) The Resource Company is a "taxable Canadian corporation" and a "public corporation" as defined in subsection 89(1). It is a mining exploration company and a "principal-business corporation" as defined in subsection 66(15). Its common shares are listed on the Exchange under the trading symbol XXXXXXXXXX.

6) Each Charity is a registered charity and a "qualified donee" as described in subsection 149.1(1).

7) You advise that the Liquidity Providers are independent parties which will acquire the Shares from the Charities in the ordinary course of their businesses. The Liquidity Providers were identified by ACO.

8) You advise that the Corporation, the Resource Company, the Liquidity Providers and the Donors deal with each other at arm's length. The Charities also deal at arm's length with the Corporation, the Resource Company and the Liquidity Providers. With the exception of the Donors identified in Schedule A that are making donations to private foundations with whom they do not deal at arm's length, each Donor deals with the respective Charity or Charities at arm's length.

9) On XXXXXXXXXX, ACO, on behalf of the Agents, signed a best efforts engagement letter (the "Engagement Letter") with the Resource Company under which the Agents agreed to sell the flow-through shares to be issued by the Resource Company (see 12 below).

10) Each Donor has established a non-discretionary account with BCO and has deposited sufficient cash to pay the subscription price for the Shares (see 14 below).

Proposed Transactions

11) The Resource Company intends to raise up to $XXXXXXXXXX through a best efforts private placement of up to XXXXXXXXXX Shares through the Agents. You advise that the Donors will subscribe for XXXXXXXXXX Shares. The remaining Shares will be offered to investors who are not participating in the Arrangement. Under the terms of the subscription agreement for the Shares, the Resource Company has committed to use the proceeds of the offering for exploration on its properties in XXXXXXXXXX.

12) Pursuant to the Engagement Letter, the Agents will earn a cash fee equal to XXXXXXXXXX % of the gross proceeds of the private placement and that number of broker warrants equal to XXXXXXXXXX % of the aggregate number of Shares issued pursuant to the private placement. Each broker warrant will entitle the holder to buy one common share of the Resource Company at the reference price at any time during the XXXXXXXXXX months following the closing of the private placement. The Resource Company will reimburse ACO for ACO's expenses incurred pursuant to the offering, including legal fees and disbursements. The Agents are taxable Canadian corporations and will earn these fees in the normal course of their business.

13) The Resource Company will enter into subscription agreements directly with the Donors to issue the Shares under the flow-through share offering.

14) The Shares will be issued pursuant to the subscription agreements. The subscription price for the Shares issued to the Donors will be paid from the funds deposited in the accounts of the Donors established at BCO. You advise that the Donors have not borrowed the funds used to subscribe for the Shares.

15) The transfer agent for the Resource Company will register a global certificate for the Shares in BCO's name, as nominee for the Donors, in accordance with industry standards. In its records, BCO will maintain a record of beneficial ownership reflecting the appropriate number of Shares purchased by each Donor. Once issued, the Shares will be listed on the Exchange.

16) You advise that each Share will be a "flow-through share" as defined in subsection 66(15). The Resource Company will renounce eligible CEE to the Donors and other subscribers pursuant to subsections 66(12.6) and (12.601). All attendant tax reporting and renunciation forms will be prepared and filed by the Resource Company in accordance with the Act and Regulations.

17) In the event that any of the CEE renounced to a Donor qualifies as "flow-through mining expenditures" within the meaning of subsection 127(9), the Donors will claim a federal investment tax credit to the extent provided for in subparagraph 127(5)(a)(i). XXXXXXXXXX

18) You advise that none of the Corporation, the Donors, the Charities, the Agents or the Liquidity Providers will be "specified persons" in respect of the Resource Company within the meaning of subsection 6202.1(5) of the Regulations.

19) While not obligated to do so, you advise that each Donor intends to donate all of the Donor's Shares unconditionally to the Donor's respective Charity as listed on Schedule A. The Donors will donate their Shares to their Charity by Deed of Gift.

20) The Charities have established non-discretionary accounts with BCO. In accordance with the Deed of Gift, BCO will transfer the donated Shares to each Donor's respective Charity's account at BCO. BCO's records will reflect the change in beneficial ownership in accordance with industry standards. Each Charity will issue a donation receipt to the respective Donor equal to the fair market value of the Shares donated.

21) You advise us that the Charities have indicated that they do not want to retain the Shares, but instead want to sell them to realize cash for their charitable purposes. The Liquidity Providers will make an offer to purchase all of the donated Shares from the Charities.

22) You advise us that none of the Charities has given any undertaking or is obliged in any manner to sell the Shares to the Liquidity Providers. A Charity can still participate in the Arrangement if it chooses not to sell the donated Shares. If a Charity wished to hold the donated Shares and sell them later (either within the hold period of XXXXXXXXXX months from the date of closing to another accredited investor, or after the hold period into the market), the Charity will have to pay the Corporation its XXXXXXXXXX % fee as described in 25 below based on that ultimate sale price. However, since holding the donated Shares involves considerable risk of changing prices, you advise that no Charity is likely to assume such price risk and will sell the donated Shares to the Liquidity

23) You advise that each Charity intends to sell all of its Shares to one or more Liquidity Providers as specified on Schedule B. The Charities will enter into share purchase agreements with the Liquidity Providers. The price payable by the Liquidity Providers will be $XXXXXXXXXX per Share.

24) ACO, on behalf of the Liquidity Providers, and the Corporation, on behalf of the Charities, negotiated this price of $XXXXXXXXXX per Share at arm's length, without any direction or influence from the Donors or the Resource Company.

25) As consideration for having arranged the series of transactions, the Charities will pay a fee to the Corporation equal to XXXXXXXXXX % of the gross selling price of any Shares sold to the Liquidity Providers.

26) You advise that no fees, commissions or compensation of any kind will be paid by or received by any participants in the proposed transactions other than those described in 12, 22 and 25 above.

27) You advise that all purchases, transfers and dispositions of the Shares will comply with all applicable securities laws.

28) Other than the tax benefits relating to the CEE, the investment tax credit and the focused flow-through share tax credit, you advise that the Donors will not receive any benefit or advantage in respect of the donation of the Shares to the Charities.

Purpose of the Proposed Transactions

29) The purpose of the proposed transactions is to allow donors to respond to government initiatives designed to encourage philanthropy by providing preferential tax treatment for gifts of publicly traded shares to charitable organizations. However, notwithstanding that flow-through shares may be publicly traded, there may not be an active market so that charitable organizations cannot convert the shares received as donations into readily available cash. Under the proposed transactions, the Liquidity Providers, with regard to their own independent objectives, will purchase the Shares donated to the Charities so that they can convert the gift in kind into funds which can be applied for their charitable purposes.

Rulings Given

Provided that the preceding statements constitute a complete and accurate disclosure of all the relevant facts, the proposed transactions, and purpose of the proposed transactions, and provided further that the proposed transactions are carried out as described above, we confirm that:

A. The Arrangement will constitute a gifting arrangement pursuant to paragraph (a) of the definition of "gifting arrangement" and a tax shelter pursuant to paragraph (b) of the definition of "tax shelter" in subsection 237.1(1).

B. The donation of the Shares to a Charity by a Donor will not, in and by itself, preclude the Donor from deducting:

a. in the computation of the Donor's income for purposes of the Act, any CEE that the Donor would otherwise be entitled to deduct pursuant to subsections 66(12.61) and 66.1(3),

entitled to deduct pursuant to subsection 127(5), or
c. XXXXXXXXXX

C. Provided the parties to the Arrangement and in particular the Resource Company and the Liquidity Providers deal at arm's length, neither the donation of the Shares to the Charity by a Donor nor the sale of the Shares to a Liquidity Provider as described above will, in and by themselves, cause a Share to be a prescribed share, within the meaning of section 6202.1 of the Regulations, for purposes of the definition of "flow-through share" in subsection 66(15).

D. An amount equal to the fair market value on the date of donation of the Shares donated by each individual Donor to the Donor's respective Charity, as described in 19 above, will qualify as a gift for the purposes of the definition of "total charitable gifts" in subsection 118.1(1) provided an official receipt containing prescribed information is filed as required by subsection 118.1(2).

E. An amount equal to the fair market value on the date of donation of the Shares donated by each corporate Donor to its respective Charity, as described in 19 above, will qualify as a gift under paragraph 110.1(1)(a) provided an official receipt containing prescribed information is filed as required by subsection 110.1(2).

F. Provided that the Shares are capital property to a Donor, no portion of the capital gain arising from the disposition of the Shares, if any, resulting from the making of the gift to the Charity will be included in computing the Donor's taxable capital gain to the extent provided for in paragraph 38(a.1).

G. Participation in the Arrangement, in and of itself, will not cause the Shares to not be considered capital property to a Donor within the meaning assigned to that term in section 54 if the Shares would otherwise be considered capital property to the Donor.

The above rulings are given subject to the limitations and qualifications set out in Information Circular 70-6R5 and are binding, subject to the caveats noted below, on the CRA provided that the proposed transactions are completed before XXXXXXXXXX .

Opinion

As stated in paragraph 20 of Information Circular 70-6R5, although the CRA does not provide advance income tax rulings on draft legislation, it will give non-binding technical interpretations. In this regard, provided that the above statements constitute a complete and accurate disclosure of all the relevant facts, proposed transactions and purpose of the proposed transactions, and provided that the applicable amendments to the Act as set out in Bill C-10 which received Second Reading in the Senate on December 4, 2007, are enacted substantially as proposed, it is our opinion, subject to the caveats noted below, that the CEE renounced to the Donors and any investment tax credit or focused flow-through share tax credit claimed pursuant to the flow-through share financing will not constitute an "advantage" for the purposes of proposed subsection 248(32).

Caveats

Nothing in this letter should be construed as implying that the CRA has agreed to or reviewed:

regard, we note that the share price received by the Charities from the sale of the Shares to the Liquidity Providers as described in 23 above may not be representative of the fair market value of the Shares at the time the Shares are donated by the Donors to the Charities. It is the responsibility of the Charities to support that the amount reported on the donation receipt reflects the fair market value of the property donated to the Charities;

b) the determination of arm's length between any of the parties referred to herein;

c) that any of the Shares issued by the Resource Company will be a flow-through share;

d) any of the expenses renounced by the Resource Company to a Donor will qualify as either a CEE, as a flow-through mining expenditure, or as an eligible Ontario exploration expenditure for the purposes of Ruling B;

e) whether property held by the Donors is held on income or capital account; and

f) any tax consequences relating to the facts and proposed transactions described herein other than those described in the rulings given above.

Yours truly,

XXXXXXXXXX
Manager
Charitable and Financial Institution Sectors
Financial Sector and Exempt Entities Division
Income Tax Rulings Directorate
Legislative Policy and Regulatory Affairs

Theanon Charitable Foundation

Comments on Representations received March 15, 2013

The audit conducted by the Canada Revenue Agency (CRA) identified that Theanon Charitable Foundation (the Organization):

- Failed to devote resources to charitable purposes by making gifts to non-qualified donees and providing undue benefits;
- Carried on an unrelated business;
- Issued receipts that were not in accordance with the *Income Tax Act* or the regulations; and
- Failed to maintain adequate books and records.

We have reviewed the Organization's submissions dated March 15, 2013 and we maintain our position that the non-compliance issues identified during our audit represent a serious breach of the requirements of the *Income Tax Act* and that, as a result of this non-compliance the Organization's registration should be revoked.

Your general representations suggest a number of observations as follows:

1) You state it is incorrect for the Canada Revenue Agency to allege that a preponderance of the effort and resources of the Organization were devoted to participating in various tax planning arrangements. You further state that the Organization disclosed gifts to qualified donees of $11.3 million in the audit period and $39.7 million in the three fiscal periods subsequent to the audit.

   We respond by stating that the transactions reviewed in detail, such as those pertaining to 570139 BC Ltd/Vision Poultry Ltd. (570129) and Dekker Poultry Ltd (Dekker), indicated that there was a high risk of inaccuracy and/or overstatement of the amounts reported. As a result, we cannot confirm with certainty that the numbers included on Form T3010, *Registered Charity Information Return* and correspondingly, Form T1236, *Qualified Donees Worksheet* are correct. Of the $11.3 million reported, $3.09 million pertained to the 570139 and Dekker transactions and are not considered amounts spent on charitable activities (as discussed below). Further, it appears the Organization transferred $5.1 million of the $39.7 million reported in the later years to Independent World Television Foundation (IWTF) and $18.2 million was transferred to the [redacted]. The amount reported as gifted to IWTF appears to be the write-off of their loan payable and further contradicts the Organization's submissions that IWTF paid a portion of the loan payable prior to its revocation (as discussed below). Additionally, it appears out of place that a charity would gift such a large amount to an entity winding up its operations. Finally, it appears the amount reported as gifted to the [redacted] is the Organization's "disposition" of its

unrelated business (as discussed below). We have not reviewed the rest of the Organization's gifts to qualified donees in the three fiscal periods subsequent to the audit and therefore cannot confirm or deny the remaining amounts reported.

2) You state Mr. Blake Bromley has never communicated with, spoken to or met either of the Dekker families in connection with the 570129 or the Dekker transaction and it is unreasonable to suggest the Organization is responsible for tax and business decisions made by the Dekkers.

   Although we cannot refute the above statement with complete certainty, we find it concerning that Mr. Bromley, President and 100% shareholder of [redacted], as well as a Director and the controlling mind of the Organization at the time of the 570129 and Dekker transactions, would agree to carry on a number of million dollar transactions without meeting, communicating or speaking to all of the parties involved in the transactions.

   We understand that all of the directors of 570129 and Dekker stepped down as directors in 2005 and [redacted], [redacted], was named as sole director, decreasing the number of directors from two to one. It appears that [redacted] met with the Dekkers on a number of occasions to sign and complete the necessary agreements for the sale of assets and/or shares.

   Parties to both the 570129 and Dekker transactions, who coincidentally are both named Dekker, filed Civil Claims with the Supreme Court of British Columbia against the defendants including Mr. Bromley, his son Mr. John Bromley, Benefic Law Corporation, Legacy Advisors Law Corporation and Mr. Ian Worland to name a few. In the Civil Claim filings, the Dekkers referred to the above-mentioned defendants as the Charity Advisors and advised that the transactions and the tax avoidance plans were planned, devised, created, promoted and implemented by the Charity Advisors with the assistance of the other Defendants.

   The Dekkers advised that the Charity Advisors who were acting as solicitors and tax advisors, held themselves out as experts in the tax aspects of commercial transactions such as the 570129 and Dekker farm sale and in particular, in the use of charities or charitable foundations in such transactions to avoid or reduce taxation otherwise payable by devising plans to accomplish this result.

   It is evident that the Charity Advisors were very involved in structuring the tax avoidance plans because invoices payable to Mr. Bromley, [redacted] and/or [redacted] were paid by the Organization totaling more than $85,000 in the fiscal year ending 2005.

3) You state that our references to the failure of the Organization to devote its resources to charitable purposes may be that we are confusing the requirements for a charitable organization, which is that it must devote all of its resources to its

own charitable organization, and the requirements for a charitable foundation, which is that it must be constituted and operated exclusively for charitable purposes. We do not agree.

We advised in our letter of January 17, 2013 that the Organization is registered as a public foundation and in order to satisfy the definition of a "public foundation" pursuant to subsection 149.1(1) of the Act, an organization must be "a corporation or trust that is constituted and operated exclusively for charitable purposes". A charitable foundation may carry on charitable activities of its own, but in most cases its principal purpose is to make donations to other registered charities or qualified donees.

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 its resources to activities undertaken in support of non-charitable purposes cannot be registered as a charity.

The term "charitable purposes" in subsection 149.1(1) of the Act states that it "includes the disbursement of funds to qualified donees". The term is not otherwise defined in the Act and it is therefore necessary to refer, in this respect, to the principles of the common law governing charity.

All charitable organizations and foundations must devote all of their resources to activities undertaken in support of charitable purposes. As outlined in our letter dated January 17, 2013 it is our view that the Organization does not operate exclusively for charitable purposes.

1) Failure to Devote all of its Resources to Charitable Purposes

Transactions involving 570129 B.C. Ltd./ Vision Poultry Ltd.

Our letter of January 17, 2013 detailed a series of transactions through which the Organization transferred funds to three charities to assist their purchase of all the outstanding shares of 570129. On the same day, 570129 transferred farm assets valued at $3,460,000 to the Organization and was issued an official donation receipt for the amount of $2,020,000 ($3,460,000 net of an outstanding debt of $1,440,000 assumed by the Organization). The Organization then sold the farm assets of 570129 for $3,460,000 to an outside purchaser, the Brandsmas. An agreement with the Brandsmas was already in place before the donation to the Organization of the farm assets took place.

As explained below, it remains our position that the transactions were designed to give the appearance of routing the farm assets of 570129 through the participating registered charities under the guise of investments and gifts. The transactions were not undertaken to fulfill the Organization's mandate of disbursing funds to qualified donees as the real intent of the parties involved was to facilitate a sale of farm assets by 570129 to an outside purchaser and to facilitate the avoidance of taxes otherwise payable on the disposition of these assets.

The reasons for our assertions are as follows:

- The acquisition of 570129's shares by the three charities had no legal substance. Although documents were signed to give the appearance that the shares were sold, there is no compelling evidence the shares were actually paid for in full by the participating charities. The Dekkers were not paid in full until *after* the completion of the sale of assets to an outside purchaser. The shares were not purchased unconditionally but with the provision that the assets would be immediately donated to the Organization and then sold to an outside purchaser.

- There was no transfer of assets from 570129 to the Organization or from the Organization to the outside purchaser as there was an unconditional agreement in place for the sale of assets prior to the assets being gifted to the Organization. Therefore, neither the other charities nor the Organization ever had unfettered ownership of the shares or the assets.

- There was a listing agreement in place that involved only 570129 and the real estate brokers, not the Organization.

- There was one deposit of $50,000 paid by the third party purchasers pursuant to the agreement signed with 570129. This deposit was paid January 25, 2005 when all conditions to the offer to purchase were removed. This deposit was not returned to the purchasers when the agreement was purportedly terminated, but instead was credited to the purchasers on the purported sale by the Organization.

We have further determined that these transactions represent a tax planning scheme to facilitate the avoidance of taxes otherwise payable on the disposition of these assets rather than to genuinely enrich the charities involved. The Dekkers' real intent was to sell the farm assets of 570129 to an outside purchaser. If the farm assets had been sold directly to the outside purchaser, 570129 would potentially have to pay taxes on capital gains. The Dekkers, on the other hand, may have to pay tax on dividends if they wished to access the proceeds of the sale of the farm assets from 570129. We believe the tax planning scheme enabled the Dekkers and 570129 to avoid their potential tax assessments as follows:

- By gifting the farm assets to the Organization before the eventual sale, 570129 was able to offset the capital gains tax otherwise payable with the tax receipt issued by the Organization.

- The net proceeds from the sale of the farm assets received by the Organization approximately equal the cash transfers it made to the three charities that purchased the shares of 570129 five days prior. Effectively, the three charities and the Organization routed to its original shareholders on a tax-free basis the proceeds from the sale under the guise of a share purchase as the original shareholders were able to offset the capital gains tax on the sale of the 570129 shares with the capital gains exemption on farm property.

It is our position that the Organization acted as a conduit in a tax planning scheme to utilize its charitable and tax-exempt status to route the proceeds from the sale of 570129's farm assets to the Dekkers on a tax-free basis. As mentioned in our previous letter, it is our conclusion that, while the original shareholders and 570129 achieved significant tax savings from these transactions, it does not appear that the Organization received any benefit from its participation.

On page 4 of your written representations, you submit that the alleged tax-planning arrangements involving the Dekkers were not carried out to the detriment of the Organization's charitable mandate because the Organization made a profit from each arrangement. You further state that "[l]ooking at the audit as a whole from the perspective of overall fairness, we submit it is not appropriate not to refer to the fact that the Dekkers donated $350,000 to the [Organization], which was in addition to the "profit" that it and other charities made from the arrangements." On pages 4 and 7 of your representations, you explained that the Organization "made specified gifts of approximately $1.9 million to facilitate the purchase of shares, received a donation of approximately $2 million and received an additional $350,000 from the individuals who sold their shares." We respectfully disagree with your statement for the following reasons:

- According to a third party source, the $350,000 donation was negotiated upon between the parties involved because the Dekkers wanted more money for their 570129 shares and were offered the donation receipt instead. The purported donation flowed through the [redacted] account; however, no proof of payment was provided confirming cash was actually surrendered by the Dekkers to the Organization.

- On April 4, 2008, we asked the Organization for an accounting of net consideration remaining in the Organization after the 570129 transaction was completed and to document how the Organization was in a better position financially after the transaction was complete. Mr. Blake Bromley responded on behalf of the Organization and, although we were not provided with an accounting of net consideration, we were advised that the Organization's net position was not materially improved by as much as had been hoped.

- Our review of the [redacted] account that all funds associated with the 570129 transaction flowed through confirmed Mr. Blake Bromley's statement and our

position that the Organization was not financially improved as a result of its involvement in the transaction. In fact, the immaterial amount paid as a participation fee pales in comparison to the value of the properties that were routed through the Organization and the other charities.

CRA's audit also disclosed that more than $86,000 in legal and consulting fees were paid by the Organization as a result of the 570129 and the Dekker transactions further reducing the facilitator fees paid to the Organization for its participation.

We maintain our position that the predominant purpose of the series of transactions outlined above and in Appendix A of our prior letter was to facilitate a tax planning arrangement to confer undue private benefits rather than furthering the Organization's charitable purpose.

Transactions Involving Dekker Poultry Ltd.

Our previous letter outlined a series of transactions whereby the Organization and two other charities purchased all of the outstanding shares of Dekker from the [redacted] for $3,275,300. [redacted] had purchased all of the outstanding shares of Dekker for $3,034,025 less liabilities earlier on the same day. Four days later, Dekker gifted its assets valued at $3,298,400 to the Organization and two other charities. The Organization and the other two charities issued official donation receipts for the total amount of $3,298,400 to Dekker.

It remains our position that the transactions were designed to give the appearance of routing the farm assets of Dekker through the participating registered charities under the guise of investments and gifts, to facilitate the avoidance of taxes otherwise payable on the disposition of these assets, rather than to genuinely enrich the charities involved. The transactions were not undertaken to fulfill the Organization's mandate of disbursing funds to qualified donees; the real intent of the parties involved was to facilitate a sale of farm assets by Dekker to outside individuals and corporations. Agreements were already in place to sell the farm assets to outside sources before they were donated to the Organization and two other charities.

The Organization and the other two charities played a crucial role in facilitating these transactions by issuing the official donation receipts for Dekker and flowing the proceeds from the sale of farm assets to the Dekkers. The primary, if not exclusive, purpose of the transactions was to facilitate a tax planning arrangement to confer undue private benefits rather than furthering the Organization's charitable purpose.

On page 7 of your representations with respect to transactions with the Dekkers, you submit that it is not correct to say that the Organization does not appear to have received any benefit from its participation in the transactions. On April 4, 2008, we asked the Organization for an accounting of net consideration remaining in the Organization after the Dekker transaction was completed and to document how the

Organization was in a better position financially after the transaction was complete. Mr. Blake Bromley responded on behalf of the Organization saying "[The Organization's] net consideration was $1,154,440 minus $1,142,889 = $11,551. [The Organization's] net position was not as materially improved by as much as had been hoped and [the Organization] does not intend to participate in such transactions in the future." The net consideration of $11,551 would be non-existent once the legal fees paid by the Organization were subtracted. The total legal fees paid for both 570129/Vision and Dekker transactions were $86,000.

Federal Court of Appeal Prescient Foundation v. Minister of National Revenue

Our position on the 570129 transaction was confirmed by the Federal Court of Appeal on May 1, 2013 as a result of an appeal brought by Prescient Foundation (Prescient) from the confirmation by the Minister of National Revenue (Minister) of a proposal under subsection 168(1) of the *Income Tax Act* to revoke the registration of Prescient as a registered charity. An application for leave to appeal was then filed by Prescient at the Supreme Court of Canada but was dismissed with costs.

Your representations suggest that the Dekker transaction and the 570129 transaction were substantially the same, except that Prescient did not participate in the Dekker transaction and the Dekker family members involved sold their shares to a taxable corporation and not to a registered charity. We respectfully agree and believe that because of the similarities between the 570129 and the Dekker transactions, the May 1, 2013, Prescient decision from the Federal Court of Appeal would be relevant in the Dekker case as well.

The FCA stated the following with regard to the 570129 (Farm Sale Transactions):

[36] The Minister concluded that these transactions amounted to participating in a tax planning arrangement for the private benefit of others and, as such, were not entered into for charitable purposes. Consequently, the Minister concluded that he should revoke Prescient's registration as a result of its participation in the Farm Sale Transactions. After carefully reviewing the concerned transactions and Prescient's submissions in this appeal, I find that the Minister's conclusion was reasonable in the circumstances.

[37] The overall purpose of the Farm Sale Transactions was to facilitate the sale of the farm assets to the Brandsmas while avoiding taxes otherwise payable by Vision Poultry (570129) and the Dekkers through a tax planning scheme seeking to use the special tax privileges of registered charities to the private benefit of specific individuals and corporations. In effect, Prescient's purchase of the shares of Vision was part of a scheme to route to the Dekkers, on a tax-free basis, the proceeds received from the Brandsmas for the sale of the farm assets.

[38] The special advantages extended to charities under the Act are meant to assist them in pursuing their charitable purposes. Under section 149.1(1) of the Act, charitable

foundations must thus be operated exclusively for charitable purposes. Prescient broke that important rule through its participation in the Farm Sale Transactions. By so doing, it ignored the fundamental purpose of the special advantages provided to charities under the Act. In the light of the egregious nature of the Farm Sale Transactions and of Prescient's participation therein, it was reasonable for the Minister to revoke Prescient's registration under the Act.

[39] I do not accept Prescient's submission that its intention in participating in the Farm Sale Transactions was to increase the amounts made available to it and to other registered charities for charitable purposes..... It does remain that the primary purpose of the Farm Sale Transactions was not to benefit the concerned charities, but, rather, to use the tax privileges of the concerned charities in order to confer unwarranted tax benefits on the private individuals and corporations involved.

[redacted]

Per our previous letter, the Organization purchased shares of [redacted] at a discount of $11,000 and we find that the Organization entered into this transaction to merely be the facilitator or accommodator in the transactions. Over a period of 14 days, the Organization acquired the shares at a discount and subsequently "arranged to have them redeemed" by the very same corporation. It is our belief the Organization would have been aware that the sole purpose of purchasing and redeeming the shares was to benefit the shareholder. The shareholder would have been subject to a deemed dividend under subsection 84(3) of the Act if the shares were redeemed; however, by selling the shares to the Organization at a loss, the shareholder was able to acquire the shares to access the redemption proceeds without being subject to tax.

Our position remains that the Organization accepted an $11,000 accommodator fee to facilitate this series of transactions that were designed to confer a significant undue private benefit on a shareholder of [redacted]. Further, there was no guarantee that the Organization would be able to resell the shares back to [redacted] or any other purchaser thereby risking the resources of the Organization.

Independent World Television Foundation (IWTF)

We have considered your representations with respect to the IWTF transactions and do not concur with your interpretation of the transactions. We remain of the position that the Organization failed to operate exclusively for charitable purposes in this regard.

The history of the Organization's relationship with IWTF is as follows:

- [redacted]. There is a related organization in the United States registered with the Internal Revenue System as a 501(c)(3) charity under the name of Independent World Television Inc. (IWT U.S.).

- [redacted] applied for registration as a public foundation under the name of Independent World Television Foundation (IWTF) with the help of Mr. Blake Bromley [redacted]. IWTF was registered effective December 16, 2005 and Mr. Blake Bromley was one of the founding directors.

- According to The [redacted], if you are donating in the United States, you will receive a tax receipt from IWT U.S., a 501(c)(3) charity. If you are donating in Canada, you will receive a tax receipt from [redacted] a Canadian registered charity. Canadian tax receipts were issued by IWTF prior to its status as a charity being revoked in 2010.

- On August 31, 2006, the Organization, loaned $2 million CAD to IWTF at an interest rate of 20% per annum plus 5% term interest. On April 30, 2007, the Organization loaned a further $2 million CAD to IWTF at the same interest rates even though no interest had been paid on the prior loan. According to Mr. Jay, a director of IWTF, no written loan agreements were in place.

- The funds were flowed through IWTF to IWT U.S. We reviewed the IRS Form 990, *Public Charity Status and Public Support* filed by IWT US which confirmed that $3.6 million USD was reported on the 2007 return as an amount due to a related party. IWTF also reported an amount receivable of $3.6 million CAD and a liability of $4.2 million CAD for what we believe to be the accrued interest.

We respectfully disagree with your representations advising that $3 million of the outstanding loan and interest was repaid to the Organization by IWTF in 2009. Further research in this regard refutes your representations as outlined below.

A review of IWTF's T3010, *Registered Charity Information Returns* filed prior to its revocation in 2010 confirmed that IWTF did not have funds to repay the outstanding loan and interest to the Organization in 2009. IWTF's net assets for the period of 2006 to 2009 were as follows:

	2009	2008	2007	2006
Assets				
Cash	$9,703	$234,498	$90,845	$1,651,033
Accts Receivable	$4,354,817	$3,812,469	$3,629,246	$82,574
Other	$7,057	$13,222	$17,128	$20,817
Total Assets	$4,371,577	$4,060,189	$3,737,219	$1,754,424
Liabilities				
Accts payable	$4,518	$5,980	$5,000	0
Other Liabilities	$4,550,685	$4,350,685	$4,150,685	$2,000,000
Total Liabilities	$4,555,203	$4,356,665	$4,155,685	$2,000,000
Net Assets	$ (183,626)	$ (296,476)	$ (418,466)	$ (245,576)

We have now learned that [redacted], a Canadian registered charity, transferred $3 million to IWTF just prior to its revocation in 2010. The funds were then flowed to the Organization from IWTF under the guise of a partial repayment of the principal and interest owing. Our records confirm that Mr. Bromley was a director of both [redacted] and the Organization during this time frame. It is reasonable to assume that Mr. Bromley, as the controlling mind of these charities, provided the direction to flow $3 million from [redacted] to IWTF and then to the Organization to give the impression that at least part of the loan had been repaid. The final T3010 filed by IWTF in 2010 did not show a decrease in the outstanding liability account of $4.5 million owing to the Organization nor does it show the purported gift of $5.1 million received from the Organization.

Our position remains that the Organization jeopardized its resources by loaning funds to IWTF, an organization that did not have the ability to pay the exorbitant interest amounts or repay the principal payment of $4 million. In our view simply moving funds from one charity to another does not constitute a legal loan repayment. As such, the Organization failed to operate exclusively for charitable purposes in compliance with the requirements of the Act and does not meet the definition of a charitable foundation under subsection 149.1(1) of the Act.

[redacted]

We agree with your position that the Act does not require the Minister to revoke the registration of a public foundation that has acquired control of a corporation; however, paragraph 149.1(3)(c) of the Act states:

> "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 since June 1, 1950, acquired control of a corporation."

The representations suggest that CRA said the shares of [redacted] were not purchased and in fact, they were donated to it. We cannot find the reference you refer nor have you provided documentation to support your representations. We will note that our letter indicates "According to Mr. Bromley, "[The Organization] purchased (emphasis added) land under a court ordered bankruptcy sale. It subsequently rolled the land into a new corporation it acquired (emphasis added)." The Organization has provided no information verifying that the corporation referred to was in fact donated to it[1].

With respect to your comments noting that CRA guidance on related business indicates that registered charities may form wholly-owned corporate subsidiaries to carry on an unrelated business distinguishes the situations by which a charitable organization and a charitable foundation can acquire control of a corporation. As noted at paragraph 47 of CPS-019, *What is a Related Business?*, "As long as its own governing documents and provincial legislation allow it to do so..., the charity (if it is a charitable organization) can

[1] A review of the general ledgers and official donation receipts provided does not reveal that the corporation was donated to the Organization.

retain control over the taxable corporation through share holdings or a power to nominate the board of directors. However, the *Income Tax Act* does not allow a charity that is a foundation to acquire more than half of the voting shares of a taxable corporation, unless the shares are donated to the foundation." Accordingly, we disagree with your representations as they failed to consider that the Organization is a charitable foundation and it did not acquire control of [redacted] by way of donated shares. Finally, we disagree the funds loaned to [redacted] were funds used to further the Organization's charitable purposes.

Our position remains that the Organization failed to comply with paragraph 149.1(3)(c) of the Act and for this reason alone there are grounds to revoke the registered status of the Organization.

[redacted]

We accept the Organization's representations with respect to the donation of [redacted] shares and will not rely on the arguments outlined in our previous letter as grounds for revocation.

[redacted]

Our position remains that, even though the Organization made a decision not to go forward with the investment in [redacted] and the $500,000 deposit was returned, the transaction was another potential example of non-compliance with the Act. The $500,000 transfer to [redacted] would have been considered a gift to a non-qualified donee. As this was merely an example, we will not rely on the arguments outlined in our previous letter as grounds for revocation.

Our audit indicated that the Organization had made significant gifts to persons that were not qualified donees, as well as engaging in transactions that resulted in significant losses of its financial resources without benefitting itself or furthering its charitable purposes. It is therefore our position that the Organization failed to devote its resources exclusively to charitable activities carried on by it as was required under subsection 149.1(1) of the Act. As such, there are sufficient grounds to revoke the charitable registration of the Organization under paragraph 168(1)(b) of the Act.

2) <u>Carrying on an Unrelated Business</u>

We have considered your representations submitted with respect to the unrelated business the Organization was carrying on; however, we do not feel we were provided with any new information and as a result, our position remains that the Organization has carried on a business that is not considered to be a related business. Moreover, to be considered a related business, the business activity must clearly be subordinate to the overall charitable programming conducted by a charity. In the absence of any significant charitable activity undertaken by the Organization, its business activities do not meet this test.

Per our previous letter:

- The intent of purchasing the lots from another registered charity at the time was to earn a profit. Mr. Blake Bromley, director of the Organization, confirmed this intent in his letter dated May 10, 2010.
- The potential to show a profit was evidenced in the purchase and sale agreement signed with the vendor, Sea to Sky Foundation. For example, a restrictive covenant in the purchase and sale agreement prohibited the Organization from building more than 78 dwelling units on the property; the Organization purchased 56 residential lots from Sea to Sky Foundation for this purpose at a total price of $9 million. A sample of the lots reviewed and reported on the BCAA site indicates the fair market value of each lot is $147,500; the Organization reported a large gain on the sale of the four lots in the 2009 fiscal year. Additionally, a reasonable person would not conclude, as the Organization has, that purchasing 56 residential lots "did not have any degree of continuity or regularity that would be required in order to constitute "carrying on" a business."
- The existence of profits in the past years was evidenced by the fact that the Organization sold four lots in the 2009 fiscal year, earning a profit of $1.8 million. CRA is unable to verify the number of lots sold since 2009 as it is outside our audit period. However, it is reasonable to conclude that the Organization would have to engage in repeated and regular sales transactions in subsequent years in order to fully realize the profit it intended to generate from all 56 lots.
- The expertise and experience of the persons or organizations that entered into an agreement with the Organization to market and sell the lots are qualified real estate advisors and developers who have been in business for more than 30 years. It is reasonable to suggest that one of the reasons the Organization engaged real estate advisors and developers to be its associates for this venture was that it realized the venture is a business to be carried on for multiple years. The agreement suggested that the actions in connection with the marketing and selling of such a large number of lots would need to have a degree of continuity and regularity in order to constitute carrying on a successful business in the years going forward. For example, the advisors were expected to develop a detailed marketing and sales program including strategies, budgets and schedules focused on enhancing sales values for current and future lot sales.

Our understanding is the remaining lots have now been gifted to [redacted] another public foundation. Please keep in mind that our position is based on the issues and concerns revealed during the audit period, not on a going-forward basis, and gifting the business as well as the assets to a qualified donee does not alter our conclusion that the Organization has engaged in an unrelated business for which it can be revoked.

In light of the above, it is our position that the Organization has carried on a business that is not a related business. As such, there appears to be sufficient grounds to revoke the Organization's registration under paragraph 149.1(3)(a) of the Act.

3) Issuing Official Donation Receipts Not in Accordance with the Act

Our position remains that the Organization has contravened the Act by issuing receipts for transactions that do not qualify as gifts under section 118.1 of the Act. The assets received lack *animus donandi*; neither Dekker nor 570129 BC Ltd necessarily enrich, or intend to enrich the Organization. The purpose of the transactions was to route pre-sold assets through a registered charity. In the transactions the Organization purportedly received a gift but was left in no better financial position than before the transaction.

The Organization was, at no time, entitled to maintain or benefit from the property purportedly donated to it. In fact, it does not appear that the transfer of assets was legally effective - the purchase and sale agreements to sell the assets to the third parties were signed in advance of the purported gifting of assets to the Organization. For example, in the Dekker arrangement the purchase and sale agreements were signed in March 2005 yet the purported "gifting" occurred in May 2005; and the Dekker's legal representative confirmed to the BC Chicken Marketing Board that the ownership of Dekker remained in the hands of Mr. and Mrs. Dekker "despite any change in ownership and control of the Company [Dekker] which may have taken place".

It is our position that the primary motivation of the participant in each of the tax-planning arrangements was not to enrich the Organization or the other participating charities but, through a series of transactions, to avoid certain provisions of the Act and taxes otherwise payable. Our audits have revealed the transactions in these two arrangements were pre-arranged by the participant, as the Organization merely acted as a conduit to issue donation receipts and funnel cash and tax-receipted property to achieve the desired tax effects. In each case, the financial positions of the Organization and other charities involved did not improve by nearly as much as the tax-receipted amount, if at all. At best, the Organization was lending its tax-receipting privilege for a fee.

We accept the Organization's representations with respect to the donation of Archon shares and will not rely on the arguments in our previous letter as grounds for revocation.

It is our position that there was no donative intent behind the aforementioned tax-planning transactions. As such, the property received by the Organization in each case did not qualify as a gift under section 118.1 of the Act and it remains our position that the Organization has failed to issue donation receipts in accordance with the Act. Consequently, this constitutes one of the reasons to recommend revocation of registration of the Organization by virtue of paragraph 168(1)(d) of the *Income Tax Act*.

4) Failure to Maintain Adequate Books and Records

A registered charity must maintain, and make available to the CRA at the time of the audit, meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required documentation and records subsequent to the audit.

The Organization was provided sufficient time to prepare and provide its books and records prior to and during the course of our audit yet chose not to make all of its records available.

The Organization's representations state on page 18 "You have alleged that [the Organization] did not maintain proper books and records in the form of minutes of meetings of directors. We suggest that there is no express requirement for such minutes to be maintained." We respectfully disagree. In the Federal Court of Appeal case dated May 1, 2013, Prescient Foundation v. Minister of National Revenue, the Court responded as follows when reviewing the lack of meeting minutes pertaining to the 570129 transaction (referred to by the Court as Farm Sale Transactions):

[53] I first note that Prescient maintained no records of its Board of Directors meetings relating to its involvement in the Farm Sale Transactions, most notably concerning its acquisition of 30% of the shares of Vision Poultry. Articles 14.7 and 14.8 of Prescient's own by-laws (Appeal Book ("AB") at p.23) required its board of directors to approve the acquisition in order to determine both whether it was a prudent investment and whether Prescient should invest in this type of shares. Yet no record of such a meeting was maintained.

[54] Moreover, Prescient did not maintain documentation clearly showing that its gift to DATA had been made to an American charity, nor did it disclose this important fact to the CRA auditor in a timely fashion. As the record shows, the auditor raised the issue of the contribution to DATA in a query to Prescient dated July 8, 2008 (AB p. 250) and in a letter to Prescient dated January 21, 2009 (AB p. 520). The lack of proper documentation relating to this transaction, coupled with the failure of Prescient to voluntarily disclose the relevant information in a timely fashion, resulted in the auditor erroneously assuming that the contribution had been made to a Canadian charity bearing a similar name to that of DATA. It was only in May of 2009 that the auditor was made aware that the contribution had been made to an American charity.

[55] In light of this, it was reasonable for the Minister to conclude that Prescient did not maintain adequate records.

Given the reportedly significant values of the assets and the complexity of the transactions the Organization was involved in, we find it reasonable to expect that the directors of the Organization would have conducted extensive discussion regarding the approval of such transactions. However, our audit indicated a lack of records of such discussions. For instance, we found no Board minutes or planning documents with respect to the transactions of the shares of DPL and 570129 BC Ltd. Further, it would seem prudent for the Organization to review the transactions and the associated expenditures on a continual basis. Here again, our audit indicated the Organization did not retain adequate records to support these expenditures.

Further, with reference to the 570129 and Vision transactions, the representations state "amounts paid for legal fees to arm's length law firms by [the Organization] in

connection with the transactions were reasonable." We respectfully disagree with this statement as all of the legal and consulting fees, $86,576, were paid to non-arm's length firms and individuals. Fees were paid to [redacted], [redacted] and [redacted]. Also, we find it difficult to conclude the legal fees were reasonable due to the limited detail the invoices provided. For example, invoices 05-105 and 05-108 state "For consulting services rendered in relation to Dekker's donation including: All meetings, correspondence and telephone conferences; considering to and working on the completion of the Dekker's donation by [redacted]" (or Blake Bromley 05-108).

In our Query #11 dated April 4, 2008, we asked the Organization to provide a detailed listing of expenses claimed, by whom and for what purpose as well as an explanation and the supporting documentation to show expenses were incurred to further the activities of the Organization. The Organization's response to our query provided little or no insight; indicating that the legal bills were incurred as an expense to help the Organization feel competent that it was complying with the laws governing public foundations.

The representations provided, referencing expenses for travel to Brussels, advise that all of those expenses were clearly documented and disclosed in its books of records. This is not accurate.

Our Query #10 dated April 4, 2008, asked the Organization to verify the travel expenses claimed on the 2005 T3010 of $16,481 and 2006 T3010 of $19,321 by providing the purpose of the travel, what work was done in support of the Organization and an explanation and documentation to show that the expenses were incurred to further the activities of the Organization. The Organization provided the following explanation: "The travel expenses in 2005 and 2006 relate to attending conferences relating to international grant-making. The purpose of travel to Europe in 2005 and 2006 was to attend the annual meeting of the Conference of the European Foundation Centre in an effort to get a better understanding of some of the best practices of foundation in Europe so they can be transferred to the [Organization]. The purpose of travel to Washington, D.C. and San Juan was to attend the Conference of the Council on the Foundations and a Conference on International Philanthropy, respectively, to discuss best practices and policies relating to international grant-making and Anti-Terrorism legislation." A review of the European Foundation Centre website listed [redacted] as an associate member in Canada. We did not locate where the Organization was listed as being an associate member.

We also received copies of invoices for hotels for [redacted] and Blake Bromley and invoices from [redacted] for [redacted] outlining an itinerary for [redacted] and Blake Bromley travelling to Edmonton, Calgary, Frankfurt, Amsterdam, Brussels, London, Atlanta, San Juan, Athens, Ottawa, Toronto, and Malev in 2004, 2005 and 2006. None of the documentation indicated the invoices were for expenditures incurred by or on behalf of the Organization. The books and records provided during and subsequent to the audit did not link any of the travel destinations to the

Organization nor was the auditor provided with any verifiable information that indicated the best practices presented at the Conferences in Europe and Washington D.C. have been transferred to the Organization to enhance the ability to carry out its charitable purposes.

Under subsection 149.1(3) of the Act, the Minister may revoke the registration of the registered charity in the manner as described at paragraph 168(1)(e) of the Act because the registered charity has failed to comply with or contravenes any of sections 230 to 231.5 of the Act. It is our position the Organization has contravened section 230 of the Act for failing to maintain complete records to verify the information contained within its *Registered Charity Information Returns* and financial statements. For this reason, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(e) of the Act.

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.