



September 8, 2022

**REGISTERED MAIL**

Leslie Brandlmayr  
Director  
Stewards' Charitable Foundation  
1250 – 1500 W. Georgia St.  
Box 62  
Vancouver BC V6G 2Z6

BN: 86917 9861 RR0001  
File number: 3007461

Dear Leslie Brandlmayr:

**Subject: Notice of intention to revoke**

We are writing with respect to our letter dated October 25, 2018 (copy enclosed), in which Stewards' Charitable Foundation (the Foundation) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from September 1, 2011, to August 31, 2015. Specifically, the Foundation was asked to explain why its registration should not be revoked in accordance with subsection 168(1) of the Income Tax Act.

We have reviewed and considered your written response dated January 31, 2019. Your reply has not alleviated our concerns with respect to the Foundation's non-compliance with the requirements of the Act for registration as a charity. Our concerns are explained below.

**Issuing official income tax receipts not in accordance with the Act – Lack of donative intent**

An essential element of a gift is *animus donandi*; meaning, that the donor must be motivated by an intention to give. It must be clear that the donor intends to enrich the donee by giving away property and to generally grow poorer as a result of making the gift. The transactions may not result directly or indirectly in any right, privilege, benefit or other advantage to the donor.

During the audit period, the Foundation issued an official income tax receipt for shares transferred to it by John Redekop and then transferred these shares fourteen months later to Oak Tree Foundation, a registered charity John Redekop was a director of, and therefore, does not deal at arm's length with. Because of this, the audit concluded it was not clear that John Redekop intended to enrich the Foundation through this transfer. Rather, it appeared that the transaction was part of a private tax planning arrangement.

Foundation's response:

The Foundation questioned how the jurisprudence referenced in our letter established a lack of donative intent and to explain why the CRA entirely ignored the statutory provision in subsection 248(30) of the Act. In fact, the Foundation questioned whether the Minister was unaware of this provision or was she intentionally misstating the law so as to advance her prejudicial attempt to brand, as a tax cheat, a generous Canadian. The Foundation did not submit any additional documentation as part of its response to this area of non-compliance.

CRA's response:

As explained in our letter, under common law, it is generally considered that a transfer of property is not a gift unless the donor is impoverished by the transfer to the benefit of the donee and it is the donor's intention to enrich the donee without consideration. We have considered and reviewed the application of subsection 248(30) to this transaction and it is our position that it does not apply to this series of transactions. Subsections 248(30), (31) and (32) were added to the Act to clarify the circumstances under which taxpayers and donees may be eligible for tax benefits under the Act in respect of the impoverishment of a taxpayer in favour of a donee. It is generally accepted that the tax benefit available to a taxpayer, by way of a charitable donation deduction or credit, is not considered an advantage or benefit that would reflect a lack of donative intent on the part of a taxpayer. However, there may be circumstances where the intention of a taxpayer to make a gift is in doubt because of the combination of tax and other benefits to the taxpayer. If the primary motivation of a taxpayer for entering into a transaction or series of transactions is to return a profit to the taxpayer by way of a combination of tax and other benefits, as is CRA's position in the case of the Foundation, the taxpayer may not be impoverished by the transfer of property to a charity. Subsection 248(30) is not intended to allow a taxpayer to profit by the making of a gift.

**Issuing official income tax receipts not in accordance with the Act – Fair market value (FMV)**

The audit found, based on a review by the CRA's Business Equity Valuations Unit (BEV), that while the shares transferred to the Foundation were traded on a listed stock exchange, the volume of these shares far exceeded the daily average volume of shares traded. The high volume of the shares transferred would have resulted in a block discount, which would decrease the FMV of these shares. As a result, the Foundation issued an official income tax receipt for a value exceeding the FMV by \$592,200.

Foundation's response:

The Foundation noted it had not been provided a copy of the BEV valuation [the report was subsequently mailed to the Foundation in May 2019].

The Foundation argued that acquiring a block of these shares would attract a premium, not a discount, because these shares were thinly traded as very few owners are willing to sell them. The Foundation also argued that to state that issuing an official donation using

the daily trading value was grounds for revocation under paragraph 168(1)(d) was evidence of the Minister's bias against the Foundation.

**CRA's response:**

Generally, the CRA accepts the use of the exchange trading price of a share listed on a designated stock exchange as its fair market for receipting purposes. However, CRA guidance also recommends that a charity may wish to seek professional advice in this determination as there may be other factors that need to be taken into consideration, as is the case with the Foundation. The Foundation noted that the shares in question were thinly traded and John Redekop was a director of the corporation whose shares were transferred in the past. Given this information, the Foundation should have known that additional scrutiny and examination would be necessary to confirm the fair market value of these shares. To not have done so demonstrates a lack of due diligence in accepting, valuing and receipting these shares. Further, the Foundation provided no documentation to support its position that these shares would attract a premium.

Under paragraph 168(1)(d), the Minister may propose to revoke a charity's registration if it issues a receipt for a gift otherwise in accordance with the Act and the regulations. The onus is on registered charities to consider all factors when determining the fair market value of a non-cash gift for receipting purposes. It is the CRA's position that the Foundation failed to consider all factors when it issued a receipt for the shares in question resulting in it issuing a receipt otherwise in accordance with the Act.

**Failure to devote resources to charitable activities**

The audit determined that the Foundation structured its affairs for the benefit of private persons by participating in a private tax planning arrangement. As a result, the Foundation's resources were not devoted to charitable activities. The Foundation had limited activities outside of this and maintained no documentation demonstrating that accepting the shares from John Redekop would be favourable for it nor the reasons for transferring them to another registered charity of which John Redekop was a director of, fourteen months after receiving the shares.

**Foundation's response:**

The Foundation argued that if the transfer had been directly to Oak Tree Foundation, the tax result to the donor would have been exactly the same as the transfer to the Foundation and that there is no tax benefit which the donor received by giving to one foundation rather than the other.

CRA's response:

The Foundation did not provide any new information, explanations or documentation to change our position as outlined in our letter. Our position remains that the Foundation acted in favour of a private person rather than its own charitable interests.

**Conclusion**

The audit by the CRA found that the Foundation is not complying with the requirements set out in the Act. In particular, it was found that the Foundation issued official income tax receipts not in accordance with the Act and failed to devote resources to charitable activities. This non-compliance constitutes a serious breach of the requirements for registration. For these reasons, it is our position that the Foundation no longer meets the requirements for charitable registration.

Consequently, for the reasons mentioned in our letter dated October 25, 2018, and pursuant to subsection 168(1) of the Act, we hereby notify you of our intention to revoke the registration of the Foundation. By virtue of subsection 168(2) of the Act, the 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) and 168(1)(d) of the Income Tax Act, of our intention to revoke the registration of the charity listed below and that by virtue of paragraph 168(2)(b) thereof, the revocation of registration will be effective on the date of publication of this notice in the Canada Gazette.

<b>Business number</b>	<b>Name</b>
869179861RR0001	Stewards' Charitable Foundation Vancouver BC

In addition, due to the serious nature of non-compliance found in the audit, the CRA has decided to publish a copy of the notice in the Canada Gazette immediately after the expiration of 30 days from the date of mailing of this notice pursuant to paragraph 168(2)(b) of the Act.

Should the Organization choose to object to this notice of intention to revoke its registration, in accordance with subsection 168(4) of the Act, a written notice of objection, with 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:

Assistant Commissioner  
Appeals Intake Centre  
Post Office Box 2006, Station Main  
Newmarket ON L3Y 0E9

However, please note that even if the Organization files a notice of objection with the CRA, this will not prevent the CRA from publishing the notice of revocation in the Canada Gazette immediately after the expiration of 30 days from the date of mailing of this notice.

The Organization has the option of filing an application with the Federal Court of Appeal (FCA), as indicated in paragraph 168(2)(b) of the Act, to seek an order staying publication of the notice of revocation in the Canada Gazette. The FCA, upon reviewing this application, may extend the 30-day period during which the CRA cannot publish a copy of the notice.

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

### **Consequences of revocation**

As of the effective date of revocation:

- a) the Foundation 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 Foundation would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3) and paragraph 110.1(1)(a) of the Act respectively;
- b) by virtue of section 188 of the Act, the Foundation 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 Form T2046, Tax Return where Registration of a Charity is revoked. Form T2046 must be filed, and the tax paid, on or before the day that is one year from the date of the notice of intention to revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix A. Form T2046 and the related Guide RC4424, Completing the Tax Return where Registration of a Charity is revoked, are available on our website at [canada.ca/charities-giving](http://canada.ca/charities-giving);
- c) the Foundation will no longer qualify as a charity for purposes of subsection 123(1) of the Excise Tax Act. As a result, the Foundation may be subject to obligations and entitlements under the Excise Tax Act that apply to entities 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, we 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,

*Sharmila P. Khare*

Sharmila Khare  
Director General  
Charities Directorate

Enclosures

- Appendix A, Relevant provisions of the Act
- CRA letter dated October 25, 2018
- Foundation's representations dated January 31, 2019

c.c.: Nadine Britton

**Qualified Donees**

**149.1 (1) Definitions**

**charitable foundation** means a corporation or trust that is constituted and 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 settlor thereof, and that is not a charitable organization

**charitable organization**, at any particular time, means an organization, whether or not incorporated,

(a) constituted and operated exclusively for charitable purposes,

(a.1) all the resources of which are devoted to charitable activities carried on by the organization itself,

(b) no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof,

(c) more than 50% of the directors, trustees, officers or like officials of which deal at arm's length with each other and with

(i) each of the other directors, trustees, officers and like officials of the organization,

(ii) each person described by subparagraph (d)(i) or (ii), and

(iii) each member of a group of persons (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(l)) who do not deal with each other at arm's length, if the group would, if it were a person, be a person described by subparagraph (d)(i), and

(d) that is not, at the particular time, and would not at the particular time be, if the organization were a corporation, controlled directly or indirectly in any manner whatever

(i) by a person (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(l)),

(A) who immediately after the particular time, has contributed to the organization amounts that are, in total, greater than 50% of the capital of the organization immediately after the particular time, and

(B) who immediately after the person's last contribution at or before the particular time, had contributed to the organization amounts that were, in total, greater than 50% of the capital of the organization immediately after the making of that last contribution, or

~~(ii) by a person, or by a group of persons that do not deal at arm's length with each other, if the person or any member of the group does not deal at arm's length with a person described in subparagraph (i)~~

**qualified donee**, at any time, means a person that is

- (a) registered by the Minister and that is
  - (i) a housing corporation resident in Canada and exempt from tax under this Part because of paragraph 149(1)(i) that has applied for registration,
  - (ii) a municipality in Canada,
  - (iii) a municipal or public body performing a function of government in Canada that has applied for registration,
  - (iv) a university outside Canada, the student body of which ordinarily includes students from Canada, that has applied for registration, or
  - (v) a foreign charity that has applied to the Minister for registration under subsection (26),
- (b) a registered charity,
- (b.1) a registered journalism organization,
- (c) a registered Canadian amateur athletic association, or
- (d) Her Majesty in right of Canada or a province, the United Nations or an agency of the United Nations.

#### **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;
- (b.1) makes a disbursement by way of a gift, other than a gift made
  - (i) in the course of charitable activities carried on by it, or
  - (ii) to a donee that is a qualified donee at the time of the gift;
- (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 149.1(4), to revoke its registration as a private foundation.

#### **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;
- (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; and
- (f) of a registered charity, if it accepts a gift from a foreign state, as defined in section 2 of the State Immunity Act, that is set out on the list referred to in subsection 6.1(2) of that Act.

#### **Revocation of Registration of Certain Organizations and Associations**

##### **168 (1) Notice of intention to revoke registration**

The Minister may, by registered mail, give notice to a person described in any of paragraphs (a) to (c) of the definition "qualified donee" in subsection 149.1(1) that the Minister proposes to revoke its registration if the person

- (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;
- (c) in the case of a registered charity or registered Canadian amateur athletic association, fails to file an information return as and when required under this Act or a regulation;

(d) issues a receipt for a gift 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 the granting of which was expressly or implicitly conditional on the association making a gift to another person, club, society or association.

#### **168 (2) Revocation of Registration**

Where the Minister gives notice under subsection 168(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,

(d) [Repealed, 2011, c. 24, s. 54]

(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,

(g) refuses to accept for registration for the purposes of this Act any retirement income fund,

(h) refuses to accept for registration for the purposes of this Act any pooled pension plan or gives notice under subsection 147.5(24) to the administrator of a pooled registered pension plan that the Minister proposes to revoke its registration, or

(i) refuses to accept an amendment to a pooled registered pension plan,

the person 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), the administrator of the plan or an employer who participates in the

plan, in a case described in paragraph (f) or (f-1), or the administrator of the plan in a case described in paragraph (h) or (i), 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),
- (b) [Repealed, 2011, c. 24, s. 55]
- (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),
- (c.2) the mailing of notice to the administrator of the pooled registered pension plan under subsection 147.5(24), or
- (d) the time the decision of the Minister to refuse the application for acceptance of the amendment to the registered pension plan or pooled 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.

### **Tax and Penalties in Respect of Qualified Donees**

#### **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) a registered charity
  - (i) 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,
  - (ii) that is not the subject of a suspension under subsection 188.2(1),
  - (iii) that has no unpaid liabilities under this Act or under the Excise Tax Act,
  - (iv) that has filed all information returns required by subsection 149.1(14), and
  - (v) 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; or
- (b) a municipality in Canada that is approved by the Minister in respect of a transfer of property from the particular charity.

### **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) Joint and several, or solidary, liability – tax transfer**

If 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, or solidarily, 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 described in paragraph 188(1.3)(a) 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.



**REGISTERED MAIL**

October 25, 2018

Ms. Leslie Brandlmayr  
Director  
Stewards' Charitable Foundation  
1250 - 1500 W. Georgia St.  
Box 62  
Vancouver BC V6G 2Z6

BN: 86917 9861 RR0001  
File #: 3007461

Dear Ms. Brandlmayr,

**Subject: Audit of Stewards' Charitable Foundation**

This letter results from the audit of the Stewards' Charitable Foundation (the Foundation) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Foundation for the period from September 1, 2011 - August 31, 2015.

On October 25, 2018 the Foundation was advised that the CRA identified specific areas of non-compliance with the provisions of the Income Tax Act and its Regulations in the following areas.

<b>AREAS OF NON-COMPLIANCE:</b>		
	<b>Issue</b>	<b>Reference</b>
1.	Issuing official income tax receipts not in accordance with the Act	110.1, 118.1, 149.1(2), 168(1)(d) Reg. 3500, 3501(1), and 3501(1.1)
2.	Failure to devote resources to charitable activities	149.1(1), 149.1(3), 149.1(4.1)(a), 168(1)(b)

This letter describes the areas of non-compliance identified by the CRA relating to the legislative and common law requirements that apply to registered charities, and offers the Foundation an opportunity to respond and present additional information. The Foundation must comply with the law; if it does not, its registered status may be revoked in the manner described in section 168 of the Act.

'Facts identified during the audit:

- On December 29, 2011, John Redekop donated 238,000 shares of the [REDACTED] to Stewards' Charitable Foundation
- An official donation receipt (ODR) was issued in the amount of \$2,796,500 to Mr. Redekop
- The ODR was issued based on the exchange trading price on that day of \$11.75/share
- At the time of the donation, Mr. Redekop was a director of Oak Tree Foundation
- Fourteen months after the donation, the shares of [REDACTED] were transferred to Oak Tree Foundation on February 26, 2013

**Identified areas of non-compliance:**

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

It is our position that the Foundation has contravened the Act by accepting and issuing a receipt for a transaction that does not qualify as a gift by participating in a private tax planning arrangement. The Foundation issued a tax receipt for \$2,796,500<sup>1</sup> for a donation of publicly traded securities. We have determined that the property for which the tax receipt was issued was not a gift at law and that the receipt was overvalued by \$592,200.

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

It is of particular importance that the registered charity reports the correct value of the gift on its tax receipts. Given the potential uncertainty over their valuation, the Act stipulates that the "fair-market value" (FMV) of a gift of non-cash property to be reported on a tax receipt. The CRA recognizes the complexity of valuating non-cash property and recommends the use of an independent appraiser where a registered charity issues a tax receipt of significant value for a gift-in-kind. We recognize that appraisals are not required under the Act or its Regulations; however, it is our view that the onus remains with the charity to ensure the value assigned to non-cash gifts received is reflective of the factual fair market value of the goods being received. For property with a value in excess of \$1,000, we strongly recommend that the property be appraised by an independent third party<sup>2</sup>. The person determining the fair market value of the item should be competent and

<sup>1</sup> The Foundation received gifts of publicly traded securities in [REDACTED], a public company whose shares were being traded on the Toronto Stock Exchange, of \$2,796,500 on December 29, 2011. The Foundation issued an official donation receipt to the donor, Mr. Redekop, which was calculated on the closing share trading price of \$11.75 per share multiplied by 238,000 shares.

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

qualified to evaluate the particular property being donated, as well as be knowledgeable about the marketplace for the specific property. They should be knowledgeable about the principles, theories, and procedures of the applicable valuation discipline and follow the Uniform Standards of Professional Appraisal Practice or the standards of the profession.

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

A registered charity that issues an official donation receipt that includes false information is liable to a penalty equal to 125% of the eligible amount stated on the receipt, where the total does not exceed \$25,000. Where the total exceeds \$25,000, the charity is liable to a penalty equal to 125% and the suspension of tax-receipting privileges. We do not intend to apply these penalties given the serious nature of the non-compliance, as explained below.

#### Lack of Donative Intent

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

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

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

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

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

or indirectly, or anticipation of that. The intent of the donor must, in other words, be entirely donative.

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

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

It is our view that the primary motivation of the donor was not to enrich the Foundation, but rather to create a veil, protecting the parties of the transaction from public scrutiny. This is evidenced by the transaction on February 26, 2013, where the Foundation gifted the shares, and the potential to earn future income, to Oak Tree Foundation, a charity where Mr. Redekop is one of the directors. Based on the timing of the transactions (the shares were donated to the Foundation only fourteen months earlier), the parties involved, and the lack of documentation to support this decision, we have concluded that Mr. Redekop donated to Stewards' Charitable Foundation expecting the donation would be forwarded to Oak Tree Foundation in the near future. As such, there was no intention to make a "gift" within the meaning assigned at section 118.1 of the Act. Furthermore, it appears the donor participated in a private tax planning arrangement rather than making a gift with a desire to enrich the Foundation.<sup>3</sup>

In our view, these transactions, given the combination of the inflated tax credit and other benefits received, lack the requisite *animus donandi* to be considered as a gift.

#### Fair Market Value (FMV)

Regulation 3501(1)(h)(ii) requires every registered charity to report the fair market value of a gift of property on an official donation receipt.

The Business Equity Valuations (BEV) area of the CRA has reviewed the share value (\$11.75/share) that was used by the Foundation for determining the value of the donated [REDACTED] shares. An equity valuation was necessary to determine if the market value of the shares used for donation-receipting purposes was reflective of the "actual" market value of the shares. Based upon the review by BEV, it was determined that even though the shares were traded on a listed stock exchange; the volume of shares donated far exceeded the daily average volume of shares traded. As a result, if a person was to sell 238,000 shares on the open market at once, it would have saturated the market, thereby causing the share price to decrease. Therefore, it was estimated that the fair market value for the 238,000 [REDACTED] shares was between \$2,122,467 and \$2,286,190, with the midpoint of the

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<sup>3</sup> The Foundation only reported investment income of \$59,505 on its [REDACTED] share holdings for its YE Aug. 31, 2012. No investment income was reported for the YE Aug. 31, 2013.

range being **\$2,204,300** (\$9.26/share). The lower share price is a result of a block discount related to the high volume of shares donated at once.

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

## **2. Failure to devote resources to charitable activities**

It is our position that the Foundation was operated for the non-charitable purpose of providing a private tax planning arrangement, and as such, its resources were not devoted to charitable activities. Furthermore, the Foundation structured its affairs for the benefit of private persons to the detriment of the Foundation's charitable mandate.

Our audit found that for the period under audit, the donation of shares from Mr. Redekop and the subsequent gifting of those shares to Oak Tree Foundation were the only transactions with significant value aside from the interest earned from the shares. As a result, we have determined that the Foundation devoted a significant portion of its resources to a private tax planning arrangement for the benefit of the donor, Mr. Redekop.

Trust law imposes on a registered charity's directors the obligation to properly manage the assets of a charity. While it is often difficult for directors to foresee whether an asset they propose to acquire on behalf of the charity will be a good investment, the rules of prudent administration require that they take reasonable steps to ensure that the investment is a wise one which will ultimately be favourable for the charity. It is our view the Foundation's directors did not acquire the shares for investment purposes since the shares were only held for a brief period of time (approximately 14 months), nor did the Foundation receive any financial compensation related to the disposition of the shares since they were gifted to another registered charity (Oak Tree Foundation).

Based on the Foundation's limited activities outside of the private tax planning arrangement, a reasonable person could conclude that the acquisition of the [REDACTED] shares, and the gifting of the shares to a charity in which Mr. Redekop was a director, was entirely orchestrated for the purpose of earning tax credits from the donation of [REDACTED] shares and protecting the donor from public scrutiny. In our view, the Foundation has not operated as a registered charity, but as a facilitator of a private tax planning arrangement. Furthermore, the three directors of Stewards' Charitable Foundation were complicit in the private tax planning arrangement, whereby these directors have operated/managed the Foundation in a manner that is contrary to the purposes for which it was constituted.

It is also our position that this series of transactions was orchestrated to avoid or unduly delay the expenditure of amounts on charitable activities; and therefore, paragraph 149.1(4.1)(a) applies.

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

**The Foundation's options:**

**a) Respond**

If the Foundation chooses to respond, send written representations and any additional information regarding the findings outlined above **within 30 days** from the date of this letter to the address below. After considering the response, the Director General of the Charities Directorate will decide on the appropriate course of action. The possible actions include:

- no compliance action;
- issuing an educational letter;
- resolving the issues through a Compliance Agreement;
- applying penalties or suspensions or both, as described in sections 188.1 and 188.2 of the Act; or
- issuing a notice of intention to revoke the registration of the Foundation in the manner described in subsection 168(1) of the Act.

**b) Do not respond**

The Foundation may choose not to respond. In that case, the Director General of the Charities Directorate may issue a notice of intention to revoke the registration of the Foundation in the manner described in subsection 168(1) of the Act.

If the Foundation appoints a third party to represent it in this matter, send us a written request with the individual's name, the individual's contact information, and explicit authorization that the individual can discuss the file with us.

If you have any questions or require further information or clarification, do not hesitate to contact me at the numbers indicated below. My team leader, Sherri Davis, may also be reached at 250-363-3128.

Yours sincerely,

John Dumalski, [REDACTED]  
Audit Division  
Vancouver Island and North Tax Services Office

Telephone: (250) 363-6338  
Facsimile: (250) 363-3000  
Address: 9755 King George Blvd.  
Surrey BC V3T 5E1

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CRA  
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CNVR de Surrey

January 31, 2019

John Dumalski, [REDACTED]  
Audit Division  
Vancouver Island and North Tax Service Office  
9755, King George Blvd.  
Surrey BC V3T 5E1

Dear John,

RE: Administrative Fairness Letter to Stewards' Charitable Foundation  
BN: 86917 9861 RR0001 File#: 3007461

This letter is written in response to the Administrative Fairness Letter dated October 31, 2018 subsequent to the audit of the Stewards' Charitable Foundation (the "Foundation") conducted by the Canada Revenue Agency ("CRA"). The audit related to the operations of the Foundation for the period from September 1, 2011 to August 31, 2015.

#### OVERVIEW

I was deeply saddened as I read this AFL. Having read hundreds of AFLs issued by CRA, I can remember few that have made hostile subjective judgments about the motivation of the donor and misstated the law so blatantly so as to come up with the allegation that the donor was "participating in a private tax planning arrangement". In the decades during which I have dealt with you, John, in audits of many charities, I have never seen you demonstrate the blatant bias which informs CRA's "administrative fairness" in this AFL. While you signed this AFL, I assume that it was substantially written by your superiors in Ottawa.

The donor whose gift CRA maligns was [REDACTED]

[REDACTED] he was advised to donate blocks of capital into charitable foundations so the capital could be retained and income donated year after year. "Oak Tree Foundation" is named after a particular oak tree he remembers from his boyhood on the property in [REDACTED] he learns that his government considers his philanthropy as nothing more than the machinations of a tax cheat.

The donor is a director of more than one foundation which hold in excess of \$30 million. CRA must have some other agenda other than "fairness" to taint this generosity with allegations that it is the nefarious participation in "a private tax planning arrangement". It is necessary for me to waste the resources of a charity to respond technically with legal arguments addressing the many spurious administrative positions adopted by CRA. However, CRA's AFL is without legal merit and it is shameful that you would cast these aspersions on the type of citizen generosity that Charities Directorate should be nurturing.

## OBLIGATIONS OF CRA

The AFL states that "we believe there is [sic] sufficient grounds to revoke the charitable status of the Foundation under paragraph 168(1)(b) of the Act." Consequently, the Foundation notes it is trite law that

the decision of the Minister to send a notice of revocation under s.s. 168(1) must be arrived at in a manner enabling the Minister to create a record sufficiently complete to be used by [the Federal Court of Appeal] in deciding the appeal. This presupposes, in my view, that the Minister must follow a procedure enabling him to constitute a record reflecting not only his point of view but also that of the organization concerned.<sup>1</sup>

The law further states that charities at risk of de-registration must be "fully informed of the case to be met and [be] given a full opportunity to respond."<sup>2</sup> Although de-registration under paragraph 168(1)(b) is threatened by the AFL, the content of the AFL leaves me truly unable to understand the case to be met.

Consequently, I pose several questions below to which I seek a response from CRA, and I request documentation that has been referenced in the AFL but not disclosed be disclosed. Should responses not be provided to these questions, and the identified documentation not be disclosed, we will take the position that the Minister has not created the record she is required to by *Renaissance*, and that the Foundation has neither been fully informed of the case to be met nor given a full opportunity to respond.

While the questions and requested documentation are necessarily set out within the context of other matters discussed in this letter, I have summarized them in our conclusion for your ease of response and disclosure.

## COMPLYING WITH THE LAW

The AFL states that "the Foundation must comply with the law" and cites 149.1(1), 149.1(3), 149.1(4.1)(a) and 168(1)(b) as the statutory basis for non-compliance. Having studied the AFL carefully, I can find no alleged non-compliance with 149.1(3). Please identify the non-compliance with 149.1(3)<sup>3</sup> so I can address it in a subsequent letter.

The AFL explicitly states: "It is our position that the Foundation has contravened the Act by accepting and issuing a receipt for a transaction that does not qualify as a gift by participating in a private tax planning arrangement". Please explain the statutory basis for revoking because of "participating in a private tax planning arrangement"<sup>4</sup> because this is not identified in the statutory provisions cited in the AFL. Please advise whether CRA takes the position that it has the power to revoke based upon non-compliance with CRA's administrative policies absent an express statutory authority for revocation.<sup>5</sup>

<sup>1</sup> *Renaissance International v Canada (National Revenue)*, 142 DLR (3d) 639 at para 9.  
<sup>2</sup> *Canadian Committee for the Tel Aviv Foundation v Canada*, 2002 FCA 72 at para 23.

<sup>3</sup> Question #1 Seeking Response from CRA.  
<sup>4</sup> Question #2 Seeking Response from CRA.  
<sup>5</sup> Question #3 Seeking Response from CRA.

## DEALING WITH THE "FACTS"

The problem in providing my client with a professional response to this AFL as a lawyer is not confined to issues of law. The first point CRA lists under "Facts identified during the audit" is: "On December 29, 2011, John Redekop donated 238,000 shares of the [REDACTED] to Stewards' Charitable Foundation".

The final two points describe the facts "at the time of the donation" and "fourteen months after the donation". Consequently, CRA states that the shares were "donated" and describes the transfer as a "donation". As counsel for the Foundation, it was very difficult to explain to my client that even though CRA has explicitly set out the Foundation's interpretation of the facts – that the impugned transaction was in fact a donation, a synonym of gift – these words in the AFL are of no consequence. It is my job as legal counsel to identify which statements in the AFL are to be ignored as being untrue and which are to be addressed as gospel on pain of revocation. The lack of professionalism with which this letter is written is inconsistent with my experience with audits conducted by you and is another reason I suspect you merely signed your name to an AFL prepared by someone else.

## ISSUING OFFICIAL INCOME TAX RECEIPTS NOT IN ACCORDANCE WITH THE ACT

The facts set out in the AFL state that the Foundation issued an official donation receipt ("ODR") in the amount of \$2,796,500 "based on the exchange trading price on that day of \$11.75/share". The AFL then goes on to threaten the Foundation with statutory penalties for "incorrect information" and "false information" because the property was not appraised by an independent third party. In the circumstances, the Minister is abusing her powers and being completely unreasonable.

The property donated were shares of a publicly traded corporation, the [REDACTED]. Please advise if it is CRA's position that if an independent qualified appraiser who is not affiliated with the charity or the donor determined that the Fair Market Value of each share was \$13.50 that the ODR should have been issued for \$3,213,00? Given that the [REDACTED] shares are traded on the Toronto Stock Exchange, how is an appraisal relevant to the amount which the Foundation can receive upon disposing of the shares?

This is not a purely theoretical question with regard to [REDACTED] shares. Experts who know the corporation intimately realize that its value is based upon assets which are almost exclusively income producing real estate. They are of the opinion that the break-up value of selling all the assets is greater than the trading value on the Toronto Stock Exchange. An appraisal would deal with the break-up value based upon assets.

Some years ago, I was legal counsel to a different donor (Donor A) who donated a much larger block of [REDACTED] shares to a registered charity. Dealing with shares in the same corporation, [REDACTED] CRA was approached and asked whether the ODR could have a higher value than the trading price because of the break-up value. CRA said that the ODR should use the trading price on the day of the donation. Consequently, it is evidence of both prejudice and bias that a donor who is a friend of Donor A and was very much aware of Donor A's prior donation of [REDACTED] shares should be maligned as "participating in a private tax planning arrangement" because the ODR was not based upon an appraisal.

CRA defines fair market value (FMV) as "the highest price, expressed in dollars, that property would bring in an open and unrestricted market, between a willing buyer and a willing seller who are both knowledgeable, informed, and prudent, and who are acting independently of each other". Please explain how CRA interprets

how the valuation based upon an appraisal fits into this definition when the property listed in the ODR is shares traded on the Toronto Stock Exchange.<sup>8</sup>

#### "NOT A GIFT AT LAW"

The standard of review of questions of law is "correctness". The AFL alleges that the transfer was "not a gift at law". It states:

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

The AFL makes no allegation that the property was not voluntary and freely given. The Foundation undoubtedly received the property. CRA's statement of the law is that the transaction may not result in any advantage to the donor. This statement of law incontrovertibly fails the correctness test because the ODR is required by ITR 3500(1)(h.1) to include "a description of the advantage, if any, in respect of the gift and the amount of that advantage". Also, given that the *ITA* contains a statutory definition of "advantage", please explain CRA's interpretation of *ITA* ss. 248(32) in the context of the AFL's test of why the transfer was "not a gift at law".<sup>9</sup>

#### LACK OF DONATIVE INTENT

The AFL cites Woods J listing the four requisite elements of a "gift" in *Coombs et al v. The Queen*, 2008 DTC 4004, as indicia of the taxpayer having "a donative intent". The AFL does not allege that the donor failed to meet a single one of the four tests so it is unclear why this jurisprudence establishes a lack of donative intent. Please explain so we can address this issue.<sup>10</sup>

The AFL also cites *Webb v. The Queen*, 2004 TCC 619, [2004] T.C.J. No. 453 as authority for the legal proposition "that in order for an amount to be a gift to charity, the amount must be paid without benefit or consideration flowing back to the donor". Please explain why CRA is entirely ignoring the statutory provision in subsection 248(30) which deals with intention to give and says that the advantage can be 80% of the fair market value of the transferred property.<sup>11</sup> Is the Minister unaware of this provision or is she intentionally misstating the law so as to advance her prejudicial attempt to brand as a tax cheat a generous Canadian seeking to give back to a Canada which has provided him with the freedom and opportunity to acquire the property to make such a gift?

The AFL states that "the intent of the donor must, in other words, be entirely donative". Please provide jurisprudential or statutory authority which supports this purported statement of law.<sup>12</sup>

#### PUBLIC SCRUTINY

The AFL states that it is CRA's "view that the primary motivation of the donor was not to enrich the Foundation, but rather to create a veil, protecting the parties of the transaction from public scrutiny". During the past four decades, I have been involved with many gifts that have had a primary motivation other than enriching the beneficiary of the gift. These motivations have included disinheriting children, avoiding a potential "matrimonial

<sup>8</sup> Question #6 Seeking Response from CRA  
<sup>9</sup> Question #7 Seeking Response from CRA  
<sup>10</sup> Question #8 Seeking Response from CRA  
<sup>11</sup> Question #9 Seeking Response from CRA  
<sup>12</sup> Question #10 Seeking Response from CRA

property" claim from a mistress or publicly honouring a parent. Please provide a jurisprudential or statutory basis for holding these motivations disqualify the transfer from being a gift at law.<sup>13</sup>

It is astounding that CRA takes the legal position that protecting the parties to a gift from public scrutiny disqualifies a transfer from being a gift at law. CRA has taken the position in the past that donations made in trust through a lawyer's trust account were qualifying gifts. Any donor board in a hospital lobby or donor credits in a theatre program lists anonymous donations. Clearly, this is done to shield the donor from public scrutiny. There are also Scriptural reasons why religious donors prefer to give without public disclosure. Is it truly CRA's position that these transfers protecting the parties to a gift from public scrutiny fail to meet the legal standard of being a gift at law?<sup>14</sup>

The Minister seems to fundamentally misunderstand the function of charitable foundations in Canada. Any legitimate gift to a charitable foundation is not intended to remain within the foundation but is intended to be distributed to qualified donees. This is the essence of the statutory disbursement quota. Granted, the disbursements are more often income than capital. However, there is nothing in the statutory definition of "charitable purpose" which restricts qualifying disbursements to income and precludes capital. Please provide a statement of law which says a subsequent transfer of capital precludes its donation from being a gift at law.<sup>15</sup>

CRA registers and allows to operate charitable foundations which do almost nothing but receipt gifts which are intended for other qualified donees. Most prominent among these is CanadaHelps CanaDon (Registration No. 8965684.17 RR0001) which a donor is issued an ODR for a gift which is immediately refigfted to a charity identified by the donor. Please advise how the transfer to the Foundation fails to meet the test of being a gift at law when the standards applied to CanadaHelps CanaDon are applied to the Foundation.<sup>16</sup>

#### BUSINESS EQUITY VALUATION (BEV)

It is interesting that the Business Equity Valuations ("BEV") area of CRA made the assumption that the block transfer would result in a discount. Having made inquiries of directors of [REDACTED], it is reasonable to take the view that acquiring a block of [REDACTED] shares should attract a premium rather than a discount. The reason that the [REDACTED] shares are thinly traded is that very few owners are willing to sell. The donor was a director of [REDACTED] in the past and is fully aware of both the break-up value and the reluctance of the current holders of blocks of [REDACTED] shares to dispose of them. Please provide a copy of the BEV analysis and report so that the Foundation can fully respond to CRA's position.<sup>17</sup>

It is undeniable evidence of the Minister's bias against the Foundation to take the position that issuing an ODR based upon the trading price rather than a BEV is grounds for revocation under paragraph 168(1)(d). It is not reasonable for the Minister to take the position that this is a standalone reason, ("each reason identified above") for revocation. Please provide an explanation as to why the ODR, using the daily trading value, is grounds for any more than an education letter.<sup>18</sup>

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- <sup>13</sup> Question #11 Seeking Response from CRA
- <sup>14</sup> Question #12 Seeking Response from CRA
- <sup>15</sup> Question #13 Seeking Response from CRA
- <sup>16</sup> Question #14 Seeking Response from CRA
- <sup>17</sup> Question #15 Seeking Response from CRA
- <sup>18</sup> Question #16 Seeking Response from CRA

## FAILURE TO DEVOTE RESOURCES TO CHARITABLE ACTIVITIES

CRA's position that the Foundation was operated for the non-charitable purpose of providing a private tax planning arrangement certainly requires an explanation as to what the private tax planning arrangement consisted of and why it is not in compliance with the Act. If the transfer had been directly to Oak Tree Foundation, the tax result to the donor would have been exactly the same as the transfer to the Foundation. There is absolutely no tax benefit which the donor received by giving to one foundation rather than the other. It is unconscionable for the Minister to seek to brand such a donor as a tax cheat.

It is further evidence of the Minister's prejudice to allege that the Foundation structured its affairs for the benefit of private persons to the detriment of the Foundation's charitable mandate. The Foundation's mandate is to encourage donors to make gifts to fund qualified donees. How could it possibly fail to advance the Foundation's mandate to encourage the donor to give to the Foundation instead of any other qualified donee such as Oak Tree Foundation? Subsequently gifting shares to another qualified donee falls explicitly within the statutory definition of "charitable purposes". Please explicitly articulate how the Foundation's activities fail to be in compliance with 149.1(1).<sup>19</sup> It is unreasonable for the Minister to maintain that the Foundation's "directors have operated/managed the Foundation in a manner that is contrary to the purposes for which it was constituted". The operations are explicitly within the stated purposes for which the Foundation was constituted.

### PARAGRAPH 149.1(4.1)(a)

The AFL contains no facts or analysis to support CRA's position that this series of transactions was orchestrated to avoid or unduly delay the expenditure of amounts on charitable activities. Consequently, I have made no submissions on paragraph 149.1(4.1)(a).

## CONCLUSION

The AFL begins by stating that "the Foundation must comply with the law; if it does not, its registered status may be revoked in the manner described in section 168 of the Act." The AFL concludes by noting "we believe there is [sic] sufficient grounds to revoke the charitable status of the Foundation under paragraph 168(1)(b) of the Act." In order to address this CRA belief, the Foundation requires a specific response to the following:

1. Please identify the non-compliance with 149.1(3).
2. Please explain the statutory basis for revoking because of "participating in a private tax planning arrangement" because this is not identified in the statutory provisions cited in the AFL.
3. Please advise whether CRA takes the position that it has the power to revoke based upon non-compliance with CRA's administrative policies absent an express statutory authority for revocation.
4. The property donated were shares of a publicly traded corporation, the [REDACTED]. Please advise if it is CRA's position that if an independent qualified appraiser who is not affiliated with the charity or the donor determined that the Fair Market Value of each share was \$13.50 that the ODR should have been issued for \$3,213,00?

5. Given that the [REDACTED] shares are traded on the Toronto Stock Exchange, how is an appraisal relevant to the amount which the Foundation can receive upon disposing of the shares?

6. CRA defines fair market value (FMV) as "the highest price, expressed in dollars, that property would bring in an open and unrestricted market, between a willing buyer and a willing seller who are both knowledgeable, informed, and prudent, and who are acting independently of each other". Please explain how CRA interprets how the valuation based upon an appraisal fits into this definition when the property listed in the ODR is shares traded on the Toronto Stock Exchange.

7. Given that the ITA contains a statutory definition of "advantage", please explain CRA's interpretation of ITA ss. 248(32) in the context of the AFL's test of why the transfer was "not a gift at law".

8. The AFL cites Woods J listing the four requisite elements of a "gift" in *Coombs et al v. The Queen*, 2008 DTC 4004, as indicia of the taxpayer having "a donative intent". The AFL does not allege that the donor failed to meet a single one of the four tests so it is unclear why this jurisprudence establishes a lack of donative intent. Please explain so we can address this issue.

9. The AFL cites *Webb v. The Queen*, 2004 TCC 619, [2004] T.C.J. No. 453 as authority for the legal proposition "that in order for an amount to be a gift to charity, the amount must be paid without benefit or consideration flowing back to the donor". Please explain why CRA is entirely ignoring the statutory provision in subsection 248(30) which deals with intention to give and says that the advantage can be 80% of the fair market value of the transferred property.

10. The AFL states that "the intent of the donor must, in other words, be entirely donative". Please provide jurisprudential or statutory authority which supports this purported statement of law.

11. The AFL states that it is CRA's "view that the primary motivation of the donor was not to enrich the Foundation, but rather to create a veil, protecting the parties of the transaction from public scrutiny." ... Please provide a jurisprudential or statutory basis for holding these motivations disqualify the transfer from being a gift at law.

12. Is it truly CRA's position that transfers protecting the parties to a gift from public scrutiny fail to meet the legal standard of being a gift at law?

13. Please provide a statement of law which says a subsequent transfer of capital precludes its donation from being a gift at law.

14. Please advise how the transfer to the Foundation fails to meet the test of being a gift at law when the standards applied to CanadaHelps CanaDon are applied to the Foundation.

15. Please provide a copy of the BEV analysis and report so that the Foundation can fully respond to CRA's position;

16. Please provide an explanation as to why the ODR, using the daily trading value, is grounds for any more than an education letter;

17. Please explicitly articulate how the Foundation's activities fail to be in compliance with 149.1(1).

Sincerely,

