AUG 0 2 2013

REGISTERED MAIL

Association for the Advancement of Scholarship
[redacted]

Attention: [redacted]

BN: 88741 7806RR0001

File #: 3023700

Subject: Notice of Intention to Revoke
Association for the Advancement of Scholarship

Dear [redacted]

I am writing further to our letter dated July 3, 2012 (copy enclosed), in which you were invited to submit representations as to why the registration of Association for the Advancement of Scholarship (the Organization) should not be revoked in accordance with subsection 168(1) of the *Income Tax Act.*

We have now reviewed and considered the written response dated September 7, 2012, provided by [redacted] on behalf of the Organization. However, notwithstanding his reply, our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity have not been alleviated. Our position is fully described in Appendix "A" attached.

Conclusion:

The Canada Revenue Agency's (CRA) audit has revealed that the Organization is not complying with the requirements set out in the *Income Tax Act.* In particular, it was found that the Organization did not devote all its resources to charitable purposes and activities; failed to meet its disbursement quota; failed to maintain proper books and records; and failed to file the T3010, *Registered Charity Information Return*, as required by the Act. 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 July 3, 2012, I wish to advise you that, pursuant to subsections 168(1) and 149.1(2) of the Act, I propose to revoke the registration of the Organization. By virtue of subsection 168(2) of

the Act, revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

> *Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(c), and 168(1)(e), and paragraph 149.1(2)(b) of the* Income Tax Act, *that I propose to revoke the registration of the organization listed below and that the revocation of registration is effective on the date of publication of this notice.*

Business Number	**Name**
887417806RR0001	Association for the Advancement of Scholarship 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

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

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

Consequences of Revocation

As of the effective date of revocation:

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

b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the Notice of Intention to Revoke. This revocation tax is calculated on prescribed form T-2046, *Tax Return Where Registration of a Charity is Revoked* (the Return). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the Notice of Intention to Revoke. A copy of the relevant provisions of the Act concerning revocation of registration, the tax applicable to revoked charities, and appeals against revocation, can be found in Appendix "B" attached. Form T-2046 and the related Guide RC-4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, are available on our 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 GST/HST obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

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

Yours sincerely,

Cathy Hawara
Director General
Charities Directorate

Attachments:

- CRA letter dated July 3, 2012;
- Your representations dated September 7, 2012;
- Appendix "A", Comments on Representations; and
- Appendix "B", Relevant provisions of the Act

c.c.: [redacted]

CANADA REVENUE AGENCY | AGENCE DU REVENU DU CANADA

Association for the Advancement of Scholarship

[redacted]

Attention: [redacted]

REGISTERED MAIL

BN: 88741 7806 RR0001
File #: 3023700

July 3, 2012

Subject: Audit of Association for the Advancement of Scholarship

Dear [redacted]

This letter is further to the audit of the books and records of Association for the Advancement of Scholarship (the Organization) conducted by the Canada Revenue Agency (the CRA). The audit related to the operations of the Organization for the period from May 1, 2005 to April 30, 2009.

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

AREAS OF NON-COMPLIANCE:		
		Reference
1.	Failure to Devote All of Its Resources to its Charitable Activities	149.1(1) 168(1)(b)
2.	Failure to meet its Disbursement Quota	149.1(2)(b)
3.	Failure to maintain adequate books and records	168(1)(e) 230(2)
4.	Failure to file a T3010A *Registered Charity Information Return* as required by the Act.	149.1(14) 168(1)(c)

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

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

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

Charitable Purposes and Activities

In order for an organization to be recognized as a charity, it must be constituted exclusively for charitable purposes, and devote its resources to charitable activities in furtherance thereof.[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.

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

A charity must be able to show through documented evidence and proper books and records that it undertook charitable activities 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 provided to the intermediary, at all times.

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

The Organization was registered as a charitable organization effective May 26, 2003 to

- award scholarships, fellowships, bursaries and prizes to persons, based upon either, or both, financial need and scholastic excellence, for the advancement of education;

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[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)

- develop, fund, administer, promote and carry on activities and programs as well as fund and supply equipment, supplies and facilities to advance the theory, practice and delivery of education in order to cultivate and develop the potential, knowledge, skills and abilities of individuals;
- develop, fund, administer, promote and carry on activities, programs and facilities that will develop compassionate humanitarian assistance, relief, care, treatment, education and training to relieve poverty and suffering and improve the quality of life for needy persons and improve economic and health conditions in poor communities;
- receive gifts, bequests, trusts, funds and property and beneficially, or as a trustee or agent, to hold, invest, develop, manage, administer and distribute funds and property for the objects of the Corporation, for and to such other organizations as are "qualified donees" under the provisions of *the Income Tax Act* and for such other purposes and activities as are authorized for registered charities under the provisions of the *Income Tax Act*; and
- conduct any and all activities and exercise any and all such powers as are necessary for the achievement and furtherance of the objects of the Corporation.

Based on our findings as illustrated below, it appears the Organization has failed to demonstrate that it devotes its resources exclusively for its charitable purposes.

a) Gifting to Non-qualified Donees

X Prize Foundation (XPF)

In 2006, the Organization signed an agreement with XPF, a non-profit organization registered under 501(c)(3) of the Internal Revenue Code in California, U.S. A main program ("XP program") of XPF is to encourage private groups to compete for large prizes in exchange for solving some very difficult problems in areas such as medicine and space travel.

The stated intent of the agreement was to implement the XP program in Canada. This objective was to be achieved as follows: the Organization would purchase certain licensing rights and intellectual property from XPF required to implement the XP program and later transfer such rights to a newly registered charity, X Prize Canada, once the latter obtained registered charitable status in Canada. The Organization transferred the first instalment of $3 million U.S.[2] to XPF with the promise that $410,655 U.S. would be paid by December 1, 2007 and a further $1.5 million U.S. by December 1, 2008.

[redacted]. As a result of [redacted] the Organization terminated the agreement with XPF and no further payments were made. However, the earlier payments were not returned to the Organization, and it did not appear that the Organization obtained any licensing rights or intellectual property in consideration of those payments. This was confirmed by [redacted] legal counsel for the

[2] Total cost $3,372,300 CAD; $324,000 in currency exchange difference and $48,300 paid to [redacted] Inc. for services rendered regarding this transaction.

[3] [redacted]

Organization, who advised CRA that no benefit, either charitable or non-charitable, was received by the Organization. [redacted] stated that he considers the funds transferred to X Prize to be a gift made to a qualified donee.

To meet the definition of charitable organization under the Act, the Organization must devote all its resources for charitable activities undertaken by itself or an agent that is under its direction and control, and for gifting to qualified donees. Based on the facts outlined above, the $3 million US transferred to XPF by the Organization was not used in any charitable activities carried on by the Organization. Further, XPF did not fit the definition of a qualified donee under subsection 149.1(1) of the Act. Since the Organization did not receive any property of value in return, we consider the $3 million US transferred to XPF to be a gift to a non-qualified donee.

Ashdown School

Our audit also indicated that the Organization had distributed $90,000 in scholarships, fellowships, bursaries or prizes to The Ashdown School in the United Kingdom. It did not appear that the recipient of these funds was acting as an agent for the Organization, nor was it a qualified donee as defined in the Act. For the same reasons specified above, it is our position that the Organization had failed to devote its resources exclusively to charitable activities carried on by itself.

b) Due Diligence of Directors

Directors of a not-for-profit corporation are fiduciaries and generally subject to the same common law fiduciary obligations as directors of a business corporation. A fiduciary is a person having 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 of a charity 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 meeting the charitable objects of the charity, and the interests of the charity should be put ahead of the interest of the directors. The definition of a charitable organization under subsection 149.1(1) of the Act also implies a charity's assets are to be managed so as to obtain the best return within the bounds of prudent investment principles.

We note with concern that the directors of the Organization have demonstrated a lack of due diligence in safeguarding its assets and ensuring that its resources are used exclusively for charitable purposes. It is our position that the Organization's directors used the Organization to engage in transactions that did not further its charitable purposes but rather confer undue benefits on other organizations and individuals that were not qualified donees. More importantly, these transactions resulted in significant erosions of the Organization's

financial resources with no tangible benefit to the Organization and have put its charitable status at risk.

X Prize Foundation (XPF)

As per above, the Organization entered into an agreement to acquire certain intangible property from XPF. While the proposed transaction, if completed, represented a cost exceeding $4 million US to the Organization, our audit did not show that the directors took any steps to confirm the existence and fair market value of the intangible property to be acquired. Furthermore, although the completion of the transactions as proposed in the agreement was contingent on the charitable registration of X Prize Canada under the Act, there was no provision in the agreement that would allow the Organization to either receive a refund of the payments already made or receive property of equal value in case of X Prize Canada's failure to obtain registered charitable status. In other words, the directors allowed the Organization to enter into an agreement that implied it could forego as much as $4 million US of funds to a non-qualified donee without receiving anything of value in return. Ultimately, the Organization did forego $3 million US paid to XPF as a gift to a non-qualified donee when X Prize Canada failed to obtain charitable status under the Act.

In summary, the directors allowed the Organization to enter into an agreement with XPF where there is no reasonable assurance that the Organization would receive due benefits for the substantial amounts of resources transferred to XPF. In the end, the Organization disbursed $3 million US on a transaction that neither benefited itself nor furthered its charitable purposes. It is therefore our position that the directors failed to fulfill their fiduciary duties to safeguard the Organization's assets and to ensure such assets were used exclusively in accordance with its bylaws, constitutions, and charitable objects.

Archon Shares

The Organization purchased 2.9 million common shares of Archon Minerals Ltd. (Archon Shares) that were trading at $3.25/share on the Canadian Venture Exchange (CVE) at the time, from Quest University Canada Foundation (QUCF) for a total consideration of $9,425,000. In April 2009, the Organization disposed of the Archon Shares at $0.81/share, for total consideration of $2,632,500, resulting in a loss to the Organization's investment of $7,947,500 or 46% of the Organization's net assets. Our audit revealed that shares were sold to the same person who had previously donated them to QUCF.

Our review showed that the Archon shares, although listed on the CVE, were thinly traded and closely held by the original donor to QUCF. As such, the Archon shares represented a risky investment for the Organization, and the share price as quoted on the CVE at any given time does not necessarily represent their fair market value. However, our audit did not show that the directors of the Organization obtained an independent appraisal of the value of the Archon shares or considered the risks of investing in such shares. In the end, the transaction resulted in a $7.9 million detriment in the resources of the Organization and may have conferred a significant benefit on the original donor.

It is our position that the directors of the Organization had failed to fulfill their fiduciary duties of, at the very least, ensuring the prudent investment of the Organization's assets.

Conclusion

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 itself as was required under 149.1(1) of the Act. As such, there appears to be sufficient grounds to revoke the charitable registration of the Organization under paragraph 168(1)(a) of the Act.

2) Disbursement Quota Shortfall

Pursuant to paragraph 149.1 (2)(b) of the Act, a charitable organization's registration may be revoked if it fails to expend amounts on charitable activities and gifts to qualified donees that are at least equal to its disbursement quota in a taxation year. For the Organization's taxation years under audit, the disbursement quota of each year as defined under subsection 149.1(1) of the Act includes an amount equal to 80% of the Organization's total tax-receipted gifts in the preceding year.

Although the 2010 Federal Budget and its accompanying legislation has proposed significant changes to the charitable expenditure part of the disbursement quota (80/20 part A), it does not apply to fiscal years ending before March 4, 2010.

Based on the *Registered Charity Information Returns* as filed, the Organization had accumulated a significant shortfall in spending on charitable activities and qualified donees needed to meet its disbursement quotas over the audit period. The shortfall becomes more pronounced after factoring in the following audit adjustments:

Fiscal Period Ending in	Available for Carry-Forward	Shortfall (Excess)
2006	37,825	37,825
2007	15,049,088	15,086,913
2008	625,707	15,712,620
2009	-143,814	$15,568,806

The large shortfall in 2007 ($15,049,088) is as a result of the $30,000,000 donation receipt issued in 2006 and the disallowance of $3,324,000 paid to XPF, a non-qualified donee. The books and records provided during the audit did not provide documentation to verify the donation was to be treated as enduring property. The *Registered Charity Information Return* incorrectly reported the amount paid to XPF as a charitable expenditure.

There appears to be sufficient grounds to revoke the charitable registration of the Organization, as it has failed to meet its disbursement quota obligation as per paragraph 149.1(2)(b) for the taxation years under audit.

3) 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 a duplicate of every official donation receipt and the supporting documents for each such donation, subsection 230(2) also requires adequate records to be kept to allow CRA to determine whether there are sufficient grounds for revocation of the charity's registration. Furthermore, 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 is prescribed; and
(b) all other records and books of account referred to in this section, together with every account and voucher necessary to verify the information contained therein, until the expiration of six years from the end 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[4];
- 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[5]; 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[6].

It is our view that the Organization failed to provide access to all of its records at the time of the audit review or subsequent to the audit review as follows:

- The Organization issued a $30,000,000 official receipt for 30,000 Class B non-voting shares [redacted] shares) in the capital stock of [redacted] but did not provide documentation to support the valuation of the shares. Under section 3501 of the *Income Tax Act Regulation*, a qualified donee is required to report the fair market

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

value of the gift on the official receipt.

- The Organization sold 27,500 of the [redacted] shares for a "Misery Pipes" royalty interest that was reported at a value of $27,500,000. The Organization did not provide documents supporting the valuation of the royalty interest.

- The Organization paid $2,000,000 to Quest University Canada for the naming rights of some buildings on the university's campus but was unable to provide documentation to support the valuation of the naming rights.

- The Organization paid expenses on behalf of Quest University Canada for executive directorship and leadership in the 2008/2009 academic year. The invoices totaled $324,000 but showed little or no detail of the services provided. [redacted] in his letter of May 10, 2010 indicated that it would be very time consuming to provide a detailed description of services to date and the details of the dynamic nature of executive directorship is well-understood by individuals who take on this responsibility. However, the Organization would not be able to support that these expenses were incurred in the course of carrying out its charitable activities without sufficient documentation.

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 at the time of the audit review. As such, it is our position that there is sufficient grounds to revoke the registration of the Organization under paragraph 168(1)(e) of the Act.

4) Failure to File an Information Return as Required by the Act

Pursuant to subsection 149.1(14) of the Act, every registered charity must, within six months from the end of the charity's fiscal year end, file a *Registered Charity Information Return* (T3010A) with the applicable schedules, containing information as prescribed by the CRA.

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

The Organization has improperly completed T3010A returns for the May 1, 2005 to April 30, 2009 fiscal periods as follows:

Fiscal years 2006 to 2009

- Payments received pertaining to the "Misery Pipes" royalty interest are shown as a reduction in the value of the royalty interest reported on line 4140 of the T3010A. The royalty income received should have been reported as "Other Revenue" on line 4650.

Fiscal year 2006

- F4 – The Organization reported $15,000,000 in tax-receipted gifts of enduring property for the fiscal period. However, our audit of the Organization's records did not show any tax-receipted gifts received would be considered an enduring property as defined in subsection 149.1(1) of the Act.

Additionally, our records showed that the Organization had consistently failed to file its returns on time as illustrated below:

FPE	Due Date	Received
2010-04-30	2010-10-31	2011-01-17
2009-04-30	2009-10-31	2009-12-07
2008-04-30	2008-10-31	2008-12-22
2007-04-30	2007-10-31	2007-12-27
2006-04-30	2006-10-31	2006-12-07

It is therefore our position that the Organization had failed to file its information returns as required by the Act. As such, there appears to be sufficient grounds to revoke the registration of the Organization under paragraph 168(1)(c) 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, which may include:

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

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

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

Yours sincerely,

[redacted]

Jeanne Effler, [redacted]
Audit Division
Telephone (250) 363-0276
Facsimile (250) 363-3862

cc: Christopher Richardson

[redacted]

[redacted]

[redacted]

[redacted]

September 7, 2012

By Fax 250-363-3862

Ms. Jeanne Effler
Audit Division
Charities Directorate
Canada Revenue Agency
Victoria, B.C.

Dear Ms. Effler:

Re: Association for the Advancement of Scholarship ("AAS")
BN 88741 7806 RR0001
Your File No. 3023700

Further to my letter of July 26 and our subsequent telephone conversations in which you agreed to grant an extension until September 7, I am responding to your letter of July 3, 2012 to AAS in which you raised a number of issues as a result of your audit for the period from May 1, 2005 to April 30, 2009.

Your letter sets out four specific areas of alleged non-compliance with the provisions of the *Income Tax Act* (the "Act") and the regulations and you have summarized those areas under four general categories, with which I deal later in this letter.

Before dealing with the specific issues you raised, I have some general observations about the Act and regulations, with particular reference to the fact that proposals introduced in December, 2002 to amend the Act have not been enacted. As you undoubtedly are aware, those amendments will, if enacted, extend the circumstances in which the registration of registered charities can be revoked. In particular, subsection 149.1(2) will be amended to provide that the Minister may revoke the registration of a charitable organization if it makes a disbursement by way of a gift, other than a gift made in the course of charitable activities carried on by it or to a donee that is a qualified donee at the time of the gift. Similarly, subsections 149.1(3) and (4) will be amended to provide that the Minister may revoke the registration of a public foundation and a private foundation, respectively, if it makes a disbursement by way of a gift other than a gift made in the course of charitable activities carried on by it or to a donee that is a qualified donee at the time of the gift.

As the law stood at the time of your audit (and still stands), without regard to whether any proposed amendments are eventually made retroactively, there is no prohibition against a registered charity making a gift to an organization that is not a qualified donee,

[redacted]

[redacted]

as long as that gift does not otherwise contravene the Act or regulations. This was considered in an application made in the Ontario Superior Court of Justice by The Wolfe and Millie Goodman Foundation (the "Goodman Foundation"), in which Canada Revenue Agency ("CRA") was respondent. An agreement was reached and the application by the Goodman Foundation for a declaration was abandoned. That declaration would have confirmed that there was no prohibition on the making of a gift to a foreign charity by the Goodman Foundation, as long as it met its annual disbursement quota, either by making gifts to qualified donees or by carrying out its own charitable activities. In this regard, the Act does not include a definition of "charity" or "charitable". As a result, common law concepts are imported into the Act and regulations. Parliament while implementing very detailed rules dealing with charities and the concept of "registered" charities has deliberately chosen to leave to the common law the meaning of "charitable". This has been illustrated in a number of cases, including *Vancouver Society*.

On the day before that application was to be heard, CRA entered into minutes of settlement in which, among other things, it agreed and acknowledged that as long as the Goodman Foundation met its disbursement quota, it would be permitted to disburse no more than 10% of its annual disbursements to non-qualified donees which met the definition of "charitable" at common law, for the fiscal year 2000 and for any future period until amendments were made to the Act to the contrary. The proposed 2002 amendments had not been introduced when the minutes of settlement were signed on August 17, 2000. The minutes of settlement made it clear that CRA recognized the Act was deficient and legislative change was required to prohibit gifts to nonqualified donees. We would like to have an opportunity to discuss with you the approach that you intend to take with respect to the proposed amendments, if you do not agree with our position.

We submit at the time you conducted your audit for the years in question relating to AAS the law was the same as it was in 2000 when CRA signed those minutes of settlement and there was no express prohibition against AAS making gifts to charitable organizations that were not qualified donees.

Alleged Non-Compliance

The four areas of alleged non-compliance set out in your letter are as follows:

1. failure to devote all resources to charitable activity;
2. failure to meet the disbursement quota;
3. failure to maintain adequate books and records; and
4. failure to file a T3010A as required by the Act.

[redacted]

[redacted]

Submissions

(a) Overview

We submit that AAS devoted all of its resources to its charitable activities, as that expression is interpreted for purposes of the Act, and met its disbursements quota, at all times covered by your audit. In the alternative, we submit that significant payments that were not so characterized were gifts to qualified donees. We also submit that AAS maintained adequate books and records at all relevant times and although it did file its T3010A late on occasion, this relatively innocuous non-compliance was cured by late filing. We note that CRA allows registered charities to become registered again if registration is revoked for late filing beyond what it considers to be an appropriate grace period. As a result, we submit that even if there was non-compliance through late filing, it does not warrant any action at this time by CRA, since AAS is aware of the fact that it filed late in the past and we understand it has remedied that problem and has filed its T3010A returns on time for later periods.

(b) Devotion of Resources

You state that in accordance with the Act, a registered charity may only properly use its resources for charitable activities undertaken by it under its continued supervision, direction and control and by making gifts to qualified donees. While it appears that you are not relying on the proposed amendments. We submit in the alternative that if amounts that AAS paid are not regarded as expenditures on charitable activities carried on by it, certain of those payments were payments to a qualified donee, for the reasons set out below with reference to section 501(c)(3) of the Internal Revenue Code (the "IRC") and U.S. charitable organizations.

With respect to reliance on the proposed amendments, to the extent that you may consider that payments were made to a non-qualifed donee, we refer to the recent decision of the Federal Court of Appeal in *Inwentash*[1] in which the Crown chose not to rely on a proposed amendment to the Act dealing with the definition of private foundation. The court declined to consider the proposed amendment not only because the Crown did not rely on it but also because it might never come into force. We submit that the proposed amendments dealing with gifts to non-qualified donees stands on the same footing and may never come into force, since nearly ten years have elapsed after since they were first announced.

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[1] *The Sheldon Inwentash and Lynn Factor Charitable Foundation* v. The Queen, 2012 FCA 136.

[redacted]

[redacted]

We also submit that the decision of the Tax Court of Canada in *Edwards*[2] is relevant. In that case, the taxpayer sought an adjournment to take advantage of proposed retroactive legislation dealing with charitable donations. Those proposed amendments were introduced in December, 2003 and are not yet law.

In dismissing the request for an adjournment, the motion judge stated that the motion was not necessarily the end of the road for the taxpayer because the trial judge will have discretion to provide some delay if the circumstances warrant it. However, the judge went on to say there was very little indication that the legislation would be enacted soon. We submit that the proposed amendments dealing with gifts to non-qualified donees should be disregarded for purposes of the audit of AAS. Please confirm whether CRA intends to rely on the proposed amendments and in particular the amendments dealing with gifts to non-qualified donees in determining the consequences, if any, resulting from your audit.

AAS submits that it entered into an appropriate agency agreement with X Prize Foundation ("XPF") and therefore the amounts in question were expended by it in carrying out its own activities and should be regarded as a devotion of its resources to its own activities. In the alternative, if those payments were not made to XPF by AAS in the course of carrying out its own charitable activities, we submit that they were gifts to a qualified donee.

We submit that, contrary to what we understand is CRA policy, if a payment to XPF is treated as a gift, it was a gift to a qualified donee. This issue is under appeal in a case to be heard by the Federal Court of Appeal involving Prescient Foundation. We understand that you conducted the audit of Prescient Foundation and are familiar with this issue and the status of that appeal. As a result, we submit that no decision should be made on whether any payment by AAS to XPF was or was not a gift to a qualified donee until that issue is resolved in the Prescient appeal. The issue is whether a U.S. organization that is exempt under section 501(c)(3) of the IRC and to which donations can be made by Canadian taxpayers on the same basis as donations to registered charities (subject to limitations based on income from the sources in the U.S.) should be regarded as a qualified donee for purposes of the Act.

You state that directors must act with due diligence. We agree with this as a matter of charity law and trust law, but submit there is no requirement in the Act for such due diligence in determining whether a registered charity has devoted its resources to its charitable activities or otherwise complied with the Act or the regulations. You state that the definition of charitable organization "implies" that

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[2] *Edwards v. The Queen*, 2012 TCC 264.

[redacted]

[redacted]

the assets must be managed so as to obtain the best return within the bounds of prudent investment principles. We would be grateful if you could provide us with any authority for that proposition. We submit that the requirement to devote resources to charitable activities permits a broader range of activity, provided there are no other specific rules, such as the prohibitions against conferring an undue benefit, carrying on an unrelated business, etc.. You express concerns that AAS demonstrated a lack of due diligence in safeguarding its assets and ensuring that its resources were used exclusively for charitable purposes.

You state that the directors used AAS to engage in transactions that did not further its charitable purposes, but conferred undue benefits on other organizations and individuals that were not qualified donees. Under subsection 188.1(5) of the Act, an undue benefit conferred on a person includes a disbursement by way of a gift or the amount of income, rights, property or resources of the charity paid, payable, assigned or otherwise made available for the personal benefit of a person who falls within a specific category. That category is restricted to proprietors, members, shareholders, trustees or settlors of the charity who have contributed or otherwise paid to it more than 50% of its capital or who deal other than at arm's length with such a person or with the charity. It does not include organizations that deal at arm's length and that have not contributed capital, in particular organizations that are not members. There is an exclusion from the conferral of an undue benefit for a gift made or a benefit conferred in the course of a charitable act in the ordinary course of the charitable activities carried on by the charity unless it can reasonable be considered that the eligibility of the beneficiary for the benefit relates solely to the relationship of the beneficiary to the charity. We submit that if AAS did confer this type of benefit, which is not admitted, it was excluded, even if the recipient was not a qualified donee, since the benefit would have been conferred in the course of a charitable act in the ordinary course of the charitable activities carried on by AAS. Please let us know if you are considering imposing a penalty based on subsections 188.1(4) and (5) for the conferral of an undue benefit.

You state that certain transactions resulted in significant erosions of the financial resources of AAS with no tangible benefit to it and put its charitable status at risk. We submit that any registered charity that reduces its own resources by carrying out its activities, whether directly or by gifts to qualified donees, necessarily reduces it financial resources with no necessary "tangible benefit" to itself. The objects for which AAS was formed include awarding scholarships and bursaries. Paying scholarships and bursaries clearly reduces the financial resources of AAS and it is difficult to see what the "tangible benefit" would be, aside from the satisfaction of having carried out the desired objects.

[redacted]

[redacted]

[redacted]

With respect to the arrangements with XPF, you state that as a further sign of lack of due diligence, the directors permitted AAS to enter into an agreement under which there was no reasonable assurance that it would receive "due benefits" for the resources that it transferred. We submit that your approach introduces a concept that is foreign to the Act as it relates to registered charities. Your approach would substitute the business judgment of the Minister of National Revenue for the business judgment exercised in good faith by the directors or a registered charity. While directors of a charity are bound to act prudently and administer charitable property based on principles of trust law, there is no requirement that they must act with perfection or that they cannot make decisions that might turn out to be less successful than expected.

You state that the audit indicates that AAS distributed $90,000 in scholarships, fellowships, bursaries or prizes to The Ashdown School ("Ashdown") in the United Kingdom, which was not acting as an agent and was not a qualified donee. We understand that those payments may not have been made during the period of the audit and therefore we have not addressed this in detail. We would like to discuss this with you more fully to be sure we understand whether the payments were made during the audit period. We submit that, if the amounts were covered by the audit, they were expended by AAS in the course of carrying on its own charitable activities and were paid for the benefit of students.

The financial resources of many registered charities with endowment funds in the market crash several years ago were significantly reduced. We submit this confirms that even the most conservative directors and the most knowledgeable advisers cannot predict when an arrangement might turn out not to be as favourable as anticipated.

You refer to the arrangements involving the shares of Archon Minerals Ltd., a corporation whose shares were publicly traded on a stock exchange, and state that your audit reveals that certain shares purchased by AAS from Quest University Canada Foundation ("Quest") for $9,425,000 were disposed of at a loss of $7,947,500 on a sale to the same person who previously donated them to Quest. You then state that those shares represented a "risky investment" for AAS and the directors should have obtained an independent appraisal of the value of those shares or considered the risks of purchasing them and that failure to do so "may have" conferred to significant benefit on the donor who transferred those shares to Quest. The sale of shares of Archon took place in the Fall of 2008 in the midst of the financial meltdown, which we submit could not have reasonably been anticipated by AAS, despite its best efforts. We submit that the decision to purchase the shares of Archon was based on considerations involving the need of another registered charity with which AAS dealt at arm's

[redacted]

length to achieve liquidity for its charitable activities. Any alleged overpayment by AAS was made to that charity and conferred no benefit on the donor. The shares of Archon so purchased had been donated to Quest when the market was far more robust. We submit further that when a decision is made to purchase shares that are publicly traded, there is no need for a valuation, since the value is clear from the market. We submit that the method used to determine the value of the shares of Archon at the time of the purchase from Quest had nothing to do with the determination of whether the purchase might have been a "risky investment", which is not admitted.

We are advised that the directors of AAS considered relevant legal issues and at no time considered that they were acting improvidently or engaging in a "risky investment". We submit further that the directors we forced to decide between following the law, as they understood it based on legal advice, and following administrative policies of the CRA which they were advised were not necessarily supported by or consistent with the applicable law. We submit that hindsight should not be used to judge the *bona fides* and due diligence efforts of directors who act in good faith. We are advised that the directors of AAS obtained legal advice in connection with various matters, including the transactions involving the shares of Archon and Quest and the arrangements with XPF and we submit that they did exercise due diligence.

The courts have held that a due diligence defence can absolve a taxpayer from a penalty for what otherwise would be a strict liability offence. We submit that this applies to penalties and other sanctions that can potentially be applied to a registered charity. For instance, in *Home Depot*[3] which dealt with late filing penalties for GST purposes, the Tax Court followed earlier jurisprudence stating that there is no bar to the defence of due diligence against strict liability in situations involving administrative penalties. The court stated that a person can avoid a penalty by presenting evidence that the person was not negligent and that this approach requires a consideration of whether the person believed on reasonable grounds in a non-existent state of facts which, if it had existed, would have made the act or omission innocent or the person took reasonable precautions to avoid the events leading to the penalty. As a result, the jurisprudence establishes that due diligence excuses either a reasonable error of fact or the taking of reasonable precautions to comply with the legislation. The courts have distinguished between a defence of due diligence and one based on an argument involving good faith. In addition, the Tax Court recently relieved a

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[3] *Home Depot of Canada Inc. v. The Queen*, 2009 GTC 970.

taxpayer from a penalty for failure to report employment income[4] and in another case, relieved the taxpayer from a penalty for failure to file a T1135 return disclosing foreign assets with a cost in excess of $100,000[5]. In *Douglas*, the court observed that the relevant penalty was strict and that Parliament had not provided an express defence of due diligence but, nevertheless, held that strict penalties should not be applied if a taxpayer takes all reasonable measures to comply with the legislation.

We submit that the due diligence "defence" is available to AAS since its directors took reasonable precautions, sought advice and were not negligent. In particular, we submit that AAS did not act negligently or capriciously and that at all relevant times took steps to comply with the Act and the regulations, as it understood them. We submit further that if there were elements of non-compliance, they were inadvertent and not a result of a lack of due diligence.

We submit that there is no basis to allege that AAS conferred any benefit on the donor who gave the Archon shares to Quest, since AAS had no privity with that donor. Moreover, we submit that since the shares of Archon were sold at the price at which they were trading on the stock exchange, AAS acted reasonably in determining the sale price. You appear to suggest that AAS did not devote its resources to its charitable activities because it deliberately or in bad faith, or without undertaking appropriate due diligence, entered into a series of arrangements that were doomed to fail by deliberately creating a loss. We submit that there is no basis for that allegation and you are attempting to use hindsight to determine whether the purchase of the shares of Archon from Quest was prudent. Those shares were traded on a stock exchange and we submit that AAS determined the fair market value based on usual principle applied to determine the value of shares that are publicly traded.

(c) Disbursement Quota

You state that there appear to be sufficient grounds to revoke registration because AAS failed to meet its disbursements quota. For the reasons mentioned, we submit that this is not the case and that there are no grounds to revoke registration on that basis.

You state that you have analyzed the amounts available for carry forward and state there were shortfalls and excesses in the T3010A returns for the fiscal periods ending in 2006 through 2009 and refer to a large shortfall in 2007

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[4] *Franck v. The Queen*, 2011 DTC 1142.
[5] *Douglas v. The Queen*, 2012 TCC 73.

[redacted]

allegedly resulting from the receipt issued for $30,000,000 in 2006 on the basis that this was not regarded as enduring property and the $3,324,000 paid to XPF was not a proper expenditure because XPF was not a qualified donee. For the reasons outlined above, we submit that amounts paid to XPF should be regarded as payments to a qualified donee if they were not amounts expended by AAS in carrying on its own charitable activities. We also submit that, even if you do not agree that AAS made the payments in carrying out its own charitable activities, the directors of AAS reasonably believed that they had met the disbursement quota, and the foregoing comments concerning the due diligence defence are applicable.

(d) Books and Records

With respect to the books and records, you appear to be relying on the fact that AAS allegedly issued an official receipt for 30,000 class B shares of [redacted] with a fair market value of $30,000,000 without any support for that valuation. You then refer to the requirements in regulation 3501 with respect to official receipts and you also refer to the fact that AAS sold 27,500 of those shares in return for a royalty interest with a value that was stated to be $27,500,000 without providing any "documents supporting the valuation of the royalty interest". We submit that while there are requirements in the regulations dealing with donation receipts, there are no requirements in the regulations or in the Act dealing with the way in which the valuation of consideration is to be determined. We submit that there is no provision in the regulations or the Act that required AAS to obtain a valuation to determine whether the $2,000.000 paid to Quest for the naming rights was in excess of a reasonable amount or whether amounts paid on behalf of Quest for executive directorship and leadership in the 2008/2009 academic year were inappropriate. We submit that AAS did not fail to maintain proper books and records and that its registration should not be revoked on those grounds.

(e) T3010A

With respect to the allegation that AAS failed to file T3010A returns on a timely basis, AAS acknowledges that the returns for the fiscal periods ended April 30, 2006 through April 30, 2009 were filed late. As pointed out above, since AAS did file the T3010A returns and they were accepted, we submit that the fact they were not filed on time should not be grounds for sanctions against AAS, particularly since we understand that it has filed its T3010 returns on a timely basis for subsequent periods.

[redacted]

[redacted]

[redacted]

Summary

For the reasons set out above, we submit that during the relevant periods, AAS did not fail to devote its resources to its own charitable activities, did not fail to meet its disbursements quota, did not fail to maintain adequate books and records and, although it did fail to file its T3010A returns on time, remedied that situation by filing them later. Accordingly, we submit that no penalties or other sanctions should be applied to AAS.

We look forward to an opportunity to discuss all of this with you.

Yours very truly,

[redacted]

[redacted]

ITR APPENDIX "A"

Association for the Advancement of Scholarship

Comments on Representations of September 7, 2012

Based on the Canada Revenue Agency's (CRA) audit of Association for the Advancement of Scholarship (the Organization), the Organization primarily operates for transferring funds to non-qualified donees and participating in a donation arrangement benefitting a private individual. As described in the balance of this letter, and in our letter of July 3, 2012, the Organization is failing to devote resources to charitable activities; is in serious breach of the requirements for registration under the *Income Tax Act* and its registration should be revoked.

1. Failure to Devote Resources to Charitable Activities

Our audit revealed that a significant portion of the Organization's resources were not utilized for charitable activities carried on by the Organization itself. The Organization was registered, in part, to award scholarships, fellowships, bursaries and prizes to persons; to develop, fund, administer, promote and carry on activities and programs to advance the theory, practice and delivery of education; and to develop, fund, administer, promote and carry on activities, programs and facilities that will develop compassionate humanitarian assistance, relief, care, treatment, education and training to relieve poverty and suffering and improve the quality of life for needy persons and improve economic and health conditions in poor communities. Our audit revealed little to no activities being conducted with respect to these registered objects.

In your representations of September 7, 2012, a number of observations about the Act and its Regulations were provided. We agree that proposals to amend subsections 149.1(2), (3) and (4) of the Act[1] were not been enacted at the time our previous letter was issued nor at the time you responded, therefore, the CRA is not relying on this legislation as grounds for revocation.

The representations state that, "there is no prohibition against a registered charity making a gift to an organization that is not a qualified donee, as long as that gift does not otherwise contravene the Act or regulations." Your representations reference the settlement proceedings (the Wolfe settlement) made in the Ontario Superior Court of Justice between The Wolfe and Millie Goodman Foundation[2] (the Foundation) and the CRA. The Foundation submitted that funding other charities is a charitable purpose at common law. The settlement minutes state that as long as the Foundation met its annual disbursement quota, CRA would permit it to disburse no more than 10% of its annual disbursements to non-qualified donees. As this case applies to the definition of a charitable foundation, and not to the definition of charitable organization, we do not regard this case as standing for the proposition that a charitable organization may make gifts to non-qualified donees. It is our position the Organization has failed to meet the definition of a charitable organization as per subsection 149.1(1) of the Act as discussed below.

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[1] Bill C-48, short title *Technical Tax Amendments Act, 2012*, received Royal Assent June 26, 2013.
[2] The Foundation was a private foundation at the time of the settlement.

Gifting to Non-qualified Donees

X Prize Foundation (XPF)

Per our previous letter, we understand that the Organization signed an agreement with XPF, a non-profit organization registered under 501(c)(3) of the Internal Revenue Code in California, U.S., with the intent to implement the main program of XPF in Canada. The objective of signing the agreement was to purchase certain licensing rights and intellectual property from XPF to implement the program in Canada. [redacted] the Organization terminated the agreement with XPF and did not make any further payments to XPF nor did XPF return the earlier payments to the Organization.

It remains our position the funds provided by the Organization to XPF were amounts given to a non-qualified donee instead of amounts devoted to the Organization's own activities. The representations submit that "[the Organization] entered into an appropriate agency agreement with X Prize Foundation ("XPF") and therefore the amounts in question were expended by it in carrying out its own activities and should be regarded as a devotion of its resources to its own activities."

The Federal Court of Appeal (FCA) has confirmed[3] that a registered charity working with an intermediary must control the activities carried out on its behalf, and over the use of its resources. As such, the CRA recommends that a charity enter into a properly structured written agreement with any intermediary to help demonstrate that the charity maintains direction and control over the charitable activities and resources carried out by the intermediary.

Our audit did not indicate there was any agency agreement under which the XPF would act as an intermediary to conduct charitable activities on behalf of the Organization. Rather, we were provided with the copy of an agreement under which the Organization would purchase certain licensing rights and intellectual property from XPF for $4.9 million USD (of which $3 million USD[4] was paid). Therefore, we are uncertain as to what agreement you are referencing as being the "agency agreement" in your representations. Whether the Organization had devoted resources to its own charitable activities is a question of fact and law, which cannot be determined based solely on an agency agreement even if one exists. Per our audit, the Organization transferred $3 million USD to XPF without receiving any property or service in return. There was no indication that any charitable activity of the Organization was undertaken as a result of the $3 million USD payment nor were we presented with any representations or documentation demonstrating the Organization's on-going control over the activities XPF was to be conducting pursuant to the agency

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[3] For example, *Canadian Committee for the Tel Aviv Foundation v. Canada 2002 FCA 72, Bayit Lepletot v. Minister of National Revenue 2006 FCA 128* and *Canadian Magen David Adom for Israel v. Minister of National Revenue 2002 FCA 323*

[4] Total cost $3,372,300 CAD; $324,000 in currency exchange difference and $48,300 paid to Benefic Group Inc. for services rendered regarding this transaction.

agreement. As indicated by its legal representative, [redacted] the Organization ultimately considered the amount to be a gift to XPF.

Your representations ask that, "if amounts that [the Organization] paid are not regarded as expenditures on charitable activities carried on by it, certain of those payments were payments to a qualified donee, for the reasons set out below with reference to section 501(c)(3) of the Internal Revenue Code ("IRC") and U.S. charitable organizations." We cannot accept this alternative for the following reasons.

XPF does not meet the definition of a qualified donee under subsection 149.1(1) of the Act. CRA's position regarding the application of paragraph 7 Article XXI of the Canada-US Tax Convention was summarized in Technical Interpretation 9728355(E) and Registered Charity Newsletter No. 6-1, August 1996. In our view, paragraph 7 of the Treaty (then paragraph 6) outlines a limited situation whereby a gift to certain US charities are eligible to the limited relief from Canadian taxation described in that section as if they were made to a Canadian registered charity. The CRA has been clear that its interpretation is that the treaty does not deem US charities to be registered charities for the purposes of the Act such that the US charity could be considered a "qualified done." We have reviewed your representations in this regard; however, your representations have not convinced us that we should deviate from the position established in the aforementioned Technical Interpretation. Therefore we maintain that the Organization has made a gift to a non-qualified donee, other than in accordance with the Act.

We note, in passing, that it is not at all clear that XPF would necessarily qualify under this provision, even were we to agree that the Canada-US Tax Treaty acted to deem a tax exempt entity as a qualified donee (which we do not). It is not apparent that XPF could qualify as a charity if it were resident in Canada and created or established in Canada, as required by the Treaty [redacted]

Finally, your representations referred to *Prescient Foundation v Canada (National Revenue) 2013 FCA 120*[5], where a similar issue was considered by the FCA. In *Prescient Foundation,* the FCA commented that the CRA had recognized in the Wolfe settlement that a gift to a foreign charity is a charitable purpose. However, we maintain that neither the Wolfe settlement nor the FCA's comments in *Prescient Foundation* regarding the making of a gift to a foreign charity by a charitable foundation apply to the legislative requirements which apply to charitable organizations. A "charitable organization" must devote all its resources to charitable activities carried on by the organization itself. Under paragraph 149.1(6)(b), a "charitable organization" is considered to be devoting its resources to charitable activities carried on by it to the extent that it disburses no more than 50% of its income in a year to qualified donees. Hence, while at common law a gift of $3 million USD to XPF may be in furtherance of a charitable purpose, it is our view that the Act nonetheless prohibits a charitable organization from making such a gift as it is neither a devotion of resources to charitable activities carried on by the organization itself nor is it a gift to a qualified donee (as permitted under paragraph 149.1(6)(b)). Therefore, it remains our position that the Organization, which is a charitable organization under the Act, has failed to devote all its

[5] We note that the FCA did not comment on the question of whether a 501(c)(3) organization is considered a "qualified donee" as a result of the Canada-U.S. Tax Convention.

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. Disbursement Quota Shortfall

We have reviewed your representations with respect to the disbursement quota shortfall we re-calculated as a result of our audit; however, your representations did not provide any information that would cause us to alter our position. No representations were made regarding the improperly reported $15 million gift of enduring property nor were documents provided to indicate we erred in our findings. Additionally, even if we were to conclude the amount transferred to XPF was a gift to a qualified donee, which we do not, the Organization would still have a significant disbursement quota shortfall. Therefore, we maintain that the Organization has failed to meet its disbursement quota obligation as per paragraph 149.1(2)(b) for the taxation years under audit and this is grounds for revocation.

3. Failure to Maintain Adequate Books and Records

Per our letter of July 3, 2012, we noted the records maintained by the Organization were inadequate to support the information reported on its T3010, *Registered Charity Information Return*, and its financial statements. Our main concerns with the inadequate records was the lack of documentation supporting the valuation of the [redacted] shares, the Misery Pipes royalty interest, and the Quest University Canada naming rights as well as the lack of documentation to support the expenses paid on behalf of Quest University Canada.

We agree with your statement that there is no provision in the Regulation or the Act to require the Organization to obtain an appraisal to determine an accurate valuation; however, as you are aware, sections 110.1 and 118 of the Act both reference fair market value when speaking to the deduction for gifts. Black's Law Dictionary defines fair market value as "the price a seller is willing to accept and a buyer is willing to pay on the open market and in an arm's length transaction." It is the CRA's general advise that if fair market value of donated goods exceeds $1,000, we strongly recommend the property be appraised by someone who is not associated with either the donor or the charity receiving the gift (i.e., a third party). The person who determines the fair market value of the property must be competent and qualified to evaluate the particular property. This approach would also apply to acquiring or selling property to ensure the charity is paying or receiving a fair price for the property and thereby utilizing the charity's resources prudently. Without evidence to the contrary, we are unable to ascertain that the values recorded by the Organization for the shares acquired and sold or the amount paid for naming rights are the factual fair market values of the property being acquired or transferred. Your representations state the directors obtained legal advice in connection with the above; however, it appears they chose not to provide said advice during the course of our audit. Accordingly, our position remains the Organization has failed to maintain the records necessary to verify the value of the property.

The Organization submitted no representations or documentation to support why it paid $324,000 of expenses on behalf of Quest University Canada. As such, our position remains that the Organization failed to maintain adequate records.

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 T3010 and financial statements. For this reason alone, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(e) of the Act.

4. Failure to File an Accurate T3010, *Registered Charity Information Return*

Our position remains unchanged regarding the inaccuracies reported on the T3010s filed and the fact that the information returns were consistently late filed. We acknowledge your representations that although the information returns were late filed, they were accepted as being filed by the CRA; however, this does not alter our findings that the Organization is failing to respect subsection 149.1(14) of the Act. The Organization did not present representations regarding the inaccuracies reported on the information returns filed.

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

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.