

July 28, 2022

**REGISTERED MAIL**

Joel Bell  
President  
Sheldon M. Chumir Foundation for Ethics in Leadership  
P.O. Box 65186 North Hill  
Calgary AB T2N 4T6

BN: 135120715RR0001  
File #: 0940874

Dear Joel Bell:

**Subject: Notice of intention to revoke**

We are writing with respect to our letters dated February 14, 2019, and February 11, 2021 (copies enclosed), in which Sheldon M. Chumir Foundation for Ethics in Leadership (the Foundation) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from January 1, 2013, to December 31, 2019. Specifically, the Organization was asked to explain why its registration should not be revoked in accordance with subsection 168(1) of the Income Tax Act.

We have reviewed and considered your written responses dated September 23, 2019, and October 14, 2021. Your replies have not alleviated our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity. Our concerns are explained in Appendix A attached.

**Conclusion**

The audit by the CRA found that the Organization is not complying with the requirements set out in the Act. In particular, it was found that the Organization failed to devote its resources to charitable activities carried on by the Organization itself, failed to be constituted for exclusively charitable purposes, failed to maintain adequate books and records, failed to file an information return as and when required by the Act and/or its Regulations, and failed to issue donation receipts in accordance with the Act and/or its Regulations. For these reasons, it is our position that the Organization no longer meets the requirements for charitable registration.

Consequently, for the reasons mentioned in our letter dated February 14, 2019, and pursuant to subsections 168(1) and 149.1(4) of the Act, we hereby notify you of our intention to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, the revocation will be effective on the date of publication of the following notice in the Canada Gazette:

Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(c), 168(1)(d), 168(1)(e), and subsection 149.1(4) and subsection 149.1(14) of

the Income Tax Act, of our intention to revoke the registration of the charity listed below and that by virtue of paragraph 168(2)(b) thereof, the revocation of registration will be effective on the date of publication of this notice in the Canada Gazette.

<b>Business number</b>	<b>Name</b>
135120715RR0001	Sheldon M. Chumir Foundation for Ethics in Leadership Calgary AB

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

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

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

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

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

A copy of the relevant provisions of the Act concerning revocation of registration, including appeals from a notice of intention to revoke registration, can be found in Appendix 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) and 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 Form T2046, Tax Return where Registration of a Charity is revoked. Form T2046 must be filed, and the tax paid, on or before the day that is one year from the date of the notice of intention to revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix B. Form T2046 and the related Guide RC4424, Completing the Tax Return where Registration of a Charity is revoked, are available on our website at [canada.ca/charities-giving](http://canada.ca/charities-giving);
- c) the 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 entities other than charities. If you have any questions about your Goods and Services Tax/Harmonized Sales Tax (GST/HST) obligations and entitlements, please call GST/HST Rulings at 1-800-959-8287.

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

Yours sincerely,

*Sharmila P. Khare*

Sharmila Khare  
Director General  
Charities Directorate

Enclosures

- Appendix A, Comments on representations
- Appendix B, Relevant provisions of the Act
- CRA letter dated February 14, 2019
- CRA letter dated February 11, 2021
- Organization's representations dated September 23, 2019
- Organization's representations dated October 14, 2021

c.c.: Scott Bodie

## APPENDIX A

### **Sheldon M. Chumir Foundation for Ethics in Leadership Comments on Representations**

In our Administrative Fairness Letter (AFL) dated February 14, 2019, we explained that the audit conducted by the Canada Revenue Agency (CRA) for the period from January 1, 2013 to December 31, 2014, identified that the Sheldon M. Chumir Foundation for Ethics in Leadership (the Organization) is not operating in compliance with the provisions of the Income Tax Act (the Act) in the following areas:

1. Failure to devote its resources to charitable activities carried on by the Organization itself
2. Failure to be constituted for exclusively charitable purposes
3. Failure to maintain adequate books and records
4. Failure to file an information return as and when required by the Act and/or its Regulations
5. Issuing receipts not in accordance with the Act

During our review of the 2013 and 2014 books and records, it was found that the Organization had entered into a joint venture agreement and was conducting foreign activities in partnership with the Chumir Foundation for Ethics in Leadership (the U.S. entity), with an apparent lack of direction and control over those activities. This non-compliance was noted in fiscal periods that fell outside of the audit period. As such, after the AFL had been issued, books and records were requested to December 31, 2019, to allow for a more thorough consideration of the Organization's response to this non-compliance concern identified in the AFL. The CRA issued a letter to the Organization dated February 11, 2021, advising it of the decision to extend the audit period and requesting documentation pertaining to the extended period.

Further to the above, we reviewed and considered all of the Organization's representations of September 23, 2019, as well as the additional records provided on October 14, 2021, and we maintain our position that the non-compliance issues identified during our audit in the AFL for the period from January 1, 2013 to December 31, 2014, represent a serious breach of the requirements of the Act. As a result of this non-compliance, the Organization's registration as a charity should be revoked.

The basis for our position is further described in detail below, including:

- A summary of the issues raised in our AFL dated February 14, 2019, and our letter dated February 11, 2021;
- A summary of the representations provided by the Organization dated September 23, 2019, and October 14, 2021; and
- The CRA's response to the representations.

## **1. Failure to devote its resources to charitable activities carried on by the Organization itself**

The Organization was registered as a private foundation under the Act, effective December 31, 1992. The Organization's governing documents, which have not changed since registration, identify its sole objective as "The betterment of society through the encouragement of, and education on, the vital importance of leadership which is motivated by high ethical purpose."

### **a) Conduct of non-charitable activities**

The AFL advised that it was our view that the Organization was not devoting its resources to charitable activities carried on by the Organization itself, as its activities did not appear to further a purpose under the Advancement of Education. The Organization did not provide sufficient information to allow us to substantiate whether all activities undertaken in furtherance of its stated purpose were charitable.

Furthermore, the audit found that the Organization was gifting funds to individuals to help pay their expenses while enrolled in a summer internship program at the University of Calgary. The Organization was not involved with the internship program itself, rather it was simply gifting funds to non-qualified donees. As such, the Organization did not appear to be devoting its resources to exclusively charitable activities.

### **b) Lack of direction and control over the use of resources / resourcing non-qualified donees**

As stated in the AFL, a charitable activity is one that directly furthers a charitable purpose, which requires a clear relationship and link between the activity and the purpose it purports to further. The Act permits private foundations to either make gifts to other organizations that are qualified donees or to carry on their own activities. In the case of making a gift, paragraph 149.1(4)(b.1) provides that a private foundation may be revoked if it makes a gift other than to a qualified donee or in the course of charitable activities carried on by it.<sup>1</sup>

The audit found that during its 2013 and 2014 fiscal periods, the Organization had entered into a number of written agreements with various organizations and individuals. Our review of these agreements, as well as the books and records provided, revealed that the agreements lacked many of the necessary elements required to demonstrate that the Organization maintained sufficient direction and control over its resources. The Organization appeared to be funding the projects of non-qualified donees, as opposed to its own activities. Furthermore, the audit revealed that the Organization had entered into internship agreements with summer students and was gifting funds to these individuals to help pay their expenses while enrolled in a summer internship program at the University of Calgary. In both cases, these concerns amounted to gifting funds to non-qualified donees.

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<sup>1</sup> This provision is retroactive to December 20, 2002, and covers the period under audit. <http://www.fin.gc.ca/drleg-apl/nwmm-amvm-1012n-05-eng.asp>, see Clause 308.

The AFL also stated that during the review of the 2013 and 2014 books and records the auditor found that while outside of the original audit period, during the 2015 fiscal period the Organization entered into a joint venture agreement and was conducting foreign activities carried out in partnership with the U.S. entity. The documentation originally provided by the Organization, which had included a written agreement dated from 2015, failed to demonstrate how the Organization would maintain direction and control over its resources, and failed to provide details in respect of the segregation of responsibilities within the joint venture partnership. Furthermore, in the response to the AFL, the Organization provided a number of additional supplementary agreements between the initial joint venture and third party collaborators. This documentation was reviewed and did not demonstrate that the organization had direction and control over the use of its resources.

After the AFL was issued, to adequately address this issue, books and records were requested for the Organization's 2015 to 2019 fiscal periods.

#### **Organization's response:**

In its initial response to the AFL dated September 23, 2019, the Organization asserted that most of the activities the CRA identified as being non-charitable are now from over six years ago, are cumulatively of small financial impact and were terminated as a consequence of strategic organizational changes made in 2013. It further stated that it "has reinforced its attention and resolve" to carry-out its own programming, to "exercise continuing direction and control" with regard to agents and joint venture partners, and to "maintain fulsome documentation of program purpose and decisions from project conception through final reporting, both as a matter of proper management and as a strategic consideration." The Organization also stated that since the 2013 audit period, a major policy review and overhaul of programming and operations has taken place that has substantially changed its strategy and program activities, and that the CRA may not have been provided with the full picture in light of the programming transition in which the Organization was actively involved beginning in 2013.

#### Conduct of non-charitable activities

Regarding the CRA's concern that the Organization conducted non-charitable activities, the Organization responded with the following:

- i) The Organization is established under the fourth category of charity 'certain other purposes beneficial to the community in a way the law regards as charitable' rather than under the second category 'advancement of education.' The Organization's activities are charitable under the recent amendment to the Act, and CRA's Guidance CG-027, Public Policy Dialogue and Development Activities, whereby "public policy dialogue and development activities" are "charitable activities" if carried on in furtherance of a charitable purpose and without political involvement by the purported charitable actor. The Organization's primary role has always been to encourage the discussion and development of public policy, which has become more apparent in the programming it pursued beginning in 2013.

- ii) The overhaul in its operations resulted in the Organization moving its operations to New York. With this move the Organization has hired new people, and has put in place better operation systems and documentation practices. The Organization has been and will continue to be focused on remedying the deficiencies in its manner of operations, as identified by the CRA.
- iii) The Organization has redirected its focus and has concentrated its activities on four issues that have greater impact in public awareness, debate and the development of public policy, and that further the Organization's charitable purpose. Namely:
  - 1) the role of arts in society;
  - 2) relations amongst the major powers;
  - 3) technology, productivity, growth and income distribution; and
  - 4) forced displacement and migration.
- iv) The Organization did not disagree with the CRA's position regarding the funds provided to the Faculty of Law students, and affirmed that the Summer Internship Program was disbanded in 2014.
- v) As a result of the change which the Organization undertook in 2013, it was unable to "find meaningful documentation" on how the other activities described on page 8 of the AFL were conducted. Accordingly, the Organization does not have any further information on how these earlier activities were conducted, nor does it "have any records to demonstrate how these programs were carried on beyond those which have been reviewed by the CRA in the course of its audit." As far as the Organization "is aware," all of the programs listed in the AFL were conducted in furtherance of its purpose, and it "is no longer conducting any of these activities." The Organization is moving away from the "one-of" type programming it had done prior to 2013, a transition that had only commenced at the beginning of the audit.

#### Lack of direction and control over the use of resources / resourcing non-qualified donees

Regarding the written agreements entered into with various organizations and individuals, and the Organization's apparent lack of direction and control that ensued, the Organization stated that it was "unable to find any further information on how the subject of these agreements were conducted in 2013." The Organization indicated that "all of these agreements were terminated when the review of its programs where conducted in 2012/13" and that it is "no longer involved in the activities that were subject of these agreements," as they do not appear to fall within the Organization's current mandate.

Furthermore, the Organization stated that due to an inability to locate information/documentation regarding its earlier activities, it "cannot testify to the question of grants or support that might offend direction and control considerations and/or qualified donee provisions." The Organization asserted that it "will use its resources solely where it has something to say and is fully engaged in the program issues, ideas and activities." The Organization "has no interest in making grants to others," and that "this includes the Summer Internship Program which was disbanded in 2014."

Moreover, the Organization stated that third parties are only involved in its program activities as joint venture partners and, on occasion, for directed commissioned research. The Organization's resources are "only used in projects where all activity is under management and execution control that requires the knowledge, approval, and detailed content engagement" of the Organization. The Organization has "proactively sought and pursued its work through joint ventures with leading centres of research, analysis and thought wherever they are located globally." The Organization is "mindful of doing this carefully so as to exercise continuing direction and control."

In its response dated October 14, 2021, the Organization also acknowledged the CRA's "concern over the obligation of the Foundation to exercise 'direction and control' over its resources through the joint venture arrangement which the Foundation entered into in 2015, with an associated entity, Chumir Foundation for Ethics in Leadership, of which Joel Bell is the President and Chief Executive Officer for both."

The Organization stated that in 2015, "on legal advice," it "provoked the establishment of an independent U.S. qualified charity with the same objectives as the Canadian Foundation, for the purpose of soliciting and receipting" donations. "The purpose of the U.S. entity was – and remains – to present prospective donors with a familiar interfacing beneficiary, while ensuring documented compliant 'direction and control.'"

The Organization asserted that legal council also confirmed that, "with the same person serving as Chairman and CEO of the Canadian and U.S. Foundations, the attention, procedure, and authority required for 'direction and control' are reassured to reside in, and are exercised by, the Sheldon M. Chumir Foundation." The Organization further stated that "this authority and responsibility have, in fact, been exercised by the board of the Canadian Foundation authorizing the uses of funds and in the Joint Venture Committee where a majority of the Foundation representatives must, in a separate vote, approve any decision."

The Organization affirmed that "to ensure 'direction and control' by the Canadian entity, the Foundation approved and approves all program activity that use its resources and entered a Joint Venture Agreement with the U.S. entity to document the relationship and confirm de jour the locus of authority to deploy Canadian Foundation resources." Schedule C of the joint venture agreement changes as projects are added, completed or exploratory assessments are discontinued.

### **CRA's response:**

#### Conduct of non-charitable activities

In regard to both the Symposium in New York (including the smaller sessions) and the Congress of Vienna 2015, after having viewed the online and written content we agree that the Organization was exploring questions relating primarily to human rights and relief of poverty, which are both charitable in nature and fall into the activities that are described in the CRA's Guidance CG-027, Policy Dialogue and Development Activities. It should be noted that this guidance was issued January 21, 2019, after the audit of the Organization's books and records

took place and after the activities occurred. However, given that this guidance is applied retroactively, the concerns identified with respect to the nature of these activities have since been alleviated.

From the information provided by the Organization in respect of the above noted activities, we accept that the Organization's objective could fall within the fourth category of charity, certain other purposes beneficial to the community in a way the law regards as charitable, particularly with regard to the recent amendment made to the Act and CRA's Guidance CG-027, Public Policy Dialogue and Development Activities.

We also acknowledge that the Organization has since ceased supporting summer internships and changed its focus to discontinue the type of programming in which the audit identified deficiencies. Furthermore, we accept that the Organization is moving away from the "one-of" (sic) type programming it had undertaken prior to 2013.

#### Lack of direction and control over the use of resources / resourcing non-qualified donees

As indicated in our AFL, when a registered charity merely transfers its resources to another entity without maintaining direction and control over the use of its resources, the result is the same as acting as a conduit sending funds to a non-qualified donee, which is not a charitable activity. The Organization is required to establish that it maintains continued direction and control over the substantive charitable activities that are ostensibly being carried out on its behalf. In this regard, the existence of an arrangement with an intermediary, written or otherwise, is not enough to prove that a charity meets the own activities test. The Foundation must be able to show that the terms of any arrangement establish a real, ongoing, active relationship with the intermediary,<sup>2</sup> and are actually implemented."

While we acknowledge that the Organization's previous intermediary agreements have since been terminated and that it is "no longer involved in the activities that were subject of these agreements," the Organization did not provide the information/documentation required to substantiate that it had maintained continued direction and control over the substantive charitable activities carried out through these intermediaries on its behalf during the audit period for which the agreements were still valid. As a result, we maintain our position that these activities amounted to providing funds to non-qualified donees and constituted a failure to devote resources to charitable activities during the period for which the Organization was audited.

Furthermore, our review of the records provided by the Organization for the 2015-2019 fiscal periods substantiate that the foreign activities carried out through its joint venture partnership were those of the U.S. entity, rather than those of the Organization. The Organization was simply acting as a conduit, sending funds to its U.S. counterpart, without maintaining sufficient documentation to verify how these funds were used to further the charitable purposes of the Organization.

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<sup>2</sup> See notably Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at para 40, [2002] 2 CTC 93.

Our review of these records identified the following concerns:

- The financial statements for the 2017, 2016 and 2015 fiscal periods were dated October 24, 2019. This raises concerns about proper oversight in respect of the Organization's maintenance of its financial statements and record-keeping obligations given that the financial statements were dated more than 3 years after the end of the fiscal periods.
- Bank statements for the joint venture partnership with the U.S. entity were not provided.
- A list of the board of directors for the joint venture partnership with the U.S. entity was not provided.
- Meeting minutes relating to the joint venture partnership were not provided, nor were any minutes provided for the Organization's operations for the 2017, 2018 and 2019 fiscal periods.
- The financial statements provided for the joint venture partnership are in the name of the U.S. entity only. The Organization's name does not appear.
- All publications created through the joint venture agreement are in the name of the U.S. entity only. The Organization's name does not appear.
- The U.S. entity's website does not name the Organization as a partner even though a large portion of the funding is provided by the Canadian charity.
- No general ledger was received for the joint venture partnership.
- No books and records outside of the financial statements were provided for the joint venture partnership.
- No progress reports were available.
- No record of monitoring actions, oversite actions, etc. was provided.
- The funds transferred to the joint venture were material in nature: \$1,126,120 (2017), \$500,000 (2016), and \$859,123 (2015).

Moreover, two years after the AFL was issued, the Organization continues to adhere to the same inadequate Joint Venture Agreement established with the U.S. entity in 2015 and continues to exhibit disregard for the maintenance of sufficient documentation to verify exactly how its funds are used.

This lack of direction and control the Organization has exhibited over its resources, as seen by its poor maintenance of books and records, coupled with the continued non-compliance and lack of separation between the Organization and the U.S. entity, has led us to the conclusion that the Organization does not devote substantially all its resources to charitable activities carried on by the Organization itself. Rather, the audit has revealed that the Organization is acting as a conduit by gifting funds to non-qualified donees outside of Canada. Furthermore, despite expanding the audit to a time period after the Organization was initially notified of the CRA's concerns, the Organization continued to demonstrate a lack of sufficient direction and control over its resources, exhibited by the inadequate records maintained for its 2015-2019 fiscal periods.

Accordingly, it is our position that the Organization has failed to meet the requirements of subsections 149.1(1) and 149.1(4) of the Act that it devote substantially all its resources to charitable activities carried on by the Organization itself. For this reason, it is our position that

there are grounds for revocation of the Organization's charitable status under paragraph 168(1)(b) of the Act.

## **2. Failure to be constituted for exclusively charitable purposes**

### **a) Delivery of non- incidental private benefits**

The audit found that the Organization may have neglected and/or breached its responsibility to properly safeguard the Organization's assets by allowing its resources to be used in a manner that brought about "serious concerns" within the Organization and that may have provided a private benefit to the Organization's director, Joel Bell, in the form of unreasonable compensation, bonuses, an expense account and office rental/expenses. In the AFL we stated that it appeared that Joel Bell did not sign the contract for services for the period July 1, 2013 to June 30, 2014, which stipulated that he would be paid [REDACTED] This included a salary of [REDACTED] In addition, we found that a subsequent contract was drawn up for the period July 1, 2014 to June 30, 2015, which stipulated that Joel Bell would be paid [REDACTED] office expenses of [REDACTED] plus an expense account of [REDACTED], for a total of [REDACTED]; however, there was no justification or reasoning provided for the increase in compensation and office rental payments to Joel Bell.

Furthermore, the AFL identified that there were serious concerns expressed by other directors on the Board with respect to the reporting of Joel Bell's expenses, as he had "failed to submit expense reports in a timely way accompanied by original receipts." These concerned directors indicated that they would seek an independent evaluation of the project to review Joel Bell's progress in his management of the expenses. Subsequent to that, a new contract for the period of July 1, 2015 to June 30, 2016, was signed with the Organization absent of those directors who had expressed concerns with Joel Bell's management of expenses. As such, it appeared that these concerns were never addressed.

#### **i. Salzburg Festival Society**

The audit found that the Organization provided an undue benefit to the Salzburg Festival, (a non-qualified donee), [REDACTED] The Organization purchased two tables of ten seats each for a fundraising dinner and performance at [REDACTED] at a cost of \$20,000. The Organization indicated that this was a "program expense in the normal course;" however, we were unable to determine how this payment was a "program expense" or that it furthered a charitable purpose of the Organization. Due to the connection with the director's [REDACTED] it appeared to constitute an undue benefit to the Salzburg Festival.

## b) Broad and vague purposes

In the AFL we advised that in our view, the Organization is not constituted exclusively for charitable purposes, as its sole purpose, "the betterment of society through the encouragement of and education on the vital importance of leadership which is motivated by high ethical purpose," is broadly worded and could potentially allow for non-charitable activities.

### Organization's response:

#### Delivery of non- incidental private benefits

In its response dated September 23, 2019, the Organization referenced Interpretation Bulletin IT-496R, Non-Profit Organizations, and indicated that based on Section 12 of the bulletin<sup>3</sup>, it is the Organization's position that the salary paid to Joel Bell is reasonable and no more than that which would be paid in arm's length situations for similar services. The Organization asserted that the expenditures Joel Bell incurred during the audit period were incurred in furthering the aims and objectives of the Organization, and that they were reimbursements for expenditures incurred by Joel Bell in carrying on the Organization's business and should not be viewed as additional compensation. The initial compensation amount of [REDACTED] plus a bonus was "materially below relevant comparisons in New York."

With respect to the employment contracts, the Organization stated that even though they did go unsigned for some time, Joel Bell recalls signing them and there was never any disagreement over the amount. The Organization indicated that the Board of Directors took into account information regarding the compensation paid incumbents in comparable organizations performing similar roles. Joel Bell's salary was "based upon considerations which the Board believed to be reasonable, including the compensation paid to Joel Bell's predecessor who acted as the Foundation's president on a part-time basis and the Board's information as to what was being paid by comparable organizations to people providing comparable service in New York, USA."

Regarding Joel Bell's expenditures, the Organization "acknowledges that the former directors" of the Organization "raised concerns about how Mr. Bell reported his expenses;" however, it asserts that "these concerns related mainly to the ways such expenditures were reported and not over whether they were in fact incurred for the purpose of furthering the aims and objectives of the Foundation." Furthermore, the Organization indicated that "Mr. Bell took the position that the Board should only reimburse those expenses that it considered justified, based on the information submitted by Mr. Bell." Not all expenses incurred were reimbursed to Joel Bell. It further stated that the last contract offered to Joel Bell in 2015 was declined by him, which had

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<sup>3</sup> Certain types of payments made directly to members, or indirectly for their benefit, will not, in and by themselves, disqualify an association from being tax-exempt under paragraph 149(1)(l). Such payments include **salaries, wages, fees or honorariums** for services rendered to the association, provided the amounts paid are reasonable and no more than those paid in arm's length situations for similar services. Also included are payments made to employees or members of the association to assist them in covering their expenses to attend various conventions and meetings as delegates on behalf of the association, provided attendance at such conventions and meetings is to further the aims and objectives of the association.

“reflected the turn in relations” with the former directors who were “refusing to implement arrangements agreed by the Board and threatening the ability of the Foundation to function.”

With respect to the office expenses, the Organization stated that the expenses were “not at all an arbitrary amount.” It stated that Joel Bell paid residential rent of [REDACTED] per month over the course of the audit. One third of the space that he leases is dedicated to the Organization, at a rate of [REDACTED] per month, and is used “not infrequently” for group meetings.

i) Salzburg Festival Society

The Organization acknowledges that [REDACTED]. Joel Bell became aware of the fundraising dinner through [REDACTED], as well as his dealings with [REDACTED] in planning for the festival. The Organization “believed that it would be appropriate to invite the panelists who would participate in the Symposium and who would thereby support the Organization without compensation.” The tickets were purchased for Joel Bell and nineteen people who “supported the Organization’s efforts in organizing, preparing for and participating in the Symposium”. The Organization paid for the ticket of [REDACTED]  
[REDACTED] The Organization asserted that there was no personal benefit “provided to Joel Bell.”

Broad and vague purposes

The Organization is of the understanding that its stated purpose is charitable as it is beneficial to the community in a way the law regards as charitable and meets the requirement of public benefit. However, it “would be pleased to work with the CRA to develop amendments to correct any deficiencies.”

**CRA’s response**

Delivery of non-incidental private benefits

The Organization did not provide documentation to support significant expenses claimed by its director, Joel Bell, in the form of compensation, bonuses, an expense account and office rental/expenses.

Specifically, there was no information or documentation in the books and records that would indicate that the Board of Directors either agreed or disagreed with the amount that Joel Bell was being paid. The Organization claims that the initial salary offered was materially below similar positions in New York; however, the Organization has not provided any comparative salaries or other documentation to demonstrate or support this claim.

Regarding the office expenses, the Organization did not provide any proof of reasonableness. We did not receive any copies of lease agreements or lease payments, nor did we receive a floorplan, including the dimensions of the entire leased space that would clearly show the amount of square footage dedicated to the Organization. There was also no documentation or schedules provided to demonstrate the dates on which the purported “not infrequent” meetings of the Organization took place, the business discussed at those meetings or whether the activities furthered the

purpose of the Organization, during the audit period which related to the concerns identified in the AFL.

Regarding the expenditures, we have not been provided with supporting documentation for any of the expenditures that Joel Bell had incurred during the period under audit. We therefore are unable to determine that the amounts are accurate or that they were incurred for charitable activities.

It is incumbent upon the Organization to provide proper books and records, which includes supporting documentation for all expenditures. Without the necessary documentation to demonstrate that these significant expenses were reasonable, it remains our position that the Organization provided a private benefit to its director in the form of unreasonable compensation, bonus payments, an expense account and office rental costs/expenses.

i) Salzburg Festival Society

In regard to the Salzburg Festival, we accept that Joel Bell could potentially have been made aware of this fundraising dinner through sources other than [REDACTED], particularly because he was in discussions with [REDACTED]. However, as this was a fundraising dinner hosted by the Salzburg Festival, a non-qualified donee, it is our view that any value beyond the fair market value of the meal represents a gift to a non-qualified donee. Given the connection with the director's [REDACTED] our position remains that this constitutes an undue benefit to the Salzburg Festival.

Broad and vague purposes

Notwithstanding the Organization's willingness to update its formal purpose, the question of whether an organization is constituted exclusively for charitable purposes cannot be determined solely by reference to its stated purposes. Rather, the CRA must take into account the activities in which an organization currently engages.<sup>4</sup> The books and records obtained for the Organization's 2015 to 2019 fiscal periods, indicates that it is not devoting all of its resources to charitable activities. Rather, the Organization is acting as a conduit by gifting funds to non-qualified donees outside of Canada. Consequently, even if the Organization were to amend its formal purpose, it would not remedy the fact that it is not operating exclusively for charitable purposes, as demonstrated by the audit evidence.

Accordingly, it is our position that the Organization has failed to meet the requirements of subsections 149.1(1) of the Act that it be constituted for exclusively charitable purposes, and the requirements of the Act regarding the delivery of a public benefit without conferring an unacceptable private benefit. For this reason, it is our position that there are grounds for revocation of the Organization's charitable status under paragraph 168(1)(b) of the Act.

**3. Failed to maintain adequate books and records**

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<sup>4</sup> Vancouver Society of Immigrant and Visible Minority Women v MNR, [1999] 1 SCR 10, 1999 CanLII 704 (SCC) at para 194, Iacobucci J. See also AYSA Amateur Youth Soccer Association v Canada (Revenue Agency), 2007 SCC 42 at para 42.

The audit found that the Organization failed to maintain adequate books and records.

Specifically, as stated in the AFL, the Organization:

- Provided inadequate documentation to demonstrate the charitable nature of its programs;
- Failed to provide documentation to support a reimbursement claim it submitted for two invoices;
- Failed to provide supporting documentation in the form of an invoice for a claimed expense, although a credit card statement was available;
- Provided inadequate documentation to support the amount of a Public Service Body (PSB) rebate claim it made; and
- Failed to demonstrate that it maintained appropriate segregation of duties with regard to its financial transactions, as there was only one person who worked in an administrative role during the audit period.

**Organization's response:**

In its response of September 23, 2019, the Organization acknowledged the deficiencies in its record-keeping system. It has since hired more experienced professional staff in New York and has hired a new auditor. The Organization asserted that it has "become more vigilant in its record keeping," and that it is committed to implementing any suggestions by the CRA to ensure future compliance with its obligations to maintain adequate books and records.

**CRA's response:**

As stated in our letter of February 11, 2021, we accept that the Organization has hired new staff and a new auditor; we also acknowledge that the Organization is open to suggestions to ensure future compliance. As such, we advised the Organization that we were prepared to accept that it does indeed maintain proper books and records, provided that we were supplied with documentation for all programs, revenues, and expenditures. However, a review of the documentation received for the 2015-2019 fiscal periods, showed that the Organization's records continued to be insufficient for the reasons identified above under the section entitled: Failure to devote its resources to charitable activities carried on by the Organization itself - Lack of direction and control over the use of resources/resourcing non-qualified donees.

It therefore remains the CRA's position that the Organization failed to maintain adequate books and records of account as per subsection 230(2) and there are grounds for revocation of the Organization's charitable status under paragraph 168(1)(e) of the Act.

**4. Failure to file an information return as and when required by the Act and/or its Regulations**

As indicated in our AFL, it is the responsibility of a charity to ensure that the information provided in its Form T3010 Registered Charity Information Return, schedules and statements, is factual and complete in every respect.

The audit found that the Organization inaccurately completed its Form T3010, Registered

Charity Information Returns and financial statements for the January 31, 2013 to December 31, 2014, fiscal periods, as various reporting errors and omissions were identified.

The audit also found that the Organization had not issued T4A remuneration slips for several honoraria it had issued, as required.

#### **Organization's response:**

The Organization's response of September 23, 2019, acknowledges the deficiencies in filing its returns. The Organization stated that it is committed to enacting other suggestions from CRA to ensure future compliance and that it is "willing to work with the CRA to find ways to ensure better and more complete accuracy in all of its filings."

#### **CRA's response:**

As indicated in our letter of February 11, 2021, we accept the Organization's willingness to correct the deficiencies in filing its returns for the initial audit period; however, upon further review, there is evidence that the non-compliance continued, identified through the review of the books and records subsequent to the initial audit period. According to the latest returns filed with the CRA, the Organization continued to demonstrate the lack of care required to safeguard against the deficiencies identified in the AFL dated February 14, 2019. For example, the December 31, 2019, GL and T3010 still show the [REDACTED] investment as the amount of \$10,410.00 from account 1400 in the GL, entitled "Investment in [REDACTED]". The amount is still included in the records and reported on line 4155 of the T3010. The AFL had identified that the property was sold a number of years ago and should be removed.

As a result, the Organization's representations have not alleviated our concerns as identified in the AFL and our position remains that the Organization has failed to meet the requirements of subsection 149.1(14) of the Act, that it file its information return as and when required by the Act. For this reason, it is our position that there are grounds for revocation of the Organization's charitable status under paragraph 168(1)(c) of the Act.

#### **5. Issuing receipts not in accordance with the Act**

As stated in our AFL, the audit found that the Organization's official donation receipts were missing required elements. Specifically, we identified that the Organization:

- Failed to provide a complete charitable registration number on its donation receipts;
- Did not include the full name of the Organization on its issued donation receipts;
- Failed to include the locality from where the receipts were issued; and
- Failed to include the date on which the donation was received when it differed from that of the date on which the official donation receipt was issued.

**Organization's response:**

The Organization's response of September 23, 2019, acknowledged the deficiencies in its official donation receipts, and asserted that it will correct those deficiencies.

**CRA's response:**

As indicated in our letter of February 11, 2021, we accept the Organization's willingness to correct the deficiencies in its official donation receipts. However, the Organization did not provide any documentation to demonstrate that the deficiencies were corrected.

It therefore remains the CRA's position that the Organization failed to issue donation receipts in accordance with the Act and/or its Regulations as per subsection 149.1(1) and Regulations 3500 or 3501, and that there are grounds for revocation of the Organization's charitable status under paragraph 168(1)(d) of the Act.

**Conclusion:**

For the reasons explained above and in our letter dated February 14, 2019, it is the CRA's position that the Organization has failed to meet the requirements for continued registration as a private foundation as outlined in subsections 149.1(1) and 149.1(14) of the Act. As such, the Organization should have its registration as a charity revoked pursuant to subsections 149.1(4) and 168(1) of the Act.

## APPENDIX A

### Qualified Donees

#### 149.1 (1) Definitions

**charitable foundation** means a corporation or trust that is constituted and operated exclusively for charitable purposes, no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof, and that is not a charitable organization

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

(a) constituted and operated exclusively for charitable purposes,

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **149.1 (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;
- (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; or
- (c) makes a disbursement by way of a gift, other than a gift made
  - (i) in the course of charitable activities carried on by it, or
  - (ii) to a donee that is a qualified donee at the time of the gift.

#### **149.1 (3) Revocation of registration of public foundation**

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

- (a) carries on a business that is not a related business of that charity;

- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;
- (b.1) makes a disbursement by way of a gift, other than a gift made
  - (i) in the course of charitable activities carried on by it, or
  - (ii) to a donee that is a qualified donee at the time of the gift;
- (c) since June 1, 1950, acquired control of any corporation;
- (d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities; or
- (e) at any time within the 24 month period preceding the day on which notice is given to the foundation by the Minister pursuant to subsection 168(1) and at a time when the foundation was a private foundation, took any action or failed to expend amounts such that the Minister was entitled, pursuant to subsection 149.1(4), to revoke its registration as a private foundation.

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

(e) of a registered charity, if an ineligible individual is a director, trustee, officer or like official of the charity, or controls or manages the charity, directly or indirectly, in any manner whatever; and

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

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

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

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

(a) applies to the Minister in writing for revocation of its registration;

(b) ceases to comply with the requirements of this Act for its registration;

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

(d) issues a receipt for a gift otherwise than in accordance with this Act and the regulations or that contains false information;

(e) fails to comply with or contravenes any of sections 230 to 231.5; or

(f) in the case of a registered Canadian amateur athletic association, accepts a gift the granting of which was expressly or implicitly conditional on the association making a gift to another person, club, society or association.

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

Where the Minister gives notice under subsection 168(1) to a registered charity or to a registered Canadian amateur athletic association,

(a) if the charity or association has applied to the Minister in writing for the revocation of its registration, the Minister shall, forthwith after the mailing of the notice, publish a copy of the notice in the Canada Gazette, and

(b) in any other case, the Minister may, after the expiration of 30 days from the day of mailing of the notice, or after the expiration of such extended period from the day of mailing of the notice as the Federal Court of Appeal or a judge of that Court, on application made at any time before the determination of any appeal pursuant to subsection 172(3) from the giving of the notice, may fix or allow, publish a copy of the notice in the Canada Gazette,

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

#### **168 (4) Objection to proposal or designation**

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

(a) in the case of a person that is or was registered as a registered charity or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(2) to (4.1), (6.3), (22) and (23);

(b) in the case of a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.2) and (22); or

(c) in the case of a person described in any of subparagraphs (a)(i) to (v) of the definition “qualified donee” in subsection 149.1(1), that is or was registered by the Minister as a qualified donee or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.3) and (22).

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

Where the Minister

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

(a.1) confirms a proposal, decision or designation in respect of which a notice was issued by the Minister to a person that is or was registered as a registered charity, or is an applicant for registration as a registered charity, under any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) and 168(1), or does not confirm or vacate that proposal, decision or designation within 90

days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal, decision or designation,

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

(b) refuses to accept for registration for the purposes of this Act any retirement savings plan,

(c) refuses to accept for registration for the purposes of this Act any profit sharing plan or revokes the registration of such a plan,

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

(e) refuses to accept for registration for the purposes of this Act an education savings plan,

(e.1) sends notice under subsection 146.1(12.1) to a promoter that the Minister proposes to revoke the registration of an education savings plan,

(f) refuses to register for the purposes of this Act any pension plan or gives notice under subsection 147.1(11) to the administrator of a registered pension plan that the Minister proposes to revoke its registration,

(f.1) refuses to accept an amendment to a registered pension plan,

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

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

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

the person described in paragraph (a), (a.1) or (a.2), the applicant in a case described in paragraph (b), (e) or (g), a trustee under the plan or an employer of employees who are beneficiaries under the plan, in a case described in paragraph (c), the promoter in a case described in paragraph (e.1), the administrator of the plan or an employer who participates in the plan, in a case described in paragraph (f) or (f.1), or the administrator of the plan in a case described in paragraph (h) or (i), may appeal from the Minister’s decision, or from the giving of the notice by the Minister, to the Federal Court of Appeal.

## **180 (1) Appeals to Federal Court of Appeal**

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

(a) the day on which the Minister notifies a person under subsection 165(3) of the Minister’s action in respect of a notice of objection filed under subsection 168(4),

(b) [Repealed, 2011, c. 24, s. 55]

(c) the mailing of notice to the administrator of the registered pension plan under subsection 147.1(11),

(c.1) the sending of a notice to a promoter of a registered education savings plan under subsection 146.1(12.1),

(c.2) the mailing of notice to the administrator of the pooled registered pension plan under subsection 147.5(24), or

(d) the time the decision of the Minister to refuse the application for acceptance of the amendment to the registered pension plan or pooled registered pension plan was mailed, or otherwise communicated in writing, by the Minister to any person,

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

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

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

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

(a) the taxation year of the charity that would otherwise have included that day is deemed to end at the end of that day;

(b) a new taxation year of the charity is deemed to begin immediately after that day; and

(c) for the purpose of determining the charity's fiscal period after that day, the charity is deemed not to have established a fiscal period before that day.

### **188 (1.1) Revocation tax**

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

$$\mathbf{A - B}$$

where

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

(a) the fair market value of a property of the charity at the end of that taxation year,

(b) the amount of an appropriation (within the meaning assigned by subsection (2)) in respect of a property transferred to another person in the 120-day period that ended at the end of that taxation year, or

(c) the income of the charity for its winding-up period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 as if that period were a taxation year; and

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

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

### **188 (1.2) Winding-up period**

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

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

### **188 (1.3) Eligible donee**

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

- (a) a registered charity
  - (i) of which more than 50% of the members of the board of directors or trustees of the registered charity deal at arm's length with each member of the board of directors or trustees of the particular charity,

- (ii) that is not the subject of a suspension under subsection 188.2(1),
- (iii) that has no unpaid liabilities under this Act or under the Excise Tax Act,
- (iv) that has filed all information returns required by subsection 149.1(14), and
- (v) that is not the subject of a certificate under subsection 5(1) of the Charities Registration (Security Information) Act or, if it is the subject of such a certificate, the certificate has been determined under subsection 7(1) of that Act not to be reasonable; or

(b) a municipality in Canada that is approved by the Minister in respect of a transfer of property from the particular charity.

### **188 (2) Shared liability – revocation tax**

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

### **188 (2.1) Non-application of revocation tax**

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

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

### **188 (3) Transfer of property tax**

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

which is its tax payable under this subsection for a preceding taxation year in respect of the transaction or series of transactions.

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

Subsection (3) does not apply to a transfer that is a gift to which subsection 188.1(11) or (12) applies.

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

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

#### **188 (5) Definitions – In this section,**

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

$$\mathbf{A} - \mathbf{B}$$

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

$$\mathbf{A} - \mathbf{B}$$

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
  - (ii) the income of the charity for the post-assessment period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 if that period were a taxation year, and
- (b) all amounts, each of which is an amount, in respect of a property transferred by the charity before the particular time and during the post-assessment period to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which

the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

### **189 (6.3) Reduction of liability for penalties**

If the Minister has assessed a particular person in respect of the particular person's liability for penalties under section 188.1 for a taxation year, and that liability exceeds \$1,000, that liability is, at any particular time, reduced by the total of all amounts, each of which is an amount, in respect of a property transferred by the particular person after the day on which the Minister first assessed that liability and before the particular time to another person that was at the time of the transfer an eligible donee described in paragraph 188(1.3)(a) in respect of the particular person, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the total of

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

### **189 (7) Minister may assess**

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



Mr. Joel Bell  
President  
Sheldon M. Chumir Foundation for Ethics in Leadership  
P.O. Box 65186 North Hill  
Calgary AB T2N 4T6

BN: 135120715RR0001  
File #: 0940874

February 14, 2019

**Subject: Audit of Sheldon M. Chumir Foundation for Ethics in Leadership**

Dear Mr. Bell:

This letter results from the audit of the Sheldon M. Chumir Foundation for Ethics in Leadership (the Foundation) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Foundation for the period from January 1, 2013 to December 31, 2014.

On November 26, 2015, the Foundation was advised that the CRA identified specific areas of non-compliance with the provisions of the Income Tax Act (the Act) and its Regulations in the following areas.

AREAS OF NON-COMPLIANCE		
	Issue	Reference
1.	Failure to devote resources to charitable activities	149.1(4), 168(1)(b)
2.	Failure to be constituted for exclusively charitable purposes	149.1(4), 168(1)(b)
3.	Failure to maintain adequate books and records	149.1(4), 230(2), 168(1)(b), 168(1)(e)
4.	Failure to file an information return as and when required by the Act and/or its Regulations	149.1(4), 149.1(14) 168(1)(c)
5.	Issuing receipts not in accordance with the Act	149.1(4), 168(1)(d), 188.1(7), Regulation 3501

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

## General legal principles

In order to maintain charitable registration under the Act, Canadian law requires that an organization demonstrate that it is constituted exclusively for charitable purposes (or objects) and that it devotes its resources to charitable activities carried on by the organization itself in furtherance thereof.<sup>1</sup> To be exclusively charitable, a purpose must fall within one or more of the following four categories (also known as "heads") of charity<sup>2</sup> and deliver a public benefit:

- relief of poverty (first category);
- advancement of education (second category);
- advancement of religion (third category); or
- certain other purposes beneficial to the community in a way the law regards as charitable (fourth category).

The public benefit requirement involves a two-part test:

- The first part of the test requires the delivery of a **benefit** that is recognizable and capable of being proved, and socially useful. To be recognizable and capable of being proved, a benefit must generally be tangible or objectively measurable. Benefits that are not tangible or objectively measurable must be shown to be valuable or approved by the common understanding of enlightened opinion for the time being.<sup>3</sup> In most cases, the benefit should be a necessary and reasonably direct result of how the purpose will be achieved and of the activities that will be conducted to further the purpose, and reasonably achievable in the circumstances.<sup>4</sup> An assumed prospect or

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<sup>1</sup> See subsection 149.1(1) of the Act, which requires that a charitable organization devote all of its resources to "charitable activities carried on by the organization itself, and *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10 at paras 155-159 [*Vancouver Society*]. A registered charity may also devote resources to activities that, while not charitable in and of themselves, are necessary to accomplish their charitable objectives (such as expenditures on fundraising and administration). However, any resources so devoted must be within acceptable legal parameters and the associated activities must not become ends in and of themselves.

<sup>2</sup> The Act does not define charity or what is charitable. The exception is subsection 149.1(1) which defines charitable purposes/objects as including "the disbursement of funds to qualified donees". The CRA must therefore rely on the common law definition, which sets out four broad categories of charity. The four broad charitable purpose/object categories, also known as the four heads of charity, were outlined by Lord Macnaghten in *Commissioners for Special Purposes of the Income Tax v Pemsel*, [1891] AC 531 (PC) [*Pemsel*]. The classification approach was explicitly approved of by the Supreme Court of Canada in *Guaranty Trust Co of Canada v MNR*, [1967] SCR 133, and confirmed in *Vancouver Society*, *supra* note 1.

<sup>3</sup> See generally *Vancouver Society*, *supra* note 1 at para 41, Gonthier J, dissenting; *Gilmour v Coats et al*, [1949] 1 All ER 848 [*Gilmour*]; *National Anti-Vivisection Society v IRC*, [1947] 2 All ER 217 at 224 (HL), Wright LJ [*National Anti-Vivisection Society*].

<sup>4</sup> See for example *In re Grove-Grady*, [1929] 1 Ch 557 at 573-574; *Plowden v Lawrence*, [1929] 1 Ch 557 at 588, Russell LJ; *National Anti-Vivisection*, *supra* note 3 at 49, Wright LJ; *IRC v Oldham Training and Enterprise Council*, [1996] BTC 539 [*Oldham*]; *Pemsel*, *supra* note 2 at 583.

possibility of gain that is vague, indescribable or uncertain, or incapable of proof, cannot be said to provide a charitable benefit.<sup>5</sup>

- The second part of the test requires the benefit be directed to the **public** or a sufficient section of the public. This means a registered charity cannot:
  - have an eligible beneficiary group that is negligible in size, or restricted based on criteria that are not justified based on the charitable purpose(s); or
  - provide an unacceptable private benefit. Typically, a private benefit is a benefit provided to a person or organization that is not a charitable beneficiary, or to a charitable beneficiary that exceeds the bounds of charity. A private benefit will usually be acceptable if it is incidental, meaning it is necessary, reasonable, and not disproportionate to the resulting public benefit.<sup>6</sup>

The question of whether an organization is constituted exclusively for charitable purposes cannot be determined solely by reference to its stated purposes, but must take into account the activities in which the organization currently engages. In *Vancouver Society of Immigrant and Visible Minority Women v MNR*, the Supreme Court of Canada stated as follows:

But the inquiry cannot stop there. In *Guaranty Trust*, *supra* at p.144, this Court expressed the view that the question of whether an organization was constituted exclusively for charitable purposes cannot be determined solely by reference to the objects and purposes for which it was originally established. It is also necessary to consider the nature of the activities presently carried on by the organization as a potential indicator of whether it has since adopted other purposes. In other words, as Lord Denning put it in *Institution of Mechanical Engineers v Cane*, [1961] A.C. 696 (H.L.), at p. 723, the real question is, "for what purpose is the Society at present instituted?"<sup>7</sup>

A charitable activity is one that directly furthers a charitable purpose, which requires a clear relationship and link between the activity and the purpose it purports to further. If an activity is, or becomes, a substantial focus of an organization, it may no longer be in furtherance of a stated purpose. Instead, the activity may further, or even form, a separate or collateral purpose. An organization with a collateral non-charitable purpose is ineligible for registration under the Act.

<sup>5</sup> See *National Anti-Vivisection Society*, *supra* note 3 at 49, Wright LJ; *In re Shaw decd*, [1957] 1 WLR 729; *Gilmour*, *supra* note 6, Simonds LJ at 446-447.

<sup>6</sup> For more information about public benefit, see CRA Policy Statement CPS-024, *Guidelines for Registering a Charity: Meeting the Public Benefit Test*.

<sup>7</sup> *Vancouver Society*, *supra* note 1 at para 194. See also *AYSA Amateur Youth Soccer Association v Canada (Revenue Agency)*, 2007 SCC 42 at para 42, [2007] 3 SCR 217.

To comply with the requirement that it devote all of its resources to charitable activities carried on by the organization itself; a registered charity may only use its resources (funds, personnel and/or property) in two ways:

- for its own 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.<sup>8</sup>

A charity's own charitable activities may be carried out by its directors, employees or volunteers, or through intermediaries (a person or non-qualified donee that is separate from the charity, but that the charity works with or through, such as an agent, contractor or partner). If acting through an intermediary, the charity must establish that the activity to be conducted will further its charitable purposes, and that it maintains continued direction and control over the activity and over the use of the resources it provides to the intermediary to carry out the activity on its behalf.<sup>9</sup>

Although there is no legal requirement to do so, and the same result might be achieved through other arrangements or means, entering into a written agreement can be an effective way to help meet the own activities test. However, the existence of an agreement is not enough to prove that a charity meets the own activities test. The charity must be able to show that the terms establish a real, ongoing, active relationship with the intermediary,<sup>10</sup> and are actually implemented. A charity must record all steps taken to exercise direction and control as part of its books and records, to allow the CRA to verify that the charity's funds have been spent on its own activities. While the nature and extent of the required direction and control may vary based on the particular activity and circumstances, the absence of appropriate direction and control indicates that an organization is resourcing a non-qualified donee in contravention of the Act.

The CRA must be satisfied that an organization's activities directly further charitable purposes in a manner permitted under the Act. In making a determination, we are obliged to take into account all relevant information. Accordingly, the current audit encompassed an enquiry into all aspects of the Foundation's operations.

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<sup>8</sup> A "qualified donee" means a donee described in subsection 149.1(1) of the Act.

<sup>9</sup> For more information, see CRA Guidance CG-002, *Canadian Registered Charities Carrying Out Activities Outside Canada* and Guidance CG-004, *Using an Intermediary to Carry Out Activities Within Canada*.

<sup>10</sup> See notably *Canadian Committee for the Tel Aviv Foundation v Canada*, 2002 FCA 72 at para 30, [2002] FCJ no 315 [Canadian Committee for the Tel Aviv Foundation].

## Identified areas of non-compliance

### Item 1: Failure to devote resources to charitable activities

#### a) Conduct of non-charitable activities

A charitable activity is one that directly furthers a charitable purpose - which requires a clear relationship and link between the activity and the purpose it purports to further. The Act permits private foundations to either make gifts to other organizations that are qualified donees or to carry on their own activities. In the case of making a gift, paragraph 149.1(4)(b.1) provides that a private foundation may be revoked if it makes a gift other than to a qualified donee or in the course of charitable activities carried on by it.<sup>11</sup> In summary, a private foundation may carry on its own charitable activities, it may make gifts to qualified donees or, it may make a gift in the course of charitable activities carried on by it.

#### Activities to further educational advancement

To advance education in the charitable sense means training the mind, advancing the knowledge or abilities of the recipient, raising the artistic taste of the community, or improving a useful branch of human knowledge through research.<sup>12</sup>

To further purposes that advance education, the education must be sufficiently structured, have a teaching or learning component, and involve a legitimate, targeted attempt to educate. The following statement from the Vancouver Society<sup>13</sup> decision summarizes the direction of the court in this regard:

[S]o long as information or training is provided in a structured manner and for a genuinely educational purpose... it may properly be viewed as falling within the advancement of education<sup>14</sup>.

To my mind, the threshold criterion for an educational activity must be some legitimate, targeted attempt at educating others, whether through formal or informal instruction, training, plans of self-study, or otherwise. Simply providing an opportunity for people to educate themselves, such as by making available materials with which this might be accomplished but need not be, is not enough. Neither is 'educating' people about a particular point of view in a manner that might more aptly be described as persuasion or indoctrination<sup>15</sup>.

<sup>11</sup> This provision is retroactive to December 20, 2002, and covers the period under audit. <http://www.fin.gc.ca/drleg-apl/nwmm-amvm-1012n-05-eng.asp>, see Clause 308.

<sup>12</sup> For more information, see CRA Policy Commentary CPC-027, *Publishing a Magazine*.

<sup>13</sup> See *Vancouver Society*, *supra* note 1.

<sup>14</sup> *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10 at para 169.

<sup>15</sup> *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10 at para 171.

It is our view that the Foundation's activities fail to satisfy the legal requirements applicable to educational advancement. Merely arranging "public discourses" lacks the necessary element of structured, targeted instruction that characterizes educational advancement in the charitable context, and providing an opportunity for self-education, which may or may not occur, is not sufficient. While, as explained above, dissemination of information can be a charitable activity, activities that advance education have been held by the courts to be subject to particular requirements.<sup>16</sup> It is not sufficient to simply inform people or exchange ideas on a particular subject. No matter how useful provision of information may be, it lacks the necessary element that characterizes education in the charitable sense.

To be considered charitable at common law, the research a registered charity conducts or funds must:

- a. represent a way to achieve or further the charity's charitable purpose;<sup>17</sup>
- b. be based on a subject that has educational value and a research proposal that is capable of being attained through research;<sup>18</sup>
- c. be conducted in such a way that it might reasonably lead to the discovery,<sup>19</sup> or improvement of knowledge;<sup>20</sup>
- d. be conducted primarily for the public benefit that could arise from it and not for self-interest,<sup>21</sup> or for private commercial consumption;<sup>22</sup> and
- e. be disseminated and made publicly available to others who might want to access the information.<sup>23</sup>

Research in the charitable sense does not include the accumulation of information:

- a. in an unstructured manner;<sup>24</sup>
- b. in an unsystematic way;<sup>25</sup>

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<sup>16</sup> See *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10 at para 169; *News to you Canada v MNR*, 2011 FCA 192 at para 17, [2011] FCJ no 848.

<sup>17</sup> See *Vancouver Society*, *supra* note 1 at paras 152, 159.

<sup>18</sup> See *Re Hopkins' Will Trusts* [1965] Ch 669 at 680; *Wood v R*, [1977] 6 WWR 273 at 284 (Alta TD); *Naish v Francis Bacon Society Inc*, [1965] Ch 669, [1964] 3 All ER 46 at 48 [*Naish*]; *McGovern v AG*, [1981] 3 All ER 493 (Ch D), [1982] Ch 321; H Picarda, *The Law and Practice Relating to Charities*, 3d, (London, Butterworths, 1999) at 62; and M Chesterman, *Charities, Trusts and Social Welfare*, (London, Weidenfeld and Nicolson, 1979) at 149-153.

<sup>19</sup> See *Royal College of Surgeons of England v National Provincial Bank Ltd*, [1952] AC 631 at 641-642, Normand LJ; *Re Besterman's Will Trusts* (1980) Times, 22 January (21 January 1980, unreported).

<sup>20</sup> See *Beaumont v Oliveira* (1869), 4 Ch App 309, Selwyn LJ; *Vancouver Society*, *supra* note 1 at paras 161, 171.

<sup>21</sup> See *Re Hopkins' Will Trusts* [1965] Ch 669 at 681, Wilberforce J; *Re Besterman's Will Trusts*, *supra* note 19.

<sup>22</sup> See *Re British School of Egyptian Archaeology v Public Trustee And Others*, [1954] 1 All ER 887 at 890; and *Incorporated Council of Law Reporting for England and Wales v AG*, [1971] 3 All ER 1029 at 1034, [1972] Ch 73.

<sup>23</sup> See *Re Hopkins' Will Trusts*, *supra* note 18 at 681; *Re Besterman's Will Trusts*, *supra* note 19.

<sup>24</sup> See *Vancouver Society*, *supra* note 1 at para 169.

<sup>25</sup> *Human Life International in Canada Inc v MNR*, [1998] FCJ no 365, 3 FC 202 (CA) at para 10.

- c. on a subject that has no educational value;<sup>26</sup> or
- d. that is selective, or unreasonably biased, or promotes a predetermined point of view.<sup>27</sup>

Research can directly further a charitable purpose; however, campaigns of public persuasion would undermine its charitable character. In this regard, bias may emerge as an issue either in the selection of research areas, where the effect is to create an overall distorted impression of the subject matter, or in the execution of the research, where the methodology is flawed. To advance education in the charitable sense, the research of a registered charity that examines policy issues must constitute a balanced assessment of an issue. In order to maintain registered status under the Act, charities must ensure:

- the results of their research activities are made available to the public (for example, through publications or on the Internet);
- their research is reasonably unbiased;
- any private benefits are incidental to the achievement of the public benefit provided by their charitable purpose(s).

Audit findings:

The Foundation undertook the following activities that do not appear to be charitable:

- a. Vienna 1860 to 1914: Creativity, Culture, Science, and Politics – Panel discussions, due to their informal nature and subjectivity, may be used in the advancement of education as a tool for conducting research. The research should then be compiled and published for the benefit of the public. There is no indication that the Foundation published its research as a result of the panel discussions. There is also no indication that the panel discussions were a part of a larger body of research.

The discussions took place on February 24, 27, and 28, 2014 at [REDACTED] in New York City, as part of [REDACTED]

[REDACTED] "The Foundation, along with the Chumir Foundation for Ethics in Leadership (a separate registered charity), funded and facilitated "informed discussion that draws on historic experience and current evidence to increase public awareness and participation in decisions that contribute best to a fair,

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<sup>26</sup> See *Re Hopkins' Will Trusts*, *supra* note 18 at 680; *Wood v R*, [1977] 6 WWR 273 at 284; *Naish*, *supra* note 18; *McGovern*, *supra* note 18 at 353; *Picarda, The Law and Practice Relating to Charities*, *supra* note 18 at 62; and *Chesterman, Charities, Trusts and Social Welfare*, *supra* note 18 at 149-153.

<sup>27</sup> *Re Bushnell* [1975] 1 WLR 1596 at 729; *Positive Action Against Pornography*, *supra* note 16 at 349; *Vancouver Society* *supra* note 1 at para 169; *Challenge Team v Canada (Revenue Agency)*, [2000] FCJ 433 at para 1, 2 CTC 352 (CA).

productive, and harmonious society" (excerpt taken from the letter of welcome to the New York program).

From the information we were provided, it does not appear that these discussions were a formal training of the mind, nor were they advancing the knowledge or abilities of the recipients in the sense that the recipients could implement their learning in order to benefit society. The panel discussions were not structured learning environments, as the structure (the ability to stay on-topic) depended very heavily on the moderator. If the moderator was not able to keep the panellists on topic, the entire discussion may not have had the intended results.

- b. The Arts in Vienna: A Proud History, a Troubled Past – this was a condensed version of Activity "a" (above), and was held in Toronto on March 17, 2014, and Calgary on March 20, 2014.
- c. Summer internships – it appears that the Foundation gifted funds to individuals who were enrolled within the [REDACTED] at the University of Calgary. Students approached the Foundation asking for funds to top-up their summer internships with separate organizations. The internships were not through the Foundation. As noted in an e-mail of March 25, 2013 from the Foundation's President at the time to a student, "The Chumir foundation [sic] may be able to provide some financial support. We do not have a formal program." The President at the time, who was on secondment from the [REDACTED], agreed to give the students money in return for having the students write a short (1300 word) article in the Foundation's quarterly newsletter, "Chumir Ethics Forum."
- d. We were not provided enough information to determine whether the following activities are charitable:
  - i. International Human Rights Day event
  - ii. Right to Know
  - iii. Civil Liberties
  - iv. Globalfest
  - v. Human Rights in Alberta
  - vi. Transparency International Discussion Group
  - vii. Syria
  - viii. Apathy is Boring
  - ix. The Sochi Olympics and International Human Rights: the Anti-Gay Propaganda
  - x. Constitutional Frontiers: Sexual Orientation and Gender Identity

Conclusion:

Based on the findings detailed above and the information on file, it is our view that the Foundation does not devote its resources to charitable activities carried on by the Foundation itself.

**b) Lack of direction and control over the use of resources / resourcing non-qualified donees**

Under subsection 149.1(1) of the Act, a "charitable foundation" is defined as "a corporation or trust that is constituted and operated exclusively for charitable purposes, no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof..."

Though made in reference to an agency relationship, the underlying principles enunciated by the Federal Court of Appeal in *Canadian Committee for the Tel Aviv Foundation v Canada* are applicable to most intermediary arrangements:

Under the scheme of the Act, it is open to a charity to conduct its overseas activities either using its own personnel or through an agent. However, it cannot merely be a conduit to funnel donations Overseas.<sup>28</sup>

And

Pursuant to subsection 149.1(1) of the Act, a charity must devote all its resources to charitable activities carried on by the organization itself. While a charity may carry on its charitable activities through an agent, the charity must be prepared to satisfy the Minister that it is at all times both in control of the agent, and in a position to report on the agent's activities.<sup>29</sup>

As re-iterated by the Court in *Lepletot v MNR*<sup>30</sup>, an organization may carry on charitable activities through an agent if the activities are conducted on behalf of the organization. However, it is not enough for an organization to fund an intermediary that carries on certain activities. The Act requires that the intermediary actually conduct those activities on the organization's behalf. Likewise, the Court in *Canadian Magen David Adom for Israel* mentions the importance of monitoring the activities when it stated that:

[A] charity that chooses to carry out its activities in a foreign country through an agent or otherwise must be in a position to establish that any acts that purport to

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<sup>28</sup> *Canadian Committee for the Tel Aviv Foundation v Canada*, 2002 FCA 72 at para 30, [2002] 2 CTC 93.

<sup>29</sup> *Canadian Committee for the Tel Aviv Foundation v Canada*, 2002 FCA 72 at para 40, [2002] 2 CTC 93.

<sup>30</sup> *Lepletot v MNR*, 2006 FCA 128 at para 5, [2006] 3 CTC 252.

be those of the charity are effectively authorized, controlled and monitored by the charity.<sup>31</sup>

Consequently, where a registered charity undertakes an activity through an intermediary, it must be able to substantiate that it has actually arranged for the conduct of that specific activity on its behalf and has not simply made a transfer of funds to a non-qualified donee. It must be able to demonstrate that it maintains direction and control over, and is fully accountable for, the use of its resources. To this end, a charity would be expected to:

- select the activity that it will conduct with or through an intermediary based on the fact that it will further the charity's charitable purposes, and after being satisfied that the intermediary is capable of conducting the activity on the charity's behalf; and
- supervise/direct, and make significant decisions in regard to the conduct of, the activity on an ongoing basis.

To this end, the Foundation is required to establish that it maintains continued direction and control over the substantive charitable activities that are ostensibly being carried out on its behalf. In this regard, the existence of an arrangement with an intermediary, written or otherwise, is not enough to prove that a charity meets the own activities test. The Foundation must be able to show that the terms of any arrangement establish a real, ongoing, active relationship with the intermediary,<sup>32</sup> and are actually implemented. For instance, the documentation should include:

- a clear, complete, and detailed description of the activity that is to be conducted, how it furthers the charitable purposes of the Foundation and how it is to be carried out by the project participant on the Foundation's behalf, including parameters, deliverables, milestones or goals;
- provision for real and effective monitoring and supervision of the activity, and the project participant carrying on the activity, with mechanisms for someone accountable to the Foundation to give instructions about, have input into, and modify the nature or scope of, the activity on an on-going basis; and
- a requirement for the Foundation to receive regular, meaningful reports as the activity progresses. To be meaningful, reporting requirements must specify issues to be covered, and when they must be submitted, to ensure the

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<sup>31</sup> *Canadian Magen David Adom for Israel v MNR*, 2002 FCA 323 at para 66, [2002] FCJ no 1260.

<sup>32</sup> See notably *Canadian Committee for the Tel Aviv Foundation v Canada*, 2002 FCA 72 at para 40, [2002] 2 CTC 93.

Foundation has the opportunity to make significant decisions in regard to the conduct of the activity on a timely and ongoing basis.

Audit findings:

The Foundation entered into agreements with numerous people/organizations on various topics, including:

- a. Consulting agreement dated January 21, 2013, with an individual to conduct an initial literature review on major works in the area of the public interest, the economy, and citizenship. The Foundation paid \$2,500 for this.
- b. Letter of agreement with the General Counsel of the Canadian Civil Liberties Association to pay for her research into national principles on community oversight of policing. The amount paid was \$3,000 and the date of the agreement was May 24, 2013.
- c. Letter of agreement on May 21, 2013 with the President of the Rocky Mountain Civil Liberties Association, to conduct work on behalf of the Foundation in the area of civil liberties, for \$3,000
- d. Internship agreements with summer students to conduct research into various topics. As mentioned, these internships were not with the Foundation, but with arm's length entities. It appears that the Foundation simply provided funds to help the students with their costs. It agreed to provide three students with \$1,500 each; they were all notified on April 23, 2013.

In every case, the agreements were similar in style to agency agreements, but lacked many of the aspects of formal agreements, particularly with regard to the direction and control of the funds relating to the activities, and to the activities themselves.

Because there was no control of the funds that were given to the individuals named in the agreements, and because the Foundation did not control the activities undertaken by the individuals, it appears the Foundation essentially gave funds to individuals to conduct their own research (or research on behalf of another organization). This amounts to gifting to non-qualified donees.

Moreover, the Foundation signed a joint venture agreement with the Chumir Foundation for Ethics in Leadership, a non-profit organization based in Delaware, USA, on July 21, 2015. The joint venture agreement did not specify costs or responsibilities of each party. There is nothing in the agreement to provide assurance that the Foundation maintains direction and control of the funds that it provides to the joint venture.

The agreement states that the two foundations "wish to carry out certain activities that serve their mutual purposes...and have each determined that it is in the best interests and will most efficiently serve the charitable purposes of the Canadian Foundation and the US Foundation, respectively, to pool their resources and establish a joint venture for

the purpose of carrying on the charitable activities set forth in Schedule C.” Schedule C details the Congress of Vienna project, which has already been determined to be non-charitable.

Although this joint venture agreement falls outside of the audit period, it shows that the Foundation continued to its pattern of not demonstrating direction and control over its resources.

Conclusion:

Accordingly, it is our position that the Foundation has failed to meet the requirements of subsections 149.1(1) and 149.1(4) of the Act that it devote substantially all its resources to charitable activities carried on by the Foundation itself. For these reasons, and each of these reasons, it appears there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

**Item 2: Failure to be constituted for exclusively charitable purposes**

**a. Delivery of non- incidental private benefits**

As indicated above, to be charitable at law, a purpose must fall within a category of charity and deliver a public benefit. However, it is not enough that a purpose, on its face, falls within one or more of the four categories of charity and delivers a charitable benefit to a properly defined eligible beneficiary group. The public requirement also means a charity may not provide private benefits as it advances and furthers a charitable purpose, except within legally acceptable boundaries.<sup>33</sup> The charity is responsible for establishing that any private benefit that may be delivered is acceptable.

Generally, a private benefit is a benefit or advantage provided to a person or organization that is not a charitable beneficiary, or a benefit provided to a charitable beneficiary that exceeds the bounds of charity. An acceptable private benefit is one that is incidental to achieving a charitable purpose. A private benefit will usually be incidental where it is necessary, reasonable, and proportionate to the resulting public benefit<sup>34</sup>.

Necessary essentially means legitimately and justifiably resulting from an action that directly contributes towards achieving a charitable purpose, or a required step in, or consequence or by-product of, an action taken only to achieve a charitable purpose.<sup>35</sup> Reasonable means related to the need and no more necessary to achieve the

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<sup>33</sup> See for example *Prescient Foundation v MNR*, 2013 FCA 120 at para 36, [2013] FCJ no 512.

<sup>34</sup> For more information, see CRA Policy Statement CPS-024, *Guidelines for Registering a Charity: Meeting the Public Benefit Test*.

<sup>35</sup> See for example *Incorporated Council of Law Reporting for England and Wales v AG*, [1972] Ch 73, [1971] 3 All ER 1029 (CA); *Royal College of Surgeons of England v National Provincial Bank*, [1952] AC 631; *Royal College of Nursing v St Marylebone Borough Council*, [1959] 1 WLR 1007 (CA); *IRC v Oldham Training and Enterprise Council*, [1996] BTC 539.

purpose,<sup>36</sup> and fair and rational. Proportionate to the resulting public benefit means a private benefit must be secondary and subsidiary to a charitable purpose.<sup>37</sup> It cannot be a substantial part of a purpose, or form an additional or independent non-charitable end in and of itself. The public benefit cannot be too indirect, remote or speculative as compared to a more direct private benefit, particularly where the direct benefit is to private persons, entities or businesses.<sup>38</sup>

In most cases, private benefits that are more than incidental under the common law will also be "undue benefit"<sup>39</sup> under the Act. A registered charity cannot confer on a person an undue benefit including disbursements by way of a gift or the amounts of any part of resources, or otherwise make available for the personal benefit of any person who is a member of the charity, or who deals not at arm's length with the charity.<sup>40</sup>

Providing a private benefit is an offence under the Act. A registered charity that confers an undue benefit is liable of a penalty equal to 105% of the amount of the benefit, increasing to 110% if the offence is reproduced within five years.

What is more, the courts have placed extensive responsibilities, known as fiduciary duties, on the directors of charities, which include:

- the duty to act honestly and in good faith, in the best interests of the charity and not in a manner that is self-serving,
- the duty to follow the laws and rules that apply to charities,
- the duty to use all charitable property and funds for only charitable purposes, and
- the duty to be accountable for the charity's property and funds.

The term 'fiduciary duties' refers to the court-recognized individual obligations that trustees undertake to ensure, among other things, that the charity complies with any applicable laws, and operates in a fiscally prudent, effective, and efficient manner.<sup>41</sup>

<sup>36</sup> See for example *Joseph Rowntree Memorial Housing Association Ltd and Others v AG*, [1983] Ch 159 (Ch D); *In Re Resch's Will Trusts And Others v Perpetual Trustee Co Ltd*, [1969] 1 AC 514 (PC).

<sup>37</sup> *Incorporated Council of Law Reporting for England and Wales v AG*, [1972] Ch 73, [1971] 3 All ER 1029 (CA); *Inland Revenue Commissioner v City of Glasgow Police Athletic Association*, [1953] AC 380 (HL); *IRC v Oldham Training and Enterprise Council*, [1996] BTC 539.

<sup>38</sup> See for example *IRC v Oldham Training and Enterprise Council*, [1996] BTC 539; *Canterbury Development Corporation v Charities Commission*, [2010] NZHC 331; *Hadaway v Hadaway*, [1954] 1 WLR 16 (PC); *Re Co-operative College of Canada et al and Saskatchewan Human Rights Commission*, [1975] 64 DLR (3d) 531.

<sup>39</sup> An "undue benefit" is defined in subsection 188.1(5) of the Act.

<sup>40</sup> See CSP-U02, *Undue Benefits*.

<sup>41</sup> Bourgeois, Donald J. *The Law of Charitable and Not-For-Profit Organizations*. Markham: Butterworths, 2002, p. 211 – 212.

Audit findings:

Prior to Mr. Bell becoming president of the Foundation, the individual holding that title was [REDACTED] and was paid \$121,484. Before his return to [REDACTED], the Foundation searched for another president, but was unable to find one who was suitable.

The Chairman of the board of directors for the Foundation, Mr. Bell, suggested that he also take over the presidency. A contract for services was drafted for the period July 1, 2013 to June 30, 2014, and was signed in July 2013 by the three other directors. It appears that Mr. Bell never signed the contract, but insisted on being paid. The agreement stated that he would be paid [REDACTED] which included a salary of [REDACTED], a bonus of [REDACTED] and an expense account of [REDACTED].

On May 29, 2014, a new organization called the Sheldon Chumir Foundation for Ethics in Leadership (the Organization) became a registered charity. Mr. Bell is also the president of the Organization. The first payment of the "contract" was made from the Foundation on February 27, 2014. This payment of [REDACTED] was for services from July 1, 2013 to February 28, 2014, based on Mr. Bell's invoice dated February 17, 2014. From March 1 to June 30 2014, the payments were made from this new Organization.

For the period of July 1, 2014 to June 30, 2015, a contract for services was drawn up between the Organization and Mr. Bell, and the remainder of the payments for 2014 (that is, the payments relating to the period July 1, 2014 to December 31, 2014) were taken from the Organization. The new contract stipulated that Mr. Bell would be paid [REDACTED] plus office expenses of [REDACTED] plus an expense account of [REDACTED] for a total of [REDACTED], yet there was no reasoning or justification for the increase in compensation and office rental payments to Mr. Bell.

On June 29, 2015, directors of the Organization (who had also been directors of the Foundation), Janice Stein and Marsha Hanen, wrote Mr. Bell a detailed review of the past year's agreement. In it, they stated, "as you know, we have serious concerns about the reporting of your expenses" and further stated, "despite repeated requests, you did not submit expense reports in a timely way accompanied by original receipts." The letter goes on to state, "we feel that you have demonstrated a lack of judgement in determining what should be a considerate expense to the Foundation, both in terms of item and quantum of costs." The letter ends by stating that, because of the serious issues raised, the proposed agreement for the upcoming year will only be from July to December 2015. At that point, Ms. Stein and Ms. Hanen stated they would seek an independent evaluation of the project from a qualified professional program evaluator, and would review Mr. Bell's progress in his management of the expenses. This contract was never signed. Instead, a new contract was signed with the Organization where the only directors were now Mr. Bell and Scott Bodie.

It appears that the serious concerns that Ms. Stein and Ms. Hanen had were never actually addressed. Instead, they ceased to be directors. It appears that the Foundation's directors may have neglected and/or breached their responsibilities to properly safeguard the Foundation's assets by allowing its resources to be used in a manner that brought about "serious concerns" within the Foundation, and that provided a private benefit to the president.

#### Salzburg Festival Society

Records obtained during the audit show that the Foundation purchased two tables of 10 seats each for a January 20, 2014 dinner, and performance at [REDACTED], presented by the Salzburg Festival Society. At the time, Mr. Bell's [REDACTED]

[REDACTED] The total cost was \$20,000. It appears that these tables were used by Mr. Bell and [REDACTED] a member of the panel discussion hosted by the Foundation, and an employee of the Foundation, amongst other individuals. We note that in an e-mail dated January 17, 2014, Mr. Bell states that the payment is a "program expense in the normal course". We fail to see how this payment is a program expense, or how it is in furtherance of a charitable purpose. It is neither an activity carried out by the Foundation nor a payment made to a qualified donee. Rather, it appears that the Foundation may be providing an unacceptable private benefit.

#### Conclusion:

Providing an unacceptable private benefit is a revocable offence under the Act. Some unacceptable private benefits are also undue benefits<sup>42</sup>. A registered charity that confers an undue benefit is liable to a penalty equal to 105% of the amount of the benefit, increasing to 110% this penalty is assessed a second time against a registered charity within a five year period.<sup>43</sup>

#### **b) Broad and vague purposes**

To be registered as a charity under the Act, Canadian law requires that an organization's purposes be exclusively charitable, and define the scope of the activities that can be engaged in by the organization.<sup>44</sup>

To be exclusively charitable in law, a purpose must fall within one or more of the four categories of charity and deliver a charitable public benefit. If a purpose is worded in broad or vague language that could permit non-charitable activities and/or result in the delivery of non-charitable benefits (where, for example, the words used may be

<sup>42</sup> See subsection 188.1(5) of the Act for the meaning of the term "undue benefits".

<sup>43</sup> See subsection 188.1(4) of the Act.

<sup>44</sup> See *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10 at para 158; *Travel Just v Canada Revenue Agency*, 2006 FCA 343 at para 8, [2007] 1 CTC 294.

interpreted in different ways and/or encompass concepts that go beyond the scope of charity),<sup>45</sup> it will not be clear that it is charitable in law (falls within a charitable purpose category and provides a public benefit), or that it defines the scope of the organization's activities.

Audit findings:

The sole purpose of the Foundation is "the betterment of society through the encouragement of and education on the vital importance of leadership which is motivated by high ethical purpose."

While this may encourage some charitable activity, it is too broad in the sense that it allows for non-charitable activities to take place. It may be possible for an organization to be registered with a purpose that is too broad, provided that it clearly restricts its activities to charitable activities. In this particular case, the Foundation did not restrict its activities to charitable activities.

Conclusion:

It is our position that the Foundation is not constituted for exclusive charitable purposes, as its purpose is broad and allows for non-charitable activities.

Accordingly, it is our position that the Foundation has failed to meet the requirements of subsections 149.1(1) of the Act that it be constituted for exclusively charitable purposes, with all its purposes falling within one or more of the four categories of charity and delivering a public benefit, without conferring an unacceptable private benefit. For these reasons, and each of these reasons, it appears there may be grounds for revocation of the charitable status of the Foundation under paragraph 168(1)(b) of the Act.

**Item 3: Failure to maintain adequate books and records**

Pursuant to subsection 230(2) of the Act, every registered charity "shall keep records and books of account [...] at an address in Canada recorded with the Minister or designated by the Minister containing:

- a) information in such form as will enable the Minister to determine whether there are any grounds for revocation of its registration under the Act;
- b) a duplicate of each receipt containing prescribed information for a donation received by it;
- c) other information in such form as will enable the Minister to verify the donations to it for which a deduction or tax credit is available under this Act."

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<sup>45</sup> See for example *Re Tetley*, [1941] Ch 308 (where the court held that the word *philanthropy* can encompass purposes and activities that go beyond the realm of charity).

In addition, subsection 230(4) also states "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 a period as is prescribed;
- 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 and the law, which have held that:

- i. it is the responsibility of the registered charity to prove that its charitable status should not be revoked;<sup>46</sup>
- ii. 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;<sup>47</sup> and
- iii. 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 in the case of material or repeated non-compliance.<sup>48</sup>

Audit findings:

During our testing of the books and records, we noted the following concerns:

- a. Many of the programs that the Foundation undertook are without documentation, or sufficient documentation to determine the nature of the program. There is not enough information to determine whether the programs are charitable or not.
- b. Two invoices totalling \$3,914.53 for an event called "Apathy is Boring" were submitted for reimbursement. They purportedly related to the reimbursement of hotel and airfare expenses, but there was no accompanying documentation to support the reimbursement claim.

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<sup>46</sup> See *Canadian Committee for the Tel Aviv Foundation*, 2002 FCA 72 at paras 26-27, [2002] 2 CTC 93.

<sup>47</sup> *Canadian Committee for the Tel Aviv Foundation*, 2002 FCA 72 at para 39, [2002] 2 CTC 93. Furthermore, failing to comply with the requirements of section 230 of the Act by refusing to make documents available can lead to a fine and imprisonment, in addition to the penalty otherwise provided. See subsection 238(1) of the Act.

<sup>48</sup> See *Prescient Foundation v MNR*, 2013 FCA 120 at para 51, [2013] FCJ no 512.

- c. A purchase was made from [REDACTED] for which a credit card statement was available, but an invoice was not.
- d. The Foundation claimed a PSB rebate, but did not have sufficient documentation to support the claimed amount.
- e. Finally, the Foundation has very little segregation of duties with regard to financial transactions, as there was only one person who worked in an administrative role during the audit period. She did all of the day-to-day bookkeeping, banking, receipting, and other financial and administrative duties. There were, however, some controls put in place, such as two signatures on disbursement cheques, and an annual audit by a qualified accountant.

Conclusion:

Under paragraph 168(1)(e) of the Act, the registration of a charity may be revoked if it fails to comply with or contravenes subsection 230(2) of the Act dealing with books and records. It is our position that the present case consists of material non-compliance. For this reason, it appears to us that there are grounds for revocation of the charitable status of the Foundation under paragraph 168(1)(e) of the Act.

**Item 4: Failure to file an information return as and when required by the Act and/or its Regulations**

Subsection 149.1(14) of the Act states that:

Every registered charity and registered Canadian amateur athletic association shall, within six months from the end of each taxation year of the charity or association and without notice or demand, file with the Minister both an information return and a public information return for the year in prescribed form and containing prescribed information.

It is the responsibility of the Foundation to ensure that the information provided in its T3010 returns, schedules and statements, is factual and complete in every respect. A charity is not meeting its requirements to file an information return in prescribed form if it fails to exercise due care with respect to ensuring the accuracy thereof. The Federal Court of Appeal has confirmed that major inaccuracies in a T3010 are a sufficient basis for revocation.

In addition, Regulation 200(1) of the Act requires that where an amount described in subsection 153(1) (wage, salary or other remuneration) has been paid, an information return in prescribed form (T4 or T4A) shall be made.

Audit findings:

During the audit, we noted the following concerns:

- a. The Foundation used to own a house [REDACTED] in Calgary; it was sold a number of years ago, but still appears on the financial statements and on line 4155 (land and buildings in Canada) of the T3010 return. It should be removed from the books.
- b. In February 2013, the Foundation invited someone from Canada Without Poverty to speak at one of its events; they offered [REDACTED] an honorarium of \$1,000 but [REDACTED] declined it and asked the Foundation to give the money to Canada Without Poverty instead. Because this is a registered charity, the amount should have been reported as a gift to a QD rather than as an expense.
- c. The Foundation issued a number of honoraria to various speakers at different events; the honoraria were generally valued between \$500 and \$1,500, but the Foundation failed to issue T4A remuneration slips.

Conclusion:

Under subsection 168(1)(c) of the Act, the registration of a charity may be revoked if it fails to file a charity information return when required under the Act. It is our position the Foundation has failed to comply with the Act by failing to file an accurate T3010. For this reason, there may be grounds to revoke the registered status of the Foundation under paragraph 168(1)(c) of the Act.

**Item 5: Issuing receipts not in accordance with the Act**

Paragraph 230(2)(b) of the Act provides that every registered charity shall "keep records and books of account [...] at an address in Canada recorded with the Minister [...] [including] a duplicate of each receipt containing prescribed information for a donation received by it."

Subsection 3501(1) of the Regulations provides that each official donation receipt that a registered charity issues must include, in a manner that cannot be readily altered, the prescribed contents of a receipt.

Audit findings:

Registered charities in Canada are required to issue official donation receipts in accordance with Regulation 3501 and Income Tax Folio S7-F1-C1, Split-receipting and Deemed Fair Market Value. We noted the following concern regarding the official donation receipts:

- a. The Foundation's charitable registration number appears on the receipts as 13512 0715RR000 - the "1" is missing.
- b. The Foundation's name on the receipts is The Sheldon M. Chumir Foundation; however, its registered name is The Sheldon M. Chumir Foundation for Ethics in Leadership. The full name must be shown;
- c. The Foundation does not have its current address on the official donation receipts; however, this is fixed temporarily with a sticker showing the current address attached to every donation receipt issued;
- d. The receipts do not contain the name, Canada Revenue Agency, or the website, **canada.ca/charities-giving**. Again, this is fixed temporarily with a sticker attached to every official donation receipt issued;
- e. The locality from where the receipt was issued is not indicated; and
- f. The date is of the receipt of the donation is not indicated where it differs from the date of the issuance of the official donation receipt.

Conclusion:

It is our position that the Foundation has failed to meet the requirements of sections 3500 and 3501 of the Regulation. For this reason, it appears there may be grounds for revocation of the charitable status of the Foundation under paragraph 168(1)(d) of the Act.

**The Foundation's options:**

**a) No response**

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

**b) Response**

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

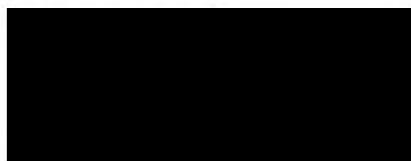
- no compliance action;
- issuing an educational letter;
- resolving the issues through a Compliance Agreement;
- applying penalties or suspensions or both, as described in sections 188.1 and 188.2 of the Act; or

- issuing a notice of intention to revoke the registration of the Foundation in the manner described in subsection 168(1) of the Act.

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

If you have any questions or require further information or clarification, do not hesitate to contact me at the number indicated below. My team leader, Francis Yu, may also be reached at 587-489-2402.

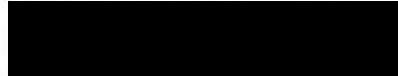
Yours sincerely,



Jason Letkemann  
Audit Division  
Edmonton Tax Service Office

Telephone: 587-489-2399  
Toll Free: 1-800-267-2384 (Charities Directorate)  
Facsimile: 780-495-2873  
Address: Suite 10, 9700 Jasper Avenue NW  
Edmonton AB T5J 4C8

c.c.: Mr. Scott Bodie





February 11, 2021

Mr. Joel Bell  
President  
Sheldon M. Chumir Foundation for Ethics in Leadership  
P.O. Box 65186 RPO North Hill  
Calgary AB T2N 4T6

BN: 135120715RR0001  
File #: 0940874

Dear Mr. Bell:

**Subject: Audit of Sheldon M. Chumir Foundation for Ethics in Leadership**

We received the many representations that you provided to us in response to the letter that we sent to you on February 14, 2019. Thank you for sending the first box of representations, and more recently, the binders with various agreements for conducting activities with and/or through other entities.

The information you sent to us was sufficient to alleviate our concerns regarding the nature of the activities that the Sheldon M. Chumir Foundation for Ethics in Leadership (the Foundation) undertook during the 2013 and 2014 years, particularly in light of the recent Canada Revenue Agency (CRA) guidance on Public Policy Dialogue and Development Activities by charities.

Regarding the other concerns that we outlined in our February 14, 2019 letter, I will address each of them in the following paragraphs.

We still have concerns that the Foundation is providing non- incidental private benefits to you as President. You stated that the salary you are receiving is comparable to the salaries of others in similar positions in the charitable sector in New York. However, you did not provide specific examples of similar positions in other charities for comparison purposes. You also failed to provide adequate documentation justifying the office expenses claimed by the Foundation. Moreover, you also failed to provide us with documentation justifying other expenditures claimed in regard to the Foundation's activities (for example, meals, travel, hotels, etc.). As such, we cannot simply overlook this concern.

The Foundation's purposes continue to be broad and vague, but we accept Mr. Bodie's suggestion that the Foundation would be willing to work on this with the CRA in order to ensure that the purposes are acceptable.

Regarding the books and records, we are prepared to accept that the Foundation does indeed maintain proper books and records, provided that we are supplied with documentation for all programs, revenues, and expenditures.

We had noted that the Foundation made some errors on the T3010 Registered Charity Information Returns that it filed during the audit period. It also had some errors on the official donation receipts that it issued during the audit period. Mr. Bodie assured us that the errors on both of those documents were easily correctible and were indeed being corrected. We accept that.

That leaves us with one final point: The lack of direction and control over the use of resources (this was one of the first points in our February 14, 2019 letter, but we are addressing it last for reasons that will become apparent.) During the audit period of January 1, 2013 to December 31, 2014, the Foundation had entered into agreements with various entities (for example, the General Counsel of the Canadian Civil Liberties Association, the President of the Rocky Mountain Civil Liberties Association, interning summer students, etc.) but failed to demonstrate, both through the agreements and outside of the agreements, that it retained direction and control over the funds that it provided to those entities.

We recognize that the Foundation no longer hires interning summer students, nor has it continued its relationships with the other entities listed above. During the audit, however, the Foundation also provided us with a Joint Venture Agreement from 2015 outlining how the Sheldon Chumir Foundation for Ethics in Leadership would interact with the Sheldon Chumir Foundation in the United States. We recognize that the Sheldon Chumir Foundation for Ethics in Leadership is a different entity than the one we have been discussing. We also recognize that the said foundation is currently dormant, and the Joint Venture Agreement now covers the relationship between the Sheldon M. Chumir Foundation for Ethics in Leadership and the Sheldon Chumir Foundation (US).

As we noted to you previously, we were interested in learning more about that agreement, as it affects the Foundation on a go-forward basis. We therefore asked you for additional documentation regarding the agreement, which you helpfully provided. After reviewing the information you provided to us, we still have concerns regarding the Foundation's direction and control of its resources.

We have therefore decided to **expand the audit period to include the dates January 1, 2015 to December 31, 2019**. As such, please provide all of the Foundation's documentation for this period, including but not limited to:

1. all bank statements, cancelled cheques, debit and credit memos from the bank, and deposit books;
2. all detailed general ledgers and related sub-ledgers;
3. details about revenue from all sources;
4. copies of contracts, invoices, correspondence and cancelled cheques for the expenditures reported in the financial statements and T3010 for the fiscal periods;
5. duplicate copies of official donation receipts and lists of donation receipts issued (including serial #, names, date, description of gifts, amount) for the above fiscal periods;

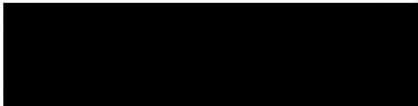
6. details about the gifts in kind. Details on valuation of gifts including appraiser's name and address;
7. details about the Charity's devotion of its resources to charitable activities;
8. reconciliation schedules between the financial statements and the T3010 returns;
9. capital assets listing and investment records;
10. copies of the T4/T4As issued for all salaries and benefits conferred (including honorariums);
11. reconciliation and breakdown of total expenditures reported in carrying out its charitable programs;
12. the minute book;
13. information regarding the disposition of assets; and
14. all information regarding excess corporate holdings.

We note that you have already sent a significant amount of material regarding the content of the Foundation's activities; that does not need to be re-sent, as we already have it in our possession.

Please provide this information to us **within 30 days** of the date of this letter.

If you have any questions or require further information or clarification, do not hesitate to contact me at the number indicated below. My team leader, Francis Yu, may also be reached at 587-335-6904.

Yours sincerely,

 **LETKEMANN JASON**

Digitally signed by LETKEMANN

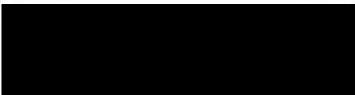
JASON

Date: 2021.02.09 14:41:39 -07'00'

Jason Letkemann  
Audit Division  
Edmonton Tax Service Office

Telephone: 780-495-5155  
Toll Free: 1-800-267-2384 (Charities Directorate)  
Facsimile: 780-495-6908  
Address: Suite 10, 9700 Jasper Avenue NW  
Edmonton AB T5J 4C8

c.c.: Mr. Scott Bodie



[REDACTED]

September 23, 2019

Canada Revenue Agency (Charities Directorate)  
Suite 10  
9700 Jasper Avenue NW  
Edmonton, AB T5J 4C8

**Attention: Jason Letkemann, Audit Division  
Edmonton Tax Service Office**

Dear Mr. Letkemann:

**Re: Audit of Sheldon M. Chumir Foundation for Ethics in Leadership  
Business Number 135120715RR0001**

We are writing in response to your letter dated February 14, 2019. Specifically, we are writing in response to the concerns you have raised with regard to the areas of non-compliance with the provisions of the *Income Tax Act* (Canada) ("the Act") in respect of the operations of the Sheldon M. Chumir Foundation for Ethics in Leadership ("the Foundation"). We will address each of the concerns which you have raised in the order in which they have been raised.

### **Overview of Position**

We will, in replying, set out:

- Our understanding of the rules and criteria we must meet to be legally compliant – a charitable foundation constituted and operated exclusively for charitable purpose by reference to Common Law examples, analogy thereto, community values and embrace and public benefit, - and whose programming constitutes charitable activities. An assessment is affected by a legislative amendment of the Act in 2018 (effective 2008), introduced since the initiation of the CRA audit of the Foundation. That legislation addresses specifically programming regarding dialogue and development of public policy and practice on issues of charitable purpose into which the Foundation's programming since 2013 falls, following a program review undertaken in 2012 and into the beginning of 2013 that very substantially changed the Foundation's strategy and program activities.
- A review of the facts of each program subject, activities, and management against the criteria set out. The CRA did not, during the audit, have the benefit of reviewing some of the information regarding the programming that the Foundation had begun in 2013 as such

information was located in its New York office. Although, we understand that you had some telephone conversations with the Foundation's chairman, Joel Bell in 2013, he advises that at the time he did not think of the fact that you may not have received a full picture of the Foundation and its activities, especially in light of the programming transition in which the Foundation was actively involved beginning in 2013. We have attempted to provide you with a more fulsome picture of the Foundation in this letter and in additional materials from the activities during the period under review. Further, the Foundation's programs and activities are, we believe, directed at the so-called 'fourth category' as 'purposes beneficial to the community' in a way the law regards as charitable and not at 'advancement of education' to which our use of the looser language of 'educating the public' (in the sense of undertaking research, provision of information, dissemination and discussion) seems to have misdirected much of the assessment as set out in your letter. We attach materials that we believe evidences a charitable purpose by the criteria for benefit to the community.

- Many of the programs and activities that the CRA focuses on in its letter, we believe pre-date the Board-led and undertaken program and strategy review of 2012 that was implemented starting in 2013 (well before the notification of the CRA audit, but in transition during the first months of the period addressed by the audit). Some were deficient in documentation of content, purpose and management and control. These are clearly understood requirements – and, in fact, are essential elements of the strategy of the Foundation that chooses to use its resource only in programming in which it is very actively engaged and believes it has something to add to the public dialogue. Our vigilance has been increased as a result of the items brought to light by the CRA audit and the Foundation has been and will continue to be focused on remedying the deficiencies in the Foundation's manner of operations, as identified by the CRA in its letter. Many of the activities highlighted in the CRA's letter were terminated some years ago as a consequence of the strategic changes made in 2013. We are rectifying forms and financial records. Third parties are only involved in our program activities as joint venture partners and, on occasion, for directed commissioned research – and, in all cases, Foundation resources are only used in projects where all activity is under management and execution control that requires the knowledge, approval and detailed content engagement of the Foundation.

We urge the CRA to appreciate that most of what the CRA identified as not being charitable activities are now from over six years ago; they are cumulatively of small financial impact; and the CRA's comments taught us lessons; we have reinforced our attention and resolve to carry-out our own programming, exercise continuing direction and control with regard to agents and joint venture partners, maintain fulsome documentation of program purpose and decisions from project conception through final reporting – both as a matter of proper management and as a strategic consideration. Finally, it should also be emphasized that there have been key changes in both the law and in the nature of the programming and operations of the Foundation which have occurred since the audit period which we believe should influence the CRA's review of our comments contained herein. Those key changes are as follows:

1. The years under audit coincided in 2013 with a major policy review undertaken by the Board of the Foundation.
2. The review caused the Board to undertake a major overhaul of both its programming and its operations.
3. The overhaul in programming resulted in:
  - (a) The Foundation moving away from the "one of" type of programming it had done prior to 2013 and move to more sustained programming focused on a core set of issues which has allowed the Foundation to have much greater impact in public policy debate and development than was possible before. This took some time to develop from the point of conception to implementation. It has been an evolutionary process since. The audit took place at the beginning of this transition by the Foundation;
  - (b) The Foundation tightening up some of the language it uses in the way it presents itself to the world. Previously it used language that may lead one to believe that the Foundation was primarily involved in education, which therefore quite understandably was the focus of the CRA's analysis. Certainly, the activities of the Foundation always had an educational element to it in the sense that it brought issues to the attention of the public. However, its primary role has always been to encourage the discussion and development of public policy – a purpose which the Foundation believes qualifies as a charitable purpose under the fourth head of charity as described below. The Foundation is of the view that the mission of the Foundation in this regard has become more apparent in the programming it has pursued beginning in 2013.
4. The overhaul in operations has resulted in the staff previously involved in the organization leaving, as the Foundation moved the center of its operations to New York where it believed it could have greater impact in the public policy world, based on the issues on which the Board decided to focus during its 2012/13 review. With this move, the Foundation has hired new people that have helped to put in place better operational systems, with better documentation practices than what the Foundation had prior to the move to New York, and at the time of the audit.
5. Recent changes to the Act which were made effective for 2008, but which were not in place during the time of the audit, clarified that the activities of the Foundation in encouraging public policy analysis, discussion, debate and development are, in fact, charitable activities within certain limits as set out in the Act. The Foundation believes that its programming operates within such limits.

The new program activity and documentation, the discipline of working with leading think tanks, the enlarged vision of issues, participants and audience have proven successful in engaging the Foundation in high standard collaborations and output that has steadily expanded its opportunities.



## ITEM 1: FAILURE TO DEVOTE RESOURCES TO CHARITABLE ACTIVITIES.

### A. Conduct of non-charitable activities.

#### **The Foundation's Charitable Purpose**

The Foundation has been designated as a "private foundation" for purposes of the Act.<sup>1</sup> Under subsection 149.1(1), a "private foundation" means a charitable foundation that is not a public foundation. A "charitable foundation" is defined in the Act as:

"A corporation or a trust that is constituted and operated exclusively for charitable purposes, no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof, and is not a charitable organization."

We note that according to the above definition, a charitable foundation must be "constituted and operated exclusively for charitable purposes". As noted by the authors in *Charities Taxation Policy and Practice*<sup>2</sup> (hereinafter referred to as "**Drache**"), this requirement may be contrasted with the definition of a "charitable organization" which provides that a charitable organization must devote all its resources to "charitable activities carried on by the organization itself".

The Foundation's sole stated purpose is "the betterment of society through the encouragement of, and education on, the vital importance of leadership which is motivated by high ethical purpose". We define 'ethical purpose' to mean community-mindedness - being aware and mindful of the impact of one's actions on others and purposefully seeking policies and practices that result in fairness, stability, harmony and productive conditions for the community and its members. This is a widely supported societal value - highly laudable and analogous to purposes the courts have determined to be charitable, for example human rights. Such results benefit the population at large; and, in some cases, identifiable groups impacted positively by a policy. We think the case can be made for the charitable nature of a governance process (i.e. a policy development process) of sound information and dialogue among parties involved - a democratic process. It is significant that research, communication and dialogue in pursuit of policy development that promotes public benefit has recently been said by statute to be charitable activity. The objective of much of our programming is precisely the development of policy that serves public interest on selected topics – and the activities the CRA indicates to then be themselves charitable, are the types of activities that constitute the programming done by the Foundation for public benefit. This can be for the betterment of the public or society at large –or some identifiable group within a community. If bringing attention to ethical leadership is not alone charitable, then positively impacting an issue confronting society, if the issue is a charitable matter, can still be charitable. We will, therefor, examine the individual

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<sup>1</sup> Unless otherwise stated, all statutory references herein are to the Act.

<sup>2</sup> Loose Leaf Series by Arthur B.C. Drache, Robert B. Hayhoe and David P. Stevens.

programs of the Foundation for impact that benefits society and issues that are charitable purposes.<sup>3</sup>

At the outset, we should note that we believe our stated purpose to be qualified as charitable at law, primarily under the fourth category of charity as set out by Lord Macnaghten in the Pemsel Decision, being a “purpose(s) beneficial to the community not falling under any of the preceding heads”. The Foundation may have inadvertently characterized the public information role as education. We are now well aware of the requirements for qualifying under that category and the fact that they in many cases were not met. We should, more accurately, ask that the assessment be made under the fourth category of charitable purpose. In furtherance of its charitable purpose, all of the activities which the Foundation carried on in 2013 and 2014 – activities that are of the same type and purpose as those it carries on today – we reason from the facts, reinforced by recent statutory law, as meeting the criteria for charitable activities at law, being of a charitable nature, a benefit to the community and intended to serve the Foundation’s charitably qualified purpose. The targets involved equally support the conclusion that the ‘public’ is the beneficiary. Since its purpose would appear to meet the conditions of being charitable at law and the activities it carries on do likewise, we have believed that the Foundation is both constituted and operated exclusively for charitable purposes.

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<sup>3</sup> The Foundation has understood there to be scope for charitable activity in the ‘world of ideas’ lying between the provision of services or resources to meet needs embraced as charitable (e.g. provision of health services to the poor, or educational instruction to the interested) and political campaigning for the political acceptance of a policy that is not the enlightened opinion of the day – the latter not qualifying as charitable purpose or activity.

- This understanding was formed at the time of the application for charitable tax exemption when, as noted on page xx of this letter, the Chairman took the initiative to meet personally with the authorities in the then Department of National Revenue and in the Tax Policy Division of the Department of Finance to review the idea of the Foundation, its ‘purpose’ as eventually stated in its corporate charter and its plans for activities that it has carried on since. No formal ruling was requested, but the purpose and powers incorporated in the specific chartering document language were written at those meetings and later granted charitable tax exemption registration.
- If the existence of scope for the charitable undertaking of research, analysis, design, discussion, dissemination, consultation of authorities and fostering of support for particular policies and practices in pursuit of the charitable purpose was in doubt at the time of the audit, it would seem to be removed by the enactment in 2018 of specific provisions of the Act and the explanation provided by the CRA Guidance recognizing policy dialogue and development as capable of being charitable – provided care is exercised to refrain from ‘political’ activity and to select issues for policy dialogue and development that are generally accepted to be laudable and to conform to values and enlightened opinion of the society.

The Foundation has evolved in regard to the subject matter of its interest and, as a result, in the community it seeks to reach for relevance to the Foundation’s selected topics. It has not changed its functional focus. If the language of its purpose is seen as too vague after the experience of 27 years since the registration of the Foundation, the Organization would, of course, welcome and conform to updated guidance. The issues addressed are not casually selected, they are chosen in light of:

- the purposes of the Foundation – i.e. the significance of the issue for fairness, stability, social cohesion and an overall productive community through the development of policy (the Foundation contributing research, analysis, materials and dialogue opportunities). In recent years, the subjects selected have been Relations Among States; Technology, Productivity and Income distribution (Disparities); Forced Displacement; and the potential for the ubiquitous, spontaneous phenomenon of Arts in Society to, by their being harnessed in policy and practice, to have a constructive impact on the education and formation of individuals, groups, communities and nations; and,
- the choice of vehicles is made for best impact - i.e. activity that is public or private as suits the issues, goals and stage of advance; supportive of excellence, balance and content that adds to the dialogue; and methods and platforms that reach channels to relevant audiences. The programmatic methods of the Foundation have also evolved, focusing on an effort to formulate specific, practical, informed policy and, innovative policies and practices.

In what is, perhaps, more of a departure from its past activities, the Foundation has proactively sought-out and pursued its work through joint ventures with leading centers of research, analysis and thought wherever they are located globally. The Foundation is mindful of doing this carefully so as to exercise continuing direction and control. This engagement as a precondition is entirely consistent with the strategic interest of the Foundation to use its funds in ways and programming that it shapes and influences.

## **Charitable Purposes at Law**

The purpose of the "betterment of society through the encouragement of, and education on, the vital importance of leadership which is motivated by high ethical purpose" is widely accepted as a value by the community. Addressing this purpose involves largely dialogue and development of public policy – a purpose that is recently confirmed in statute law and CRA Guidelines, effective 2008, to be charitable. The activities identified as appropriately serving this purpose are aimed at the promotion of knowledge, understanding of societal dynamics, design of policy that contributes to betterment of society or the circumstances of community members and making available the analyses, information and ideas for the better service of the purposes. The purpose for doing so reflects widely-held and laudable values. Addressing the selected issues would contribute to a fair, stable, harmonious and productive society of benefit to all; doing so would also impact segments of the community affected more directly by virtue of policy and practice of governments and other parties in society on a particular issue.

### **(a) The 2018 Legislative Amendment**

The recent amendment to the Act introduced in 2018 makes clear that "public policy dialogue and development activities" are "charitable activities", if carried on in furtherance of a charitable purpose and without political involvement by the purported charitable actor. According to section 17 of the bill that implemented this amendment, and other provisions of the budget tabled in Parliament on February 27, 2018, Bill G-86 which received Royal Assent on December 13, 2018, this amendment was deemed to have come into force on January 1, 2008 in respect of a corporation which was a registered charity on September 14, 2018. Since the Foundation is a corporation which was a registered charity on September 14, 2018, this amendment newly applied to the Foundation from January 1, 2008 and throughout 2013 and 2014. This is an important development since the audit of the Foundation was initiated.

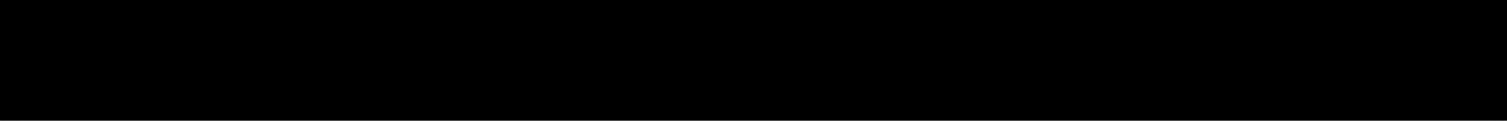
In the Guidance CG-027 issued by the Canada Revenue Agency (the "CRA") on January 21, 2019, the CRA states that the term "public policy dialogue and development activities" generally involves seeking to influence the laws, policies or decisions of a government, whether in Canada or of a foreign country. The CRA further states in CG-027 that "as long as a charity's [public policy dialogue and development activities] are carried on in furtherance of its stated charitable purpose(s), the [Act] places no limits on the amount of [public policy dialogue and development activities] a charity can engage in. In this context, a charity may devote up to 100% of its total resources to [public policy dialogue and development activities] that further its charitable purpose". Further, in CG-027, the CRA states that "[public policy dialogue and development activities] can be described as activities a charity carries on to participate in the public policy development process, or to facilitate the public's participation in that process". The CRA then goes on to state that public policy dialogue and development activities include:

1. providing information to supporters or the general public related to their charitable purposes in order to inform or persuade the public in regards to public policy. Such information must be truthful, accurate and not misleading;

2. research;
3. disseminating opinions;
4. making representations in writing or verbally to elected officials, public officials, political parties and candidates and appearing at parliamentary committees to bring their views to the public policy development process and may release such materials publicly;
5. providing forums and convening discussions; and
6. communicating on social media – charities may express their views and offer opportunity for others to express their views in regards to public policy on social media or elsewhere.

This is very relevant because it identifies what the Foundation in fact does. Later in this letter, the individual programs undertaken by the Foundation will be assessed against the cited criteria. At a general level, the Foundation programming informs the public on unfair and destabilizing conditions; brings attention to the impact of one's actions on others in a community; examines policy and practice to address how it might improve fairness, stability, harmony, healthy and productive communities. On the face of it, a mission of serving the purpose of improving lives and living conditions, individual well-being and satisfaction – all objectives that are embraced by society, highly laudable, beneficial - and beneficial for both the public at large and, potentially, for those impacted by a particular policy or practice – is arguably charitable. The particular issues or topics on which the Foundation has chosen to work are also matters on which analogies can be found in the Preamble to which the case law suggests we look for that or analogous purposes. The case law itself has found particular purposes to be charitable – another source of guidance. The case law and CRA more formal Guidance is particularly helpful in this case because it reports on the subject of human rights as analogous to the preamble – and the parallel of human rights with ethical policies and practices seems quite strong.

Before turning to that reasoning, for completeness, we should acknowledge a further important element that is not a ground on which commentary is made concerning the Foundation's activities and record the sources that bring us to our conclusions. An important requirement is that a charity must not devote any of its resources to the direct or indirect support of, or in opposition to, any political party or candidate for public office. As long as a charity does not support or oppose a political party or candidate, a charity may carry on activities to further the development of public policy at any level of government in Canada or a foreign country. It should be noted that the Foundation has never directly nor indirectly supported or opposed any political party or candidate for public office.



(b) **Legal Authorities**

There is no definition of charity under the Act. What is charitable at law has been determined by the courts over the centuries. In Halsbury's Laws of England, the common law relating to what constitutes a charitable purpose is described as follows:

"To be charitable, a purpose must satisfy certain tests: (i) it must fall either within the list of purposes enumerated in the Preamble to the ancient statute of Elizabeth I (sometimes referred to as the Statute of Charitable Uses or the Charitable Uses Act 1601) [the "**Preamble**"]; or (ii) within one of the four categories of charitable purposes laid down by Lord Macnaghten<sup>4</sup> and derived from the Preamble and in the case of the fourth of those categories, it must be within the spirit and intendment of the ancient statute, either directly or by analogy with decided cases on the same point, or it must have been declared to have been charitable by some other statute. In addition, it must be for the public benefit, that is to say that it must be both beneficial and available to a sufficient section of the community."

The objects enumerated in the Preamble to the Statute of Elizabeth are as follows: (i) the relief of the aged, impotent and poor people; (ii) the maintenance of sick and maimed soldiers and mariners; (iii) schools of learning and preschools and scholars of universities; (iv) the repair of bridges, ports, havens, causeways, churches, sea banks and highways; (v) education and preferment of orphans; (vi) the relief, stock or maintenance of houses for correction; (vii) marriages of poor maidens; (viii) support, aid and help of young tradesmen, handicraftsmen and persons decayed; (ix) the relief or redemption of prisoners or captives (x) the aid or ease of any poor inhabitants concerning payment of fifteens, setting out of soldiers and other taxes."<sup>5</sup>

This list is not meant to be exhaustive<sup>5</sup>. However, the courts have said that in order to decide whether a purpose is beneficial in a way which the law regards as charitable (being the fourth head of charity as determined by Lord Macnaghten in the Pemsel Decision discussed below), the list in the Preamble should be examined. The specifically listed objects in the Preamble and all others which by analogy are deemed to be within the spirit and intendment of those listed objects are charitable in the legal sense.

The four heads of charitable purposes laid down by Lord Macnaghten in the Pemsel Decision are as follows:

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<sup>4</sup> *Special Commissioners of Income Tax v Pemsel* [1891] AC 531 at 583 (the "**Pemsel Decision**").

<sup>5</sup> *National Anti-Vivisection Society v IRC* [1948] AC 31 at 64-65.

1. the relief of poverty;
2. the advancement of education;
3. the advancement of religion; and
4. other purposes beneficial to the community not falling under any of the preceding heads.

The four broad categories of charity which were outlined by Lord Macnaghten in the Pemsel Decision and were expressly approved by the Supreme Court of Canada in *Guaranty Trustco of Canada v. MNR*, [1967] SCR 133 and confirmed in *Vancouver Society*.

While the sole stated purpose of the Foundation could potentially fall within one of the 4 categories of charitable purpose as set out by Lord Macnaghten, we are of the view that it primarily comes within the fourth head, being for the purposes of benefitting the community in a way which the law regards as charitable.

The law does not consider all objects which may be beneficial to the community as being charitable. Halsbury's Laws of England describes this fourth category as follows:

"Not all [purposes beneficial to the community] are charitable; to be so, the purposes must fall within the "spirit and intendment" of the Preamble to the Statute of Elizabeth I. Historically in order to find whether a particular purpose came within the spirit and intendment, the courts sought to find an analogy with purposes mentioned in the Preamble itself, or with purposes previously held to be within its spirit and intendment. It now appears that, even in the absence of such an analogy, objects beneficial to the public, or of public utility, are *prima facie* within the spirit and intendment of the Preamble and in the absence of any ground for holding that they are outside its spirit and intendment are therefore charitable at law. Establishing that such an object is of actual benefit to the public may involve consideration of cognisable evidence directed to that point.

The community must be a definite community or a section of the community; it must be identifiable as such; it must be of appreciable importance; and it must not depend on any personal relationship to any particular individual or individuals."

It would seem that the law in Canada has developed in a similar manner. In Drache, the authors say the following in regard to the fourth category set out by Lord Macnaghten:

"The first point to be made, therefore, is that, while each of the purposes in this miscellaneous class must be for the benefit of the public at large,

or an appreciable section of the public, the purpose itself must have a nature or quality which conforms to the notion of charity derived from the 1601 Act. It is said by the courts that this means that each purpose in the fourth head must be within the "spirit and intendment" of the Statute of Elizabeth. It was only when he came to classify this miscellaneous group of purposes that the only thing Sir Samuel Romilly could find was "general public utility". Lord Macnaghten then called it something even more ambiguous, given the added test of public benefit, dialogue and development namely that which is "beneficial to the community".

## **Applying the Legal Authorities to the Foundation's Purpose**

### **(a) The Fourth Head of Charity**

In applying the principles set out above, it must be noted that the targeted beneficiaries of the Foundation is the public at large. The stated purpose of the Foundation is "the betterment of *society*". "a community, nation or broad group of people having common traditions, institutions and collective activities and interests or an "international social order or community of societies and institutions (i.e. nations)". The purpose of the Foundation is for the benefit of the public at large. The public at large would seem to constitute a beneficiary of the Foundation which is identifiable, of appreciable importance and not dependent on any personal relationship to any particular individual or individuals. The 'public at large' is considered an appropriate target community for the Foundation's purpose in order for such purpose to qualify under the fourth category as determined by the criteria summarized in Halsbury's Laws of England as quoted above. It is presumably at the level of each program of the Foundation that the public can be defined. While the size and importance of the public reached would seem relevant, the group reached should also be assessed against the kind of issue, the stage in the sequence of work on a program or project. This would seem quite apparent if we consider the CRA list of six elements of dialogue and development of policy reported on page 3. Further, while attention to public availability of the documentation, analytical and policy product of a charitable activity is appropriate to expect of a charitable endeavor, availability and consumption must be differentiates.

A qualified charity must have a purpose that, by its nature or quality, conforms to the notion of charity derived from the Preamble – i.e. come within its spirit and intendment. This has traditionally involved the courts looking to draw an analogy between the purpose under consideration and either the purposes specifically listed in the Preamble or previously held to be within its spirit and intendment. There have been several cases which have concluded that a gift in general terms for the benefit of a large identified group such as a country or district, even a gift not indicating a specific purpose, is charitable, apparently on the basis that it is impliedly for purposes recognized by the law as charitable.<sup>6</sup> Examples

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<sup>6</sup> See for example *Williams Trust v IRC* [1947] AC 447 at 459 and *Goodman and Saltash Corporation* (1882) 7 APP CAS 633, HL.

are gifts "to my country England"<sup>7</sup>; and gifts whether general or for specific purposes, for the benefit of the inhabitants of a country<sup>8</sup> or town<sup>9</sup>. The beneficiaries can seemingly imply a charitable purpose.

Moreover, it would seem appropriate to draw an analogy between the Foundation's purpose of encouraging leadership motivated by high ethical purpose and a line of cases which have accepted the promulgation of particular principles as being charitable. Examples include cases which have held that the promotion of ethical standards of conduct of work and compliance with the law would be valid charitable purposes<sup>10</sup> and cases that have held that the promotion of conservative principles combined with mental and moral improvement are also charitable<sup>11</sup>. There have also been cases which have held that "extending the knowledge of those doctrines in the various branches of literature to which I have turned my attention in pen in order to ascertain what appeared to be truth, and to teach it to those who would listen<sup>12</sup>, to be charitable and a case which held that the promotion of the teachings of Rudolf Steiner, which are directed to the mental and moral improvement of men is a charitable purpose<sup>13</sup>. The research and examination of the causes, consequences and cure for a malaise, unfairness, divisiveness – or rivalries between communities that threaten safety and security or better lives – would all seem analogous to these cases.

Another example whereby the Foundation's sole stated purpose would seem to be within the spirit and intendment of a purpose which the courts have previously found, by analogy, to be within the spirit and intendment of the Preamble, would be a line of cases and CRA statements which have said that the purpose of upholding human rights is charitable under the fourth head of charity. In Annex A to the CRA's new guidelines on public policy dialogue and development activities by charities, CG-027, the CRA lists categories of charities that have been found to be charitable by the courts, or are analogous to those which have been found to be charitable by the courts. One of those under the fourth head is to "uphold human rights". The CRA says the following:

"On the issue of human rights, Canadian courts have followed the direction established by the English courts in the 1981 *McGovern* case. In this case, the court refused charitable status to the Amnesty International Trust on the grounds that seeking to put pressure on governments to uphold human rights and, in particular, to stop using torture or imposing the death penalty were "political" purposes in the sense of seeking to change the law. However, the court did hold that, "a trust for the relief of human suffering and distress would be capable of being charitable in nature" within the spirit and intendment to the Preamble the Statute of Elizabeth. Therefore, it was not the subject matter (human rights) itself that were not charitable, but the political nature of the organization's activities that fell outside the scope of

<sup>7</sup> Re: *Smith, Public Trustee v Smith* [1932] ICH 153, CA.

<sup>8</sup> *A-GV Earl of Lonsdale* (1827) 1 SIM 105.

<sup>9</sup> *Wrexham Corporation v Tampeln* (1873) 21 WR 768.

<sup>10</sup> See Charitable Status: Public Concern at Work (1993) Decisions of the Charities Commissioners (1994) volume 2, page 5.

<sup>11</sup> See Re: *Scowcroft, Ormrodwilkinson* [1898] 2 CH 638 at 642.

<sup>12</sup> *Thompson v Thompson* (1844) 1 COLL 381 at 395.

<sup>13</sup> Re: *Price, Midland Bank Executor and TrusteeCo Ltd. v. Harwood* [1943] CH 422.

charity law. The Amnesty International charity was registered by the Charity Commission for England and Wales in 1986.

Further, it should be noted that this decision was rendered in a particular legal context. When the English courts decided the *McGovern* case in 1981, the United Kingdom had not yet ratified certain key human rights convention(s)(sic) or enacted measures to uphold the relevant human rights. The Amnesty International Trust's activities were therefore aimed at changing the law and determined to be political as a consequence. Since that time, many countries, including Canada, have signed treaties and have passed legislation protecting human rights, therefore changing the legal context significantly. Although Canada had already passed the *Canadian Human Rights Act* in 1977, the subsequent entrenchment of the Canadian Charter of Rights and Freedoms in the *Constitution Act*, in 1982, reinforced the importance of human rights in the Canadian legal context. As a result of these changes in Canada, and similar legislative changes in many countries around the world, activities that were considered political at the time of the *McGovern* decision are no longer so, since no attempt to change the law is implied. To the contrary, such activities have become charitable as upholding the administration and enforcement of the law, which is a recognized charitable purpose under the fourth head.

Canadian courts have also provided some insight into upholding human rights as a charitable purpose. For example, in *Louis v. Doerle* (1898), the Ontario Court of Appeal was clear in holding that a trust to promote aid and protect US citizens of African descent and the enjoyment of their civil rights was clearly a charitable trust.

In the more recent case of *Christians for the Abolition of Torture (ACAT) v. The Queen* (2002), the Federal Court of Appeal was equally clear declaring "it is evidence on its face that the abolition of torture is an objective that is itself imminently(sic) laudable and that an organization devoted to it, is *prima facie*, a charity. However, the organization's appeal of its revocation was dismissed because the organization was held to have a political purpose, since it was both trying to change the law, particularly in relation to the death penalty, and engaging in political activity that exceeded the limits allowed by the *Income Tax Act*.

It is clear that upholding human rights is consistent with existing, broadly based legislation of public policy. This establishes it as undoubtedly beneficial to the public, not political, as long as charities

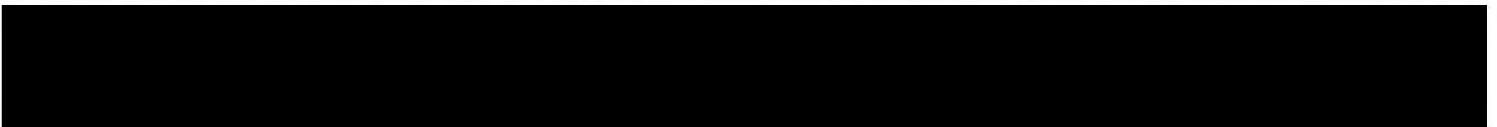
respect the prohibition on political purposes and the limitations on political activities"

This guidance is particularly instructive because the societal ills we address by some of the Foundation's programming are sometimes the subject of human rights discussion and administrative application and enforcement. Consider the millions of people who are forcibly displaced - often stranded, denied legal status, without a right to work, with no access to an education or basic social services (even food), discriminated against for race, religion, gender, colour, ethnicity or nationality. That is the subject of our project on forced displacement; and that is the stuff of human rights. How can one be charitable and the other not?

This guidance puts into sharp relief one distinction that applied **prior** to the enactment of the amendment regarding dialogue and development of public policy – the support of a policy or practice that reflected embraced values or behavior would be analogous to a gift to government whose activities are *per se* serving a community purpose and charitable. In fact, this also illustrates the logic and distinguishing features of a purpose that is solely charitable such that whatever is done in support of it cannot be otherwise. The charitable nature of an issue as predicated on community embrace is revealed by its laws, practices, international conventions, or otherwise (e.g. a debate over the details of laws and policies on human rights once embraced by a community has been said to be charitable, whereas an initiative to change a prevailing fundamental social judgment, as in the campaign demonstrations of Amnesty International when it was fighting against prevailing policy, was not. But, that was before the recent 'policy dialogue and development' amendment that would seem to at least broaden, if not entirely open, the scope of charitable activity to dialogue and development of either fundamentally new policy propositions or to policy techniques in support of embraced values. It is our belief that the particularities of the Foundation's programming satisfy the more restrictive pre-amendment standard, hence readily being charitable by the relevant current law. It would seem that even prior to the amendment to the Act, while not necessarily as clear as it could have been (thus making the amendment necessary), the law recognized the charitable nature of organizations similar to those of the Foundation whose purpose was the encouragement of public policy debate and development. This can be borne out by the fact that there are many longstanding organizations, similar to the Foundation that are registered charitable organizations. Some of the so-called "think tanks" which have been recognized as registered charities include:

- (a) The Fraser Institute;
- (b) Canadian Centre for Policy Alternatives;
- (c) Canadian Global Affairs Institute;
- (d) Public Policy Forum; and
- (e) Canada West Foundation.

Just like the Foundation, these organizations are, since their inceptions, dedicated to encouraging debate and development of public policy. The activities undertaken by such organizations both before



and after the 2018 amendments to the Act included the types of activities engaged in by the Foundation such as:

- (a) research;
- (b) analysis of current public policy problems and solutions;
- (c) publication of public policy ideas for public consumption;
- (d) sponsoring public policy forums;
- (e) encouraging debate among experts brought together at events hosted by the particular charitable organization.

The 2018 amendment took away some of the uncertainty that had surrounded this area making it clear that such activities could be considered charitable activities under the law.

Would the courts address human rights today by including as charitable an initiative to promote a new right – e.g. a right to a job; a right to a clean environment are talked about – or regard policy dialogue and development on any human right as responding to community concern for such rights overall? The same question might be posed regarding the addressing of a new policy issue, or newly prioritizing and addressing an old cause of social division, conflict or malaise seeking policy and practice improvement for the purposes of a fair, harmonious and productive society. Is the community concern for the underlying social purpose of fairness and stability for all members of society the embraced issue, hence justifying new topics as charitable because they serve that purpose even before the underlying individual policy issue is confirmed to respond to an enlightened community view? Or is the more highly profiled concern for a specific underlying issues needed to be in evidence first? For example, is a program on forced displacement charitable because it and many other specific items are shown to be matters of enlightened community interest because forced displacement is disruptive of fairness, stability and community cohesion; or, does the qualification of a charitable purpose exist only once there is evidence of community concern for addressing the plight of the forcibly displaced on its own merits - e.g. because that population has reached some 70 million people, has stressed capacities and tolerances of affected communities and affected election outcomes? The answer affects what is an initiative to change a policy and, hence, ‘political’ and what is a technique to serve an existing social concern and, hence, charitable? Does the new amendment eliminate that distinction and limit the political prohibition to supporting or opposing a party or candidate?

The answers to these questions are significant for future program selection by the Foundation, but, we respectfully submit, are NOT an issue today as the topics involved in the programming of the Foundation satisfy the narrower requirement that the underlying societal concern must be established to be one that represents an accepted social value as a precondition of charitable purpose, as well as the more general interest in a stable and fair society. Further, the ‘community-mindedness’ we intend by the idea of ‘ethical leadership’, as is seen in our mission statement and program selection; and the purpose serves the interests of the community at large for the betterment of society and significant parts of its membership – qualifying the purposes and activities as charitable in either case.

To carry the analogy to human rights further, if the government's signing of the Universal Declaration of Human Rights and domestic laws against discrimination confirm social values that make the case for human rights meriting charitable treatment, then the conventions on refugees and migrants, the domestic laws on private sponsorship of refugees, rights of asylum and support for the care and maintenance of the displaced would evidence community support for our programs on forced displacement that supports their charitable status. If a constraint on purposes and activities of policy work was removed for human rights, the same would apply to migration.

If helping the poor, downtrodden and disadvantaged is charitable, how can understanding the situation of those hurt by policies and conditions that cause large income disparities not be?

If these are charitable, how can the existential threats to life on earth as we know it – or global rivalries in a militaristic world - not be?

If these above issues are worthy of charitable attention and support, how can exploring if the arts might ameliorate conditions, reduce tensions, build bridges across dangerous, or just damaging, divides not be a sufficiently laudable cause? And, if the arts can help, would not their support be charitable?

And, if the recent amendment resolved the question by making policy dialogue and development clearly charitable (without enabling the support or opposition of candidates electorally), the programming of the Foundation in a project such as the Symposium and the Congress of Vienna 2015 would be qualified independently of the individual underlying issues selected for analysis, discussion and policy development. However, in the discussion that follows, we identify the elements that support each of the topics addressed in these 'events' as charitable in purpose and activities.

These human right guidelines provide examples of topics that fall under each of the four heads. Regarding the fourth head to which we look, the CRA provides a few examples that would apply equally to our definition of ethical leadership and attention to policies fostering fairness, harmony and productivity. Substituting 'ethical leadership', or 'stable and fair society' for 'human rights' reads very logically. This all seems to make the case for the charitable nature of the purposes and activities of the Foundation:

(a) Moral and Ethical Development of the Community

The purpose of promoting the moral, ethical and humanitarian motivations for upholding human rights may include, but are not limited to:

- (i) increasing public awareness of human rights' issues;
- (ii) promoting respect for human rights internationally;
- (iii) establishing libraries or networks to collect and disseminate information on human rights.

**(b) Example Purpose and Activities**

To improve the moral or ethical development of the community by promoting respect for human rights in accordance with (citing either some specific human rights laws, treaties or humanitarian considerations generally, as the situation requires) through the following activities:

- (i) facilitated debate and discussion through workshops and presentations on human rights;
- (ii) distributing material that increases the public's knowledge about human rights' issues and abuses;
- (iii) creating an undertaking awareness campaign for individuals encouraging them to respect each other's human rights;
- (iv) devising awareness campaigns for organizations in the private sector, encouraging them to implement ethical codes of conduct established by the government to ensure human rights are upheld.

**(b) Public Benefit**

The fourth category of charitable purposes, under which the Foundation believes its programming primarily is qualified, sets out as a criterion test that the purposes be 'beneficial to the community'. In its Policy Statement CPS-024, the CRA states that the requirement of public benefit involves the application of a two- part test:

1. The first part of the test generally requires that a tangible benefit be conferred directly or indirectly. In the Canadian context, this has been referred to as an "objectively, measurable and socially useful benefit".
2. The second part of the test requires that the benefit have a public character that is directed to the public or a sufficient section of the public.

As set out in Policy CPS-024, the first part of this two part test concerns whether the charitable purpose under consideration is directed towards achieving a universal good and is not harmful to the public – in other words, a socially useful endeavor. The second part of the two part test involves an examination of who "constitutes the public". The CRA states that:

"This notion of public benefit has also been called the "public character" of charity in that it "seeks the welfare of the public; it is not concerned with the conferment of private advantage".

According to CPS-024, in practice, if an organization sufficiently demonstrates that the organization's purposes fall within one of the first three categories of charity or establishes a connection with a

previously recognized purpose under the fourth category, the CRA will likely conclude that a tangible benefit exists so as to meet the first part of the test. It is only where the purposes are considered novel, the presumption of benefit under the first three categories of charity has been disputed, or when a presumption of benefit under the fourth category would be considered charitable but for certain concerns raised, that it would be necessary for a charity to prove that it is conferring a tangible public benefit. In CPS-024, the CRA states as follows:

"Assessing applicants under the fourth category proposes unique challenges for the CRA. Examiners largely determine whether a purpose is charitable by the general approach of reasoning by analogy. If, after reviewing similar facts in previous cases, an analogy can readily be found with a previously determined charitable purpose, then the benefit aspect of the test has been effectively established. To the extent that the purposes have already been found to be charitable under this category, a similar purpose organization will generally not be required to prove benefit. That is because the courts have already determined the benefit of such organizations (for example, organizations established for the purpose of providing community health care). Thus, it is primarily in circumstances where applications with novel fact situations, which do not fall clearly within previously recognized purposes, are being submitted for registration, that evidence of benefit to the public must be provided (see section 3.3 below for a discussion on the type of evidence that may be required to establish "benefit"). In practice, if an applicant organization sufficiently demonstrates that the organization's purposes fall within one of the first three categories, or establishes a connection with a previously recognized purpose under the fourth category, the CRA examiners will likely conclude that a benefit exists. But if the application contains information that suggests otherwise or raises issues that require further clarification, the examiners may require proof of benefit before registering the organization as a charity.

To sum up, proving benefit under the public benefit test is effectively only required in the following instances:

- when they are novel purposes to be considered;
- when the presumption of benefit under the first three categories of charity has been disputed; or
- when a presumption of benefit under the fourth category would be considered charitable but for concerns raised (for example, a health clinic specializing in controversial alternative therapies).

The above discussion relates to the initial request for registration as a charity. The purposes of the Foundation were written and approved in 1992. At that time, the Chairman of the Foundation personally met with both the Charities Branch of the Department of National Revenue and the Director General of Tax Policy Division of the Department of Finance and the purposes were written in those offices around the mission described by the Chairman – for an Alberta non-profit corporate entity. More recently, in 2014, when a federal entity sought registration for the same mission, the CRA requested some minor revisions to conform to its then thinking – and the wording was said to satisfy the Agency.

In any event, the Foundation believes it meets the requisite conditions. The Foundation's stated purpose has a reasoned connection with previously recognized purposes like human rights and the jurisprudence cited on page 11 --- so as to be seen to come within the spirit and intendment of the Preamble. Moreover, the Foundation is not aware of any allegations that the Foundation's purpose is not intended to provide a public benefit. Further, the program techniques employed by the Foundation are those used by many charities – and have now been statutorily endorsed by the policy dialogue and development amendment to the Act confirming those activities engaged in by the Foundation have a socially useful purpose and satisfy the criteria for "charitable activities". Presumably, it would not have done so if such activities were not considered to be socially useful and, once so, in the absence of evidence to the contrary, satisfying the first part of the public benefit test. It seems to us that, on its face, the encouragement of leadership motivated by high ethical standards – and the pursuit of policy and practice expected to enhance fairness, stability, social cohesiveness and harmony and productivity - is a universal good and is not harmful to the public.

The second part of the public benefit test, according to CPS-024, requires that the Foundation's purpose be for the benefit of the community. The intended beneficiary of the Foundation's purpose is society at large – all members of a community benefit from enhanced fairness, stability, harmony and productivity. In addition, in addressing individual destabilizing or divisive elements in a community, there is also usually a significant group of the community that benefit. Since its inception, and especially since the Foundation took a new direction beginning in 2013, the Foundation has been focused on encouraging such leadership in societies throughout the world. This will be explained further as we describe the global nature of the Foundation's current programming below. Therefore, the Foundation respectfully submits that the second part of the public benefit test has also been met by the Foundation's purposes.

### **Conclusion on the Foundation's Charitable Purpose**

Accordingly, it is the Foundation's understanding that its stated purpose is beneficial to the community in a way that the law regards as charitable and meets the requirement of public benefit and we turn to a consideration of the particular activities which have been carried on by the Foundation in furtherance of its stated charitable purpose. Its activities, carried out by a charity in furtherance of its charitable purpose – and focused on public policy dialogue and development activities now explicitly set out in recent law and guidance. Moreover, none of the activities carried on by the Foundation have been carried on with a political purpose and the individual issues are readily seen to be in keeping with

Canadian law, policy and societal values. The Foundation has never devoted any of its resources to the direct or indirect support of, or opposition to, any political party or candidate for public office.

## **Foundation Programming**

### **(a) The Board's Strategic Review**

Before we examine the specific activities considered by the CRA in its letter of February 14<sup>th</sup>, we think it is important to discuss the strategic change which the Foundation undertook in 2013. 2013 is one of the years which was specifically considered by the CRA in its audit of the Foundation. Coincidentally, it is also the year in which the Board of the Foundation made a strategic change in the type of programming it undertakes. That change had a significant impact on the operations of the Foundation both in the audit years and in the ensuing years – and involved some unavoidable disruption in organizational, programmatic, personnel and strategic terms as the new capacities were developed and displaced those suitable to an earlier agenda. It might be helpful to provide some background as to why this change was made and its effects both on the activities which took place during the years under audit and beyond.

Since the time of the conceiving of the Foundation in 1992, the central idea has been one of providing a vehicle for an informed discussion or examination of choices among people with different situations, views, interests and opportunities, for the betterment of society. This generally involves addressing a specific community discontent, tension, conflict or unfairness. Through such discussions on issues selected for the importance of their impact - and from subjects on which the Foundation could equip itself to contribute - with the support of information, analysis, transparency and balance, it was thought that people across various societies and categories might be encouraged to engage in public policy reconsideration, seeking-out policies and leaders that can meet the needs. Public awareness of a condition that undermine constructive conditions; an understanding of the causes, dynamics and choices in policy and behavior that would ameliorate such a situation; development and/or advocacy of a policy that advances a better result, are the activities – and activities that seem to be in the interest of the public in both procedural and substantive terms. Such action would, in fact, involve multiple stages and sustained attention, rather than single events; would require us to set the agenda; and, would call for active participation in the analysis and discussion processes – not ‘one-of’ events and not grants to others as qualified donees. The effort is to inform the community and leaders with the objective of increasing awareness of policy choices and the expectations we set for our leaders, that might contribute to ethical leadership as the Foundation describes it. While the Foundation has always been dedicated to these core purposes, the Board of the Foundation came to be of the view, through an evaluation conducted in 2012 and into 2013, that most of its then current activities lacked coordination and coherence – limiting its impact. The activities that had been carried on before then involved various different projects, which while all addressing worthwhile subjects and conducted in furtherance of the Foundation's charitable purpose, had no central theme, reached a relatively small and already convinced audience, involved very limited impact – and that based mainly in Calgary.

In an effort to upgrade its content, quality, participants and audience, the Foundation re-directed its focus in 2013 and concentrated its activities on four important and timely issues and on methods and platforms that reach a wider audience and thereby have greater impact in public awareness, debate and

the development of public policy. It was felt that by concentrating its limited resources on a limited number of issues on which it could develop meaningful ideas, or new suggested policy, it could reach a much wider audience and have greater impact on the development of public policy in areas of greater importance.

The Board selected four issues:

1. the role of arts in society;
2. relations amongst the major powers;
3. technology, productivity, growth and income distribution; and
4. forced displacement and migration.

The latter three represented and represent significant destabilizing conditions and dynamics in contemporary society; the first represents a ubiquitous feature of community whose potential as an influence on and between individuals, groups and societies is under-explored. Ethical leadership and behavior call for identification of the ills, research and analysis of the dynamics of the issues; formulation of policy 'solutions'; and both advocacy and fora for discussion of policy on these topics. Each issue was chosen by the Board on the basis of the following criteria:

1. The Foundation wanted to focus on issues creating or threatening instability in society. Conversely, the Foundation believed that if these issues were addressed in a fair-minded manner, substantively and procedurally, social stability and fairness would be enhanced. It would therefore be in the public interest to try to address these issues and try to develop ethical, sound public policy solutions to the issues identified.
2. The Foundation wanted to examine issues in respect of which it could have impact by contributing something new to the public policy debates in the chosen areas or aspects. The members of the Board spent significant time in talking with leading public policy figures to confirm that the issues on which the Foundation decided to focus its attention presented the opportunity for the Foundation to serve the public interest in new and substantive ways.

The activities that have flowed from that decision have grown steadily as the Foundation has developed its agenda. This process will continue evolving both in the exploration of the issues to which activity is currently directed as well as to similar issues and challenges

As we review these issues below, we examine first two activities which the CRA addresses in its letter, a Symposium of five sessions held in New York, Toronto and Calgary and the Congress of Vienna 2015, both outgrowths of the Board's decision revise its strategy and, later, to concentrate initially on the four issues referred to above. The latter in particular raises the four issues that were the subject matter of these projects that are then examined a little more closely to comment on their qualification as charitable purposes.

## **The Impact of the Board's Strategic Review**

### **1. Symposium: Role of Arts in Society and Reconciliation**

The role of the arts in society and their potential for influencing education, values and pursuit of shared views and experiences at both individual and community levels is one subject of the Foundation's attention. The interest is to explore the influences of art, the prospects of more focus on purposeful shared human recourse to the arts and the prospects of bridging differences through shared experience and discovery of human commonalities – as well as fostering innovation and creativity, examination and exposure of societal values and constructive mobilization of community memory. The arts are ubiquitous. They are fundamentally amoral, able to influence society for the better or the worse. The fostering of alertness to and avoidance of the negative, hostile, nationalistic or xenophobic and potentially conflict-fueling use, or early signals of reasons for concern – and the advancement of the arts inculcating constructive values – even while recognizing limits of the arts, artists and art institutions - are consistent with social values as we observe governments, individuals and companies contributing to the arts; addressing the arts as a benefit society at large and significant groups. The possibility of the use of the arts as a tool for a better society is clearly laudable and analogous to the support of leisure, instructive or social activities regarded as charitable. Anti-discrimination and hate-literature laws, holocaust remembrance initiatives and other evidence of a general community view confirms that finding ways to enhance social harmony and justice and to relieve tensions and hostilities that linger in the absence of reconciliation are analogous to purposes that the courts have held to be charitable (e.g. human rights) and part of enlightened community opinion – while the jurisprudence increasingly seems to look to the latter for finding charitable purpose by the nature of the cause served. To the extent that the aspect of the potential for policy to serve the goals is a part of the program – and, as with virtually all the Foundation's programs, that is a question posed – the 2018 amendment to the Act reinforces the treatment of policy dialogue and development on this, as on other, topics, as charitable.

The genesis of this stream of activity was a rift observed by the Foundation in communities over historic atrocities in which arts institutions had reflected society and been used to fuel abhorrent views.

[REDACTED] and Vienna in the early decades of the 20<sup>th</sup> century was a cultured and extremely creative society, but it proved vulnerable to becoming a community engaged in atrocities and later denial. The objective of the program was to foster reconciliation and a more constructive society. This was an opportunity to use the involvement of a prominent institution as a way to stimulate a reconciliation discussion that would benefit society at large by resolving distinct tensions and showing how an institution dedicated to the arts could become a constructive contributor, having been a destabilizing force in society at an earlier time.

In 2013, the Foundation put a challenge to the [REDACTED] to serve as an example by authorizing independent historian review of their archives, public disclosure and commitment to enter public and private dialogue – in the context of which the Foundation undertook to stage a very visible public discussion to clarify that the Austrian, U.S and Canadian communities, among others, shared abhorrence of the holocaust and atrocities and could and should make common cause in preventing such action in the future.

[REDACTED]

A program that exposed the positive and negative dynamics of the arts historically and alerted contemporary society to signs of risk today was seen by the Foundation as fostering beneficial dynamics by analyzing the factors that make for creativity, loss of moral standards and the tools, including the arts, with which to work at making a difference. Such a program would be beneficial to the public at large – and, likely, also to those who earlier resisted discussion by virtue of the anger they harboured. The program drew extensive attention.

Vienna's History and Legacy of the Past 150 years which is referred to in your letter of February 14<sup>th</sup> (the "**Symposium**") was conceived by the Foundation. It defined the agenda, consulted historians and musicologists, wrote a briefing booklet, scripted the scope of the sessions, recruited the panelists and moderators, visited and persuaded the media to cover the event. The public profile was very significant – many tens of thousands of people were notified, by inclusion of the Symposium [REDACTED] 10-day Vienna Festival program and by securing the support of leading New York think tank institutions as co-presenters – which meant their notifying their memberships and circulating the program to their mailing lists and nothing more. Some 1500 event attendances followed in New York, Toronto and Calgary for the discussions – with many unable to be accommodated in person due to the level of response. The notes and video of the events are posted online on the Chumir website, which can be viewed at [www.chumirethicsfoundation.org](http://www.chumirethicsfoundation.org).

The Foundation was the project organizer. It got unpaid help from scholars. It wrote briefing notes for the audiences that were published in the Programs for the discussion sessions and published them online. It scripted the scope of 5 public panel sessions. The Chairman of the Foundation met with journalists and secured reporting coverage, including a full-page article carried in the US and International editions of the [REDACTED] and an insert in a leading Austrian newspaper. The Foundation arranged for and joined discussions on national public radio in both Canada and US – making for a significant public display of the presentation/results. The panelists spoke from their considerable knowledge on the subject. Private meetings and dinners were held between previously estranged leaders to discuss reconciliation

The program was presented as the "issues" part of a 10-day [REDACTED] festival on Vienna in the context of which a fundraising dinner was held by the Salzburg Festival Society to celebrate the 25th consecutive annual tour of the [REDACTED].

The Symposium was conducted in furtherance of the Foundation's object of encouraging ethical leadership and as one of its public policy dialogue and development activities. The Foundation believes it to be constructive to examine why a society as advanced as the Austria empire and leading cultural institutions like the [REDACTED] could follow a path which was as unethical as the society of Austria became in the years leading up to and through the holocaust. The panel discussions which the Foundation organized were part of an effort to examine how this happened and to generate public consideration and discussion of how leadership in a society could prevent such circumstances from happening again – including through the constructive use of the arts and the leadership of iconic institutions in recognizing the atrocities and considering the use of its skills as a healing vehicle.

[REDACTED]

The Symposium which was conducted in New York, Toronto and Calgary in 2014 focused on the following issues: how a cultured society can prove fragile and turn against some of its members (in fact some of its formerly most prized creative talent in all fields of human endeavor); how the respected institutions can fail to protect even the most valued of its members in the face of a holocaust; the expectation and role of individuals and leaders in such circumstances; healing of terrible past wrongs for a more harmonious contemporary society; and alerting the public to emerging warning signs of socially-damaging nationalism (now more evident) and consideration of how to not repeat the experience. Results were seen in the subsequent change in media reporting, shifting away from fault-finding to a constructive relationship between the heirs of the perpetrators and victims in shared values. Panel discussions permitted the Foundation and presenters to air the range of perspectives the Foundation felt were important to be noted and to have the direct exchange bring out the shared viewpoints. It was the goal of the Foundation to encourage thoughtful discussion that could lead to public policy, behavior and thinking that represent ethical leadership in contemporary society.

The program provoked greater recognition of a shared view of the rights and wrongs of the history between formerly hostile parties, a renewed diplomatic effort at dialogue and discussion of how this process might be better used to positive effect for the betterment (more safe, fair and cohesive society). It opened the Orchestra and the government to further initiatives seen in later programming, including both the Congress and other Arts and Society programming.

The Symposium was not a "one off" proposition. The Foundation's work on the issue continues:

- The Foundation worked over a period of more than a year on the development of an Institute for Arts in Society in discussions with the [REDACTED] [REDACTED] That project did not come to fruition with these parties, but the ideas developed are now the subject of joint initiatives with leading institutions and the Foundation.

Research and analysis has been begun in preparation of a global conference in January 2021 on the constructive use of the arts for individuals, groups, communities and countries - both spontaneously arising and as an instrument of policy – with the intention of calling for papers from experts and publishing a book on the findings and conclusions. And three leading performing arts schools are exploring with us the creation of an institution to pursue this work on the constructive use of the arts for a better society – again, for harmony, cohesion, creativity and pluralism – all well-accepted aims of a healthy society.

- The Foundation has begun the development of a curriculum (the outline for which is attached), a teaching guide and a program as a course of instruction, to be presented by the Foundation – as part of a new two-year post graduate teaching Academy operated by the VPO that has received its first participants in September 2019. The curriculum will engage the members of a new Academy established by the [REDACTED], be presented largely by individuals who are members of the Foundation's Arts Advisory Committee. The curriculum would be thus tested – as will written materials and teaching guides - to be published after the year is complete and made available to others.

- In August 2020, on the 100<sup>th</sup> Anniversary of the world-renowned Salzburg Festival – a festival founded with a geopolitical mission, to foster shared experience in the arts for the purpose of realizing shared human interests and characteristics in support of pluralism and peace. The Foundation, in partnership with the Festival will hold a Symposium on the geopolitical challenges and risks of today and the potential for the arts to ameliorate the situation. The Symposium will capitalize on the Festival's very large reach (270,000 attendances occurred over five weeks this year - and many more are reached with its materials and mailings. That forum will be used to launch the two geopolitical reports of studies underway in the Foundation and described briefly below. A second segment of the program will consider the role of, and potential for, the arts in improving these conditions. The governments in Austria will invite government leaders from around the world for this commemorative event. This speaks to the importance and size of the public that is expected to hear the messages of the Foundations.

It should be noted that the Symposium was not undertaken under the education head of charity, as indicated in the CRA's letter of February 14<sup>th</sup>, although the Foundation acknowledges that the program had an educational element. Rather, as discussed below, it was undertaken in the course of the Foundation's overall purpose which, as discussed above, qualifies under the fourth category of charity, being a purpose and activity beneficial to the community, indeed to a large public. It was designed to encourage public discourse on the role, both negative and positive, that the arts can play in creating a harmonious and peaceful society- and that considers impacts of policies and practices on others, a goal of ethical society. It brought together a community to examine the holocaust and the role of even leading institutions – and to consider the policies and practices that would avoid its repetition and foster a better society. We believe that this meets the criteria for charitable purpose and activity at law and public benefit, built on values espoused by the community at large.

## 2. Congress of Vienna 2015

In its letter of February 14<sup>th</sup>, the CRA mentions the Congress of Vienna 2015 (the "**Congress**") project in passing on page 12, noting a conclusion of that program failing to meet charitable activity criteria. To clarify, the Congress is a completely separate program from the Symposium, even though the opportunity for the Congress arose because of the Foundation's Symposium. In the course of preparing for and conducting the Symposium, the Foundation came into contact with leading government officials of the Austrian Government. The Government of Austria responded favourably to the Foundation's proposal that the 200<sup>th</sup> Anniversary of the Congress of Vienna (1814 to 1815) be commemorated by the hosting of a dialogue led by the Foundation to consider the principal destabilizing conditions in the world today for the purpose of public awareness of risks and issues, understanding of the conditions and consequences and exploring potential corrective action – including policy instruments that would appear again to foster behavior aimed at fair, cohesive and productive society, benefit from the new provisions of the Act and advance accepted mores of society and the operation of which programming provides a betterment of society. The Congress of Vienna 2015 would appear to constitute charitable purpose and activity by the policy dialogue it effected as a governance process and community engagement benefit – the Congress itself was a building block or component of a multi-staged project – itself bringing to bear the scrutiny, criticism and advice of a very knowledgeable group, assessing policy directions proposed by the Foundation and defining the

next steps that would best advance the cause of the underlying issue. Should this analytical and democratic process purpose not itself rise to be a charitable purpose even with the new provisions of the Act addressing the point, the topics themselves meet the criteria addressing subjects that individually would seem to qualify for charitable purpose. – these being discussed individually below.

The original Congress is credited with being the conference which remade Europe, creating a stable, peaceful society for 100 years prior to the outbreak of World War I. The Foundation proposed the convening in Vienna – on precisely the same dates as the final acts of the historic Congress and in the same room - of a conference among leading public policy thinkers from literally around the world to discuss the destabilizing conditions and dynamics described and analyzed by the Foundation. The Government of Austria responded positively to the Foundation's proposition for a "Congress of Vienna 2015"; the UN named the event part of its 70<sup>th</sup> Anniversary projects; the Austrian Government provided what would have otherwise cost the Foundation an estimated 1.5 million Euros by: hosting the event with physical facilities, equipment, security, diplomatic support, local transportation, certain receptions and meals – as well as by providing administrative support and using its intergovernmental power of invitation where requested.

The agenda, content and participants were entirely under the Foundation's control and role. In light of the comments of the CRA, it seems important to stress the activities planned and, in fact, realized. The Congress of Vienna was designed as part of a process that is still ongoing. The steps implemented were as follows:

- The Foundation defined the three topics for discussion – one day of the meetings being dedicated to each – Relations Among the States, Displacement and Disparity. In the year preceding the Congress meetings, the Foundation itself defined 18 subtopics and outlines of questions on each; commissioned 17 papers from scholars to set out the state-of-the-art knowledge, issues and analysis on each; held 9 international 1 to 2 day workshops that the Foundation organized among experts to review and critique the analyses – all to set the agenda and to propose ideas for candid conversation to the globally highly qualified and diverse group of delegates at Congress of Vienna 2015.
- The Foundation, proposed certain conclusions and recommendations and scripted the scope of questions to be addressed at the Congress sessions. To achieve candor, the Foundation held the meeting in camera under Chatham House Rule. The Foundation subsequently took the 'tested' general ideas to a further stage of analysis and policy specification (more fully described below). The Foundation has since, itself or in collaboration with a leading think tank it identified as leading thinkers on each topic on more detailed questions, carried-on additional research, policy analysis and public communication of analyses and policy recommendations. The Foundation has:
  - o reported publicly on December 7, 2018 on Forced Displacement and a Merchant Bank for development
  - o published a book on Disparities, and

- continued an active program on the Relations Among Major States,

In view of the comment in the CRA letter that the Congress did not qualify as charitable, a conclusion that might, as noted above, result from our statement of purpose that does mention education, but that does so non-exclusively. We intended this as a program for the benefit of the community. The Congress of Vienna 2015 has, once again, been a multi-stage program serving as a vehicle in the process of policy dialogue and development. It did not stand alone as a three-day event in 2015. The first phases seemingly considered by the CRA was not intended to be a visible public or educational undertaking, but a gathering of informed thinkers and opinion leaders for a confidential canvassing of their reactions to some analyses and policy directions. In doing so the Foundation involved a number of opinion leaders in discussions of policy ideas and choices in response to conditions adversely affecting a great many lives – and matters about which the community cares.

The Congress has, in fact, achieved its purpose of informed and balanced dialogue and policy development on select issues of significance for a fair, harmonious and productive society. The ultimate purpose has been to produce documentation for a better public understanding of the challenges, causes and consequences and the betterment of society. The specific activities track those identified by the CRA guidance on policy dialogue and development as charitable activities in CG-027. The research and analyses is available publicly and some consultations have been done with leading public policy thinkers in private. The nature of the issues selected, the audiences reached and the public discussion serve a community purpose that is charitable - an activity aimed at encouraging public policy dialogue and development conducted in furtherance of its charitable purpose. A complete assessment of the charitable qualification would include a consideration of the issues selected for this attention. The assessment follows below. Each was carried out in furtherance of the Foundation's charitable purpose.

The intent of the Foundation in conducting both the Symposium and the Congress was to benefit the public. Both the Symposium and the Congress examined issues designed to find solutions to destabilizing factors in our society. Consideration through the Symposium of, and public dialogue on, the conditions for cultural creativity and constructive contribution to a better society, alertness to contemporary risks, and following of a democratic deliberative processes seem to the Foundation to address an issue of public interest both in helping to avoid future atrocities and consideration of best practices for a society that serves its constituents. For the Congress to consult opinion leaders and test their reactions to analyses and policy ideas intended to be pursued with authorities and the public as part of a multi-year policy development process that sought ways to reduce forced displacement or mitigate its consequences; to resolving the problem of extreme income disparity and poor economic performance that complicates solutions to many issues; and to understand the changes and dynamics in interstate relationships in search of policies to improve the prospects of understanding and constructive impacts, would each seem to constitute purposes that are charitable by nature, process, and potential beneficiaries. Such activity that benefits a wide public on matters and values that are mores of the society serve the public interest. That was the intent of the Foundation in carrying on both the Symposium and the Congress. These public policy dialogue and development activities were carried on in furtherance of the Foundation's charitable purpose and are analogous to issues previously treated as charitable by the courts, as discussed further below. The purpose would seem to be

confirmed as charitable by the policy-related amendment to the Act; the activities would seem wholly consistent with those declared to be charitable by that new enactment; the immediate audience was one of importance as it involved policy influencers; the result was a further step acknowledged by the activities listed in the new legislation – and this new statutory provision was not available to the Foundation or to the CRA when the audit was initiated.

## **THE FOUNDATION'S FOUR ISSUES**

### **Relations Among the Major Powers**

The examination of relationships among states – including major states acting globally and through regional geopolitical theatres and parties – considers the risks of instability by virtue of the prevailing limited extent and nature of the dialogue among them; and seeks opportunities to find shared interest in a rules-based and more solution-minded relationship that offers greater stability and security.

The state of the relationship among major powers is at a low ebb and high risk for misunderstanding, misinterpretation or mistake. Friction even among post World War I allies across the Atlantic and among European states is visible all around us. The world is about to be without any treaty governing nuclear weapons. The WTO is about to be incapable of adjudicating trade disputes. The world spends considerable time, effort and money on these issues and participates in the UN for reasons of such issues – and to help find opportunities to undertake together what cannot not be solved by individual states acting alone. The public is concerned for safety, security, stability and peace. Solving the issues of international relations – or more realistically, managing such issues more effectively - would serve the interests of all publics. Understanding the issues, the diverse interests and opinions of nation states the capacities of various states to help and the discussion of needs and opportunities must certainly be of benefit to a wide public. It is perhaps evidence of the public acceptance of these characterizations that the UN where these issues are the agenda, is, despite its not being a Canadian institution, a qualified done in Canadian law; and that Canada is making a considerable effort to win election to its Security Council – and, perhaps, noteworthy that the Congress of Vienna 2015 was designated part of the activities of the 70<sup>th</sup> Anniversary of the UN in the year it was held. It is, also, significant for evidence of audience that the initiatives we took in documenting and leading a dialogue on these geopolitical matters has led to both collaborations with three major international think tanks to develop some updated ideas on foreign policy initiatives and to the Foundation being invited by the respected Salzburg Festival to lead a geopolitical and ‘arts and society’ Symposium in 2020 as a commemoration of the 100<sup>th</sup> Anniversary of that institution founded with a mission of peace and harmony across global diversity. Both the framing of the approach and the parties involved in the projects underway are a direct consequence of the Congress project.

### **Forced Displacement**

An historically high almost 70 million have had to flee their homes in order to survive. Many are in desperate circumstances and most are in locations where governments and communities are unable to help. Governments in the wealthier world face domestic conditions of concern over being swamped by the uninvited and culturally alien migrants – and numbers they cannot expect to integrate, even if entirely sympathetic to the plight. Canadian law and policy, international law and voluntary

conventions express interest and goodwill, but policy development remains a high priority for all parties involved. It is a societal concern in Canada. Public sector resources for the purposes of development investment for relevant job creation are extremely inadequate.

The Foundation developed a distinctive policy suggestion that attracted international attention – including an invitation to the Foundation Chairman to address the Plenary Session of the worldwide membership of the UN High Commission for Refugees and to join their workshop on the issue, among other public and private invitations. The reports have been the subject of meetings with the heads of such international institutions as [REDACTED] and senior personnel in those and other relevant institutions. The Foundation established its own group to analyze and document the situation and dynamics of this issue and consider a development-led policy response and more detailed consideration of the necessary institutional mechanisms for its implementation. The Foundation organized and led the World Commission on Forced Displacement and a Steering Committee of globally recognized and representative scholars and practitioners. The Foundation published two reports which examined ways in which the leading powers could come together to help resolve the significant and growing destabilizing condition in the world today – forced displacement. These reports put forward the central idea of creating a Merchant Bank to make private sector capital available to bring development to the difficult locations where a great many forcibly displaced (and the many more poised to, or at risk of being, forced to flee their homes) are stranded, unemployed, wasting lives in over-stressed communities that cannot be reintegrated them without gainful employment. The Merchant Bank is discussed as one potential contributor to equipping needy locations to handle more of the displaced.

Failure to solve the current problems will create worsening tensions, more human suffering, lost economic output and significant security risks for many countries as the displaced become vulnerable to recruitment by terrorist organizations. The two reports published by the Foundation; one on a Merchant Bank proposal and one on Forced Displacement are attached hereto as Appendix C and Appendix D, respectively.

Again, these reports were undertaken by the Foundation in furtherance of its charitable purpose, the betterment of society through the encouragement of leadership motivated by the ethical purpose of addressing this significant global challenge and tragedy. The issue is an agreed priority reflected in Canadian adherence to international conventions on the topic and the home of policy that facilitates private sponsorship of refugees into Canada; analogous to attention to helping those in need as seen in the Preamble and confirmed as a Canadian societal interest and value, pursued by the activities declared to be charitable by the public policy dialogue and development guidance; and progress would benefit both communities at large, intergovernmental relationship and the millions affected.

#### **Technology, Productivity, Growth and Income Distribution**

Stagnant real incomes and historically wide disparities in income, wealth and the sharing of the gains of innovation and growth are receiving increasing attention in all major economies. Social dissatisfaction is a mounting destabilizer. Protectionist reactions that damage economic performance and generate international tensions are on the rise. Leaders talk increasingly about the problem and

businesses are starting to recognize a need to do something more than they have through retraining and other adjustment and redistribution policies that are evidence of concerns about the issues.

Certain policies and unaddressed conditions set economic dynamics in motion that reduce economic resources available to address societal needs; and set social dynamics in motion that impede technological innovation and trade - the main sources of growth in incomes and living standards, a universal interest and concern of our society.

Understanding the causes, consequences and cures are fundamental requirements for informed dialogue. The technology gains and distribution dynamics have generally been seen as separate in the traditional analysis; and technology and international trade have come to be seen as the causes of many unemployment (not for the first time in history), fostering hostility to innovation and globalization. These are, however, not the culprits – and they are the principle sources of improvement in living standards – i.e. displacing less productive jobs as part of an upgrading of productivity and, hence, of living standards. The Foundation has published with a partnering think tank data that provides what provides a different diagnosis - that technological innovation is the proximate trigger, but that the distributional, investment and productivity consequences are shaped by public policies and market conditions that are the real root causes of both the lost productivity/investment/output and greater unevenness of income and wealth distribution. This assessment from our research and analysis changes the debate, avoids pitting the investment class against the working class and demonstrates the logic of the policy dialogue and development activities stated to be charitable as that is essential to serving the social need with the charitable response. The purpose is again analogous to helping the needy. In May 2019, the Brookings Institution and the Foundation published a report entitled *Productive Equity: Technology and the Twin Challenges of Reviving Productivity and Reducing Inequality*. This report is attached hereto as Appendix E.

### **Arts and Society**

Support of the arts is widely encouraged and should pose little question as being charitable by nature. It seems a universal public interest if the arts can contribute to the solution of and conflicts – and analogous to the support of education.

There are three projects in the area of Arts and Society that are an outgrowth of the Symposium mobilized as part of the [REDACTED] celebration of Vienna – and reinforced by the music performance components of the Congress that used the device to bring diverse discussants together around a shared interest and experience. Each serves the purpose of the arts programming, tracks in parts the elements of the policy dialogue and development activities confirmed to be charitable when serving such a purpose:

- A research and education project, led by international scholars and practitioners leading to a global conference which will take place in January 2021 and culminating in a book that would interest academic and community organizations in the arts as well as diplomatic and political figures and institutions that do or could deploy the arts for share experience across borders and cultures;

- A global Symposium on friction in geopolitical relationships and the potential for reducing tensions through the arts. This Symposium is the program that is a collaboration of the Foundation and the world-renowned Salzburg Festival as a commemoration of the 100<sup>th</sup> Anniversary of the Festival to be held in Salzburg in early August of 2020; and
- The development of a teaching curriculum on the subject of the arts in society that could be used in schools – particularly in music academies – and being developed in collaboration with the most highly regarded [REDACTED]

### **The Foundation's Activities Reviewed by CRA**

With the change of focus of the activities of the Foundation since 2013 to concentrate on larger issues and wider beneficiaries the four issues above are those we considered among the most destabilizing and to satisfy the criteria of charitable activity. We note that several of the programs questioned by the CRA have been discontinued well before the initiation of the CRA audit as such activities were outside the revised strategy.

We would reiterate that the activities undertaken by the Foundation in 2013 and 2014 were not primarily conducted for the purpose of advancing education. Rather, they were undertaken primarily for the purpose of benefiting the community in a way that the law considers to be charitable, as discussed above. The activities conducted by the Foundation in 2013 and 2014 should not be viewed through the prism of whether or not they are charitable activities which advance education. They must be analyzed on the basis of whether they further the charitable purposes of the Foundation.

On page 7 of your letter, you begin an examination of a number of programs conducted by the Foundation during the audit period. The first such program mentioned is the "Vienna 1862-1914: Creativity, Culture, Science and Politics – Panel Discussions". This was the title of one of three panel discussion of the Symposium held in New York, not of the 5-part Symposium. Secondly, you list the panel discussions entitled "The Arts in Vienna: A Proud History, a Troubled Past". This was the title of the panel discussions which took place in Toronto on March 17, 2014 and Calgary on March 20, 2014, following the discussions which took place at [REDACTED] on February 24, 27 and 28, 2014. All of these panel discussions have been referred to collectively as the "Symposium" for purposes of this letter as all were conducted in the same time period and were carried out with the same purpose and intent by the Foundation. As described above, they represented the first activities carried on by the Foundation as a result of the Board deciding to change its programs in 2013.

We have undertaken a review of the other activities which you describe on page 8 of the February 14<sup>th</sup> letter. We have not been able to find meaningful documentation on how these activities were conducted. Further, as a result of the change which the Foundation undertook in 2013, as described above, the staff that worked for the Foundation in 2013 no longer work there. The Chairman of the Foundation, Joel Bell, only took over day to day operations of the Foundation in 2014. His main focus was implementing the Board's decision to pursue the new strategy set out above. Accordingly, he does not have any further information on how these earlier activities were conducted. We therefore

[REDACTED]

cannot comment any further on them. However, we note that as far as Mr. Bell is aware, all of these activities were conducted for the purpose of fostering public policy discussion on issues of the day. They do not appear to lend to support to or to oppose any political party or candidate. Mr. Bell is confident that all such activities were carried on in furtherance of the Foundation's stated purpose of bettering society through the encouragement of leadership motivated by high ethical purpose, but cannot testify to the question of grants or support that might offend 'direction and control' considerations and/or qualified done provisions. The Foundation is fastidious today on these matters, reinforced by the Foundation strategy to use its resources solely where it has something to say and is fully engaged in the program issues, ideas and activities - the Foundation has no interest in making grants to others. While Mr. Bell does not have any records to demonstrate how these programs were carried on beyond those which have been reviewed by the CRA in the course of its audit, Mr. Bell has been the Chairman of the Foundation since its inception in 1992. As far as Mr. Bell is aware, all of the programs listed on page 8 and 9 of the February 14<sup>th</sup> letter were conducted in furtherance of this purpose. The Foundation is no longer conducting any of these activities. This includes the Summer Internship Program which was disbanded in 2014.

On page 11 of the February 14<sup>th</sup> letter, the CRA lists a number of agreements which it says are agency agreements which lacked provisions that would provide the Foundation with a sufficient level of direction and control over the counterparty. Again, the Foundation has been unable to find any further information on how the subject of these agreements were conducted in 2013. All these agreements were terminated when the review of its programs was conducted in 2012/13 and the Foundation is no longer involved in the activities that were the subject of these agreements as they do not appear to fall within the Foundation's current mandate as set out above.

To be very clear, the Foundation has directly and on its own – talking with experts and authorities - conceived, designed, carried out research and briefings, prepared the reports and communicated the results that are associated with the Symposium, Congress and subsequent research and analyses. There should be absolutely no question or doubt regarding direction and control of those post strategic review programs. Some subsequent programs have involved partners and the World Commission on Forced Displacement involved Commissioners and Steering Committee experts who served on a volunteer basis – but all scope definition, issue description, terms of reference for any commissioned research, staff analysis and report-writing were done either by the Foundation personnel alone or in full collaboration with partners whereby the Foundation retained the right alone to approve all such terms and activities, even if the partnering organization could do likewise – and in fact, the Foundation was a full and active manager of at least comparable authority and as its partners. Only if commissioned research following detailed guidelines and/or hypotheses or fully engaged partnering is a violation of the required standard of participation can there be any question regarding these requirements.

#### **Conclusions on Item 1: Failure to Devote Resources to Charitable Activities**

In conclusion, the Foundation respectfully submits:

1. Its sole stated purpose of "the betterment of society through the encouragement of and education on the vital importance of leadership which is motivated by high ethical purpose" is a charitable purpose at law under the fourth head of charity because:

(a) It is within the spirit and intendment of the Preamble to the Statute of Elizabeth and it is analogous to purposes which the courts in the past have held to be charitable with reference to the Preamble, including a line of cases which has held that the upholding of human rights is within the spirit and intendment of the Preamble; and

Such purpose is for the public benefit as encouraging leadership motivated by high ethical purpose - i.e. community-mindedness and addressing the issues which disrupt societal stability and fairness is a universal good that is not harmful to the public. Moreover, the intended beneficiary of such purpose is society which by definition means that it is directed to the public.

2. The activities which the Foundation has carried on in furtherance of that purpose now and throughout its history, including:

- (a) providing information to its supporters and the general public with regards to various public policies;
- (b) research into public policy challenges, goals, dynamics and results;
- (c) disseminating opinions on public policy;
- (d) providing forums and convening discussions on public policy; and
- (e) communicating public policy ideas on social media,

all constitute charitable activities and are similar to the activities of other charitable organizations and foundations which encourage discussion and public policy debate. Moreover, they constitute charitable activities within the meaning of the definition of the term contained in the Act. All such activities carried on by the Foundation have been carried on in furtherance of the Foundation's stated charitable purpose.

3. While it is understandable why the CRA focused on the educational head in analyzing the activities of the Foundation in the audit period, the activities of the Foundation are more properly analyzed under the fourth head as the encouragement of public policy discussion and development is the primary focus of the Foundation. This is more evident now than it has ever been in light of the programming in which the Foundation has been involved since the Board's strategic review in 2013. The change in focus resulting from that review led the Foundation to discontinue the type of programming with respect to which the audit identified deficiencies. Given its limited resources, this strategy has permitted more impact for its charitable purpose than "one of" projects.

4. As the Foundation has a charitable purpose and all of its activities carried on both before and after 2013 constitute charitable activities carried on in furtherance of that purpose, the Foundation has been constituted and operates exclusively for a charitable purpose. As such, it complies with the requirements to be a charitable foundation under the Act.

**ITEM 2: FAILURE TO BE CONSTITUTED FOR EXCLUSIVELY CHARITABLE PURPOSES.**

(a) Delivery of Non-incidental private benefits.

(i) Joel Bell's salary and Expenses

- As set out in paragraph 12 of Interpretation Bulletin IT-496, it is the CRA's view that "certain types of payments made directly to members, or indirectly for their benefit will not, in and by themselves, disqualify an association from being exempted from tax pursuant to paragraph 149(1)(l). This view applies to payments such as salaries, wages, fees or honorariums for services rendered to the association, provided that the amounts paid are reasonable and in line with those paid in arm's length situations for similar services. It also applies to payments made to employees or members of the association to assist them in covering their expenses to attend various conventions and meetings as delegates on behalf of the association, provided the attendance at such conventions and meetings is to further the aims and objectives of the association".
- Although the Interpretation Bulletin discussed above relates to non-profit organizations within the meaning of 149(1)(l) of the Act, it seems that the CRA applies the principles set out in section 12 of Interpretation Bulletin IT-9496R equally to charities.<sup>14</sup> It is the position of the Foundation that the salary paid by the Foundation to Mr. Bell is reasonable and no more than that which would be paid in arm's length situations for similar services. Only independent Directors participate in these matters. The amounts as outlined on page 14 of the CRA's letter do, however, require some clarification as to what of the amounts reported is compensation. Moreover, it is the position of the Foundation that all expenses paid by the Foundation reimbursing Mr. Bell for expenditures he incurred in the audit period were expenditures incurred in furthering the aims and objectives of the Foundation. Further, they were in fact reimbursements for expenditures incurred by Mr. Bell in carrying on Foundation business. They should not be viewed as additional compensation to Mr. Bell. Mr. Bell has never had an open-ended or non-accountable expense allowance with the Foundation. At all times, he has only been reimbursed for properly incurred expenses.
- The Foundation acknowledges that the former directors of the Foundation, Janice Stein and Marsha Hanen raised concerns about how Mr. Bell reported his expenses. However, these concerns related mainly to the ways such expenditures were reported and not over whether they were in fact incurred for the purpose of furthering the aims and objectives of the Foundation. Mr. Bell took the very reasonable position that the Board should determine, based on the information submitted by Mr. Bell, reimburse that which they considered justified. Not all the expenses Mr. Bell indeed incurred have been reimbursed to him.

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<sup>14</sup> See, *Drache* at page 5-10, note 25.

- Other comments in the CRA letter do not conform with the record, nor to the memory of Mr. Bell or to the extent he was involved, Mr. Bodie.
- It was the Directors, not Mr. Bell, who suggested he take on the managerial responsibility for the Foundation. Upon concluding the strategic review, Mr. Bell was told that he would be the only person to implement the new strategy because of his commitment to and personal history in conceiving and creating the Foundation and its mission; no one would be found in the market to pursue and full scale agenda in an entity of its size. He initially did so on a temporary basis and not as a fulltime commitment. He was eventually convinced to undertake the role on a fulltime basis after months of searching produced only one candidate satisfactory to the Board and to whom an offer was made and by whom it was declined in favor of an apparently less well-compensated position in a university setting. While Mr. Bell cannot remember the subject under discussion that delayed the signing of a contract, Mr. Bell never had to ‘insist on being paid’; there was never any hint of withholding compensation, nor a debate over amounts; and there was ready acknowledgement that compensation, as living costs, are materially higher in the New York market compared with that of Calgary – and there was, for all intents and purposes, a contract at law that both the Foundation and Mr. Bell understood and lived by. Further, while the contract did go unsigned for some time, Mr. Bell recalls signing two contracts over the early years of his new role and relied on the staff for invoicing. The initial compensation amount of [REDACTED] was confirmed to be materially below relevant comparisons in New York – even with a bonus that was said by the Board to be very well justified by performance. There was never any disagreement over amount – and, if the written contract went unsigned, the agreement between Mr. Bell and the Foundation was never in doubt, never contested and never a point of contention insofar as ‘salary’ was concerned. The Board took into account information regarding the compensation paid incumbents in comparable organizations performing similar roles and even being counterparts with who Mr. Bell dealt as a counterpart and recognized the absence of benefits and deferred compensation in the case of the Foundation. As noted earlier regarding expenses, Mr. Bell was deliberate in saying that while every expense submitted was, in his view, incurred for something he would not have spent the money involved were he not filling the role he was at the Foundation, that should not become an irritant and the Board should reimburse those – and only those – expenses which they felt comfortable paying. If the delays in submission was troubling, nothing about the amounts can fairly be so in the final analysis.
- The amount paid Mr. Bell’s predecessor was for a part time role – and the individual was covered by certain benefits and deferred income plan at the University, neither of which forms of compensation was ever accorded Mr. Bell.
- The relevant numbers are the salary since expenses were explicitly said by the Board to only be quantified as an ‘expectation’ and for budgeting purposes, not set out as an

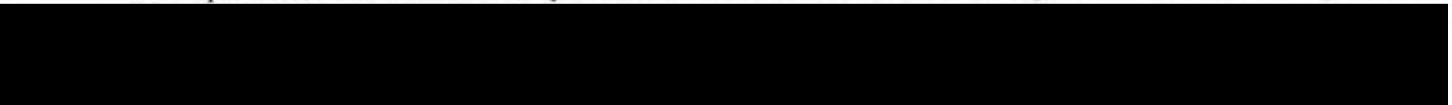
agreed or carefully projected amount. The amount would necessarily vary greatly depending upon the nature and locations of programming activities; considerable travel cost was recognized as unavoidable in budgeting for international programs; and, as a small organization 'expenses' represented claims for reimbursement that included amounts that had little to do with Mr. Bell, but rather an accommodation by him of the Foundation – e.g. Mr. Bell paid and claim reimbursement for the accommodation costs of a director who stayed in a club of which Mr. Bell is a member to who the bills are therefor sent.

- Office expenses were not at all an arbitrary amount. Mr. Bell leases space and has dedicated a percentage of the square footage, with separate access to the outside, to the Foundation. The percentage of the space so dedicated is reimbursed by the Foundation and no charge is made to the Foundation for its not infrequent use of other space for group meetings. The cost was, in fact, verified to be very competitive and there is no issue of personal benefit or gain for Mr. Bell or anyone else associated with the Foundation. The Foundation occupies an estimated one-third of the space and has paid [REDACTED] per month toward a cost of [REDACTED] over the period since the space involved has been dedicated to offices for the Foundation.
- Last, the contract that Mr. Bell was offered in mid-2015 was simply declined by him as not a basis on which he felt any serious candidate should be engaged. In fact, it reflected the turn in relations with Mrs. Stein and Mrs. Hanen who, as noted were refusing to explain their reasons – and were refusing to implement arrangements agreed by the Board and threatening the ability of the Foundation to function, by a 'stand-off' they allowed to continue for months at a critical time for an existentially important program that was itself the centerpiece of the new strategy, the Congress project. Repeated efforts by Mr. Bell to continue arrangements with the entity of which these two individuals were Directors were bluntly rebuffed and without explanation. That entity was left without the personnel necessary to execute any programming, and certainly not the one at hand.

#### **Reasoning for why the New Foundation was started.**

The CRA letter comments on the fact that Mrs. Stein and Mrs. Hanen were somehow not directors of the active organization. That merits clarification so as to not leave a wrong impression.

In the early days of the new strategy, the Foundation was advised to establish a federally-chartered charitable entity for the national and international optics in support of a program that was expanding to those wider audiences. Subsequently, it became clear that U.S.-based donors were not familiar – and some were unprepared – to make contributions to the programming of a foreign entity, however charitable and appealing the programming. Accordingly, the advice of counsel was that a U.S. vehicle should be established through which such contributions could be made and contributed to programming. The new Canadian entity was unnecessary. The Board was fully advised and engaged in these decisions. The advice included guidance regarding direction and control obligations regarding the expenditure of funds to non-qualified donees and the fact that foreign charities were non-qualified



recipients. The Foundation has been particularly careful to observe this requirement – one that was not onerous, as the Foundation as a matter of its fundamental strategy chooses to use its funds for its own programming and not at all as grants to others. The Foundation predicates all expenditures on the maintenance of clear direction and control over the activities it funds.

At the same time and in unrelated events, a director of the Foundation resident in Alberta resigned after some years of service. The law governing the Foundation requires 50% of the Directors to be Alberta residents. Janice Stein and Marsha Hanen determined that they would resign from the Foundation Board and join that of the new federally-chartered entity. The new entity was not registered as a tax exempt charity at the time so there could be no reliable expectation of any assets being put in the hands of the new entity. The new entity began to act as the operator of the activities funded by the Foundation effective on or about the start of 2015, to Mr. Bell's recollection. It had not yet signed the documentation confirming the direction and control arrangements by the funding organization. The signatures of Janice Stein and Marsha Hanen on documents meant to implement this agreed arrangement were withheld for several months after their presentation for their signature. Repeated requests with increasing urgency expressed produced only the reply, conveyed by Mrs. Stein, that she and Mrs. Hanen) had 'serious concerns' (the words of Mrs. Stein to Mr. Bell) about the documentation – concerns Mrs. Stein said they had no intentions of explaining to Mr. Bell or to Foundation counsel and Director Mr. Scott Bodie. Mr. Bell offered and authorized Foundation payment for independent counsel for these two Directors. He also sought and obtained new and independent legal advice that the documentation was entirely appropriate, conventional and well-advised – and that its signature and implementation by all the Directors of the federal entity was essential to precede any further transfer of funds or responsibilities to the federal entity. The two directors were so informed. No one was able to elicit any additional explanation of the refusal to sign, nor any action on the part of the two resistant Directors. The only discussions that had occurred in the period between the agreed new structure and the repeated refusals to sign the documentation over a 4 to 5 month period was:

- A visit paid to Mr. Bell by Mrs. Stein urging that the Foundation stand down from the Congress project and defer to [REDACTED] of which Mrs. Stein was the Director – to fund the School to carry out the approved program. Mr. Bell met with two academic members of the School faculty identified by Mrs. Stein as expert in two of the topics of the Congress agenda. One declined to participate as a result of other prior commitments, but we did remain in touch and spoke on later occasions regarding the subject matter to share ideas. The second, previously known to Mr. Bell from his having been involved, at Mr. Bell's invitation, in the Congress program, did prepare a commissioned paper on a Congress topic, play an active role in the International Workshop of the Congress on the topic and attend the Congress to present his views. In fact, both the Workshop and the Congress found the analysis and recommendations wanting, but made no issue of it. But, the abandonment of the role and responsibility of the Foundation in favor of the School was refused. From that day forward, the practice of these two resistant Directors of commenting on the program documents prepared by the Foundation and routinely sent to the Directors for that purpose was ended by the silence of these two Directors. Another of the Directors did state to Mr. Bell that she

felt [REDACTED]

In the run-up to the Congress held in October 2015, the Foundation made many commitments for its activities in the normal course – as noted above, all subjected to a commitment to accept the direction and control of the Foundation as required by law and as agreed by the Board of the new federal entity. Documentation for the Foundation to use in all such circumstances was prepared. As the due date for certain payments of commitments for the Congress approached, in September 2015, only a few weeks before the major and pivotal event that the Congress was – and to avoid an embarrassing and very damaging failure to meet obligations, Mr. Bell and Mr. Bodie, acting as the Board of the Foundation, and on legal advisor advice, had the Foundation resume responsibility for the Congress – a project that it had in fact initiated and carried out until approximately the beginning of 2015. It notified Mrs. Stein and Mrs. Hanen of the action – and explicitly made the arrangement with the Foundation to resume its active role non-exclusive and open to the entity of which the two Directors were members to join at will, but upon signing of the agreed arrangement documents. The non-involvement of the two directors as noted in the CRA letter was, in fact, in their control to avoid or reverse at the time.

Mr. Bell was presented with [REDACTED] with the federal entity that terminated in December 2015, a few months hence and only part way into the new strategy. Mr. Bell [REDACTED] and undertook the responsibilities for the Congress on behalf of the Foundation in the role he has occupied ever since. The federal entity has remained entirely dormant ever since, without management to fulfill any programming. The two dissenting Directors never approved and never explained to either Mr. Bell or Mr. Bodie the grounds of their concerns with the arrangements they declined to sign.

It should be added that there was an issue also being addressed in the summer of 2015, while the above activities and refusal of the two Directors were playing out – that being the questions during the summer of 2015 regarding expenses incurred by Mr. Bell while performing his responsibilities at the Foundation. Mrs. Stein had, as noted earlier, expressed concern regarding the documentation of expenses. Mr. Bell, in response explained the individual expense items and asked the Foundation to pay only those with which they felt comfortable and of which they approved. That in fact was done and never debated by Mr. Bell.

The compensation paid Mr. Bell was proposed by the Board based on consultation with organizations and with regard to positions that are similar to that fulfilled by Mr. Bell – and having regard to the compensation paid a part time predecessor in 2013/2014 in Calgary (that being the equivalent of [REDACTED] per year excluding benefits and deferred income). Mr. Bell has, in fact, accepted the amount proposed by the Board, being [REDACTED] without bonus, benefits or deferred income entitlements – and as compensation for a position he fills [REDACTED] where comparables are distinctly higher. In fact, the Board and Mr. Bell are well aware that the individuals with whom he interacts routinely in his position are paid at a higher level and enjoy both benefits and deferred income arrangements. These arrangements have not, in fact, been actively ‘negotiated’ and earlier employment contracts have not been re-dated for a number of years during which the compensation has simply

been continued. These arrangements have in fact implicitly renewed annually without discussion or new documentation.

It is further the conviction of the Foundation that the compensation paid to Mr. Bell is reasonable and certainly no more than the amount which would be paid in comparable situations for similar services as required in Interpretation Bulletin IT-496R. Mr. Bell's salary was set by the Board in the period 2012 – 2015 following negotiations with Mr. Bell, and based upon considerations which the Board believed to be reasonable, including the compensation paid to Mr. Bell's predecessor who acted as the Foundation's president on a part-time basis and the Board's information as to what was being paid by comparable organizations to people provided comparable services in [REDACTED]

(ii) The Salzburg Festival Gala

As set out above, the Symposium was presented in the context of a 10-day festival which took place in [REDACTED]. One of the events which was scheduled as part of the festival was a fundraising dinner put on by the Salzburg Festival Society to celebrate the 25<sup>th</sup> consecutive annual tour of the [REDACTED]. The Salzburg Festival is an organization that was founded immediately following World War I and the festival's mission is to help bridge the different cultures through the shared experience of the performing arts, particularly music. It is acknowledged that [REDACTED] the Salzburg Festival Society, a U.S. support organization, is [REDACTED]

However, there is no other connection between the Salzburg Festival Society and either the Foundation or Mr. Bell. Mr. Bell became aware of the fundraising dinner through [REDACTED] but also through his dealings [REDACTED] in planning for the festival. The Foundation believed that it would be appropriate to invite the panelists who would participate in the Symposium and who would thereby support the Foundation without compensation. The fact that [REDACTED] had no bearing on the Foundation's decision to invite its panelists. The cost of \$20,000 identified was the cost for the tickets for Mr. Bell and [19] people who supported the Foundation's efforts in organizing, preparing for and participating in the Symposium. There was no personal benefit extended to either Mr. Bell or [REDACTED]

[REDACTED] Bell hosted the invited participants and joined community leaders in attendance. It gave the Foundation the opportunity to thank the panelists and organizers of the Symposium who had supported the Foundation with no other compensation. However, the \$20,000 expenditure provided no personal benefit to Mr. Bell. It is the position of the Foundation that its leadership, when in the line of its duties and role on behalf of the Foundation participate in such events, they are carrying out their duties and not in receipt of any unacceptable or undue private benefit.

(b) Broad and vague purposes.

As explained above, it is the view of the Foundation that the purpose of the Foundation is charitable for the reasons set out earlier. We note that in 2014, the directors of the Foundation caused a new foundation, the Sheldon Chumir Foundation for Ethics in Leadership to be formed under the *Not-for-Profit Corporations Act* (Canada). The directors of the Foundation formed this new Federal foundation because it was believed that it would facilitate the new direction which the Foundation [REDACTED]

wanted to take. It applied for status as a charitable foundation and was granted such status by the CRA's charity division. It had essentially the same purpose as the Foundation with only minor variations. In any event, if the CRA is of the view that the Foundation's stated purpose is too broad or vague, it would be pleased to work with the CRA to develop amendments to correct any deficiencies.

**ITEM 3: FAILURE TO MAINTAIN ADEQUATE BOOKS AND RECORDS.**

Prior to the time that its administrator left the organization in 2015 as part of the transition discussed above, the same administrator worked for the Foundation since its very early days in 1992. As far as the Foundation was aware, she had done an excellent job. However, the Foundation now understands through the comments supplied by the CRA that there have been some deficiencies in its record keeping systems. Since receiving the more experienced professional staff in New York and a new Auditor. The Foundation has become more vigilant in its record keeping. The Foundation is committed to implementing any suggestions the CRA may have to further ensure compliance with its obligations to maintain adequate books and records.

**ITEM 4: FAILURE TO FILE INFORMATION RETURN AS WHEN REQUIRED BY THE ACT.**

The Foundation acknowledges the deficiencies listed on page 19 of the CRA's letter. It believes the people in place now will guard against such deficiencies in the future. It is committed to enacting any other suggestions the CRA may have to ensure that it continues to file accurate T3010's in the future. It is respectfully submitted that the deficiencies listed by the CRA on page 19 do not rise to the level of meriting revocation and the Foundation is more than willing to work with the CRA to find ways to ensure better and more complete accuracy in all of its filings.

**ITEM 5: ISSUING RECEIPTS NOT IN ACCORDANCE WITH THE ACT.**

The Foundation acknowledges the deficiencies listed by the CRA in regards to its charitable receipts. It will prepare new receipts that will correct the deficiencies listed by the CRA. Specifically, the Foundation will ensure that all receipts issued in the future will:

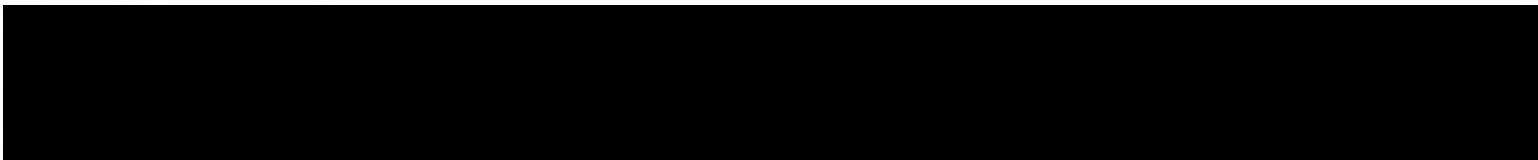
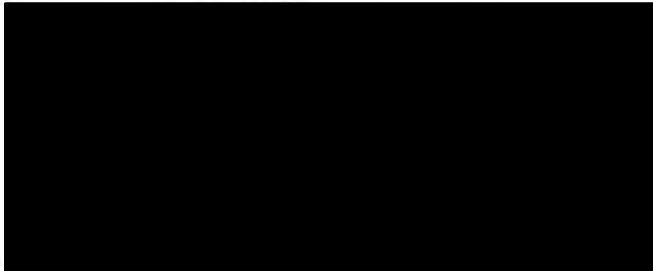
1. Have the Foundations' proper charitable registration number on it;
2. Have the Foundation's proper legal name on it;
3. Have the Foundation's proper address on it;
4. Have the name of the CRA on it;
5. Indicate the locality from where each receipt is issued; and
6. Indicate both the proper date of the receipt of a donation and the date of issuance of the receipt.

September 23, 2019

Page 40

Thank you for your consideration of these submissions and for your patience as the Foundation formulated its thoughts. The Foundation would be willing to meet with you at any time if you wish to discuss the matters set out herein. If you have any questions or would like to discuss any aspect of these matters, please feel free to contact the writer.

Yours truly,



October 14, 2021

Ms. Pamela Tribiger  
Audit Division  
Edmonton Tax Service Office  
Suite 10, 9700 Jasper Avenue N.W.  
Edmonton, AB T5J 4C8

Dear Ms. Tribiger:

**Re: Sheldon M. Chumir Foundation for Ethics in Leadership (the "Foundation")**

Further to our earlier conversation, our letter to you dated September 28, 2021 and the CRA's request contained in the letter dated February 11, 2021, please see herewith the information requested with respect to the taxation years 2017, 2018 and 2019. Please note that the Foundation's bank does not provide cancelled cheques so the documents included herewith as set out below do not include cancelled cheques. If there is other information you require that is not included, please advise and we undertake to provide you with the same as quickly as possible.

Further, we note that you advised that the CRA has expressed concern over the obligation of the Foundation to exercise 'direction and control' over its resources through the joint venture arrangement which the Foundation entered into in 2015, with an associated entity, Chumir Foundation for Ethics in Leadership, of which Joel Bell is the President and Chief Executive Officer for both. We would welcome a discussion with you regarding the joint venture arrangement, but note for your consideration that the Resolutions included with these documents are based on a legal structure and procedural design intended to exercise 'direction and control' as follows:

- The Sheldon M. Chumir Foundation is an Alberta entity established in 1992 and it is the owner of the bulk of the assets in question. In 2014, the activity, subject matter and audience addressed by this Foundation was considerably enlarged. It added activities in the U.S. and Europe.
- This Canadian qualified charity was initially advised that there was a prospect of attracting some U.S. donors – and, perhaps, European donors as well - directly into the Canadian entity. In 2015, advice from counsel - and our experience - confirmed that U.S. charitable entities preferred (some would only consider) making grants to U.S. qualified entities (authorized under IRS 501-c-3), regardless of the location of the activities or control. On legal advice, we

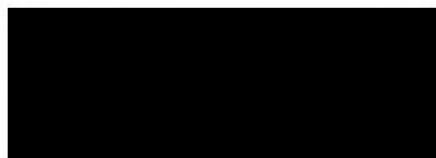
provoked the establishment of an independent (for risk isolation), U.S. qualified charity with the same objectives as the Canadian Foundation, for the purpose of soliciting and receipting such contributions. The purpose of the U.S. entity was – and remains – to present prospective donors with a familiar interfacing beneficiary, while ensuring a documented compliant ‘direction and control’.

- Our global activities were coordinated and more managed from New York – and the U.S. entity undertook the hiring and provision of services to the Canadian originator of our program ideas. To ensure ‘direction and control’ by the Canadian entity, that foundation approved and approves all program activity that use its resources and entered a Joint Venture Agreement with the U.S. entity to document the relationship and confirm *de jure* the locus of authority to deploy Canadian Foundation resources.
- Legal counsel in both Canada and the U.S. confirmed that, with the same person serving as Chairman & CEO of the Canadian and U.S. Foundations, the attention, procedure and authority required for ‘direction and control’ are reassured to reside in, and are exercised by, the Sheldon M. Chumir Foundation. This authority and responsibility have, in fact, been exercised by the Board of the Canadian Foundation authorizing the uses of funds and in the Joint Venture Committee where a majority of the Foundation representatives must, in a separate vote, approve any decision.

We believe that this procedure has, in fact, brought non-Canadian funded activity – both in content and expenditures - under the control of a Canadian charity.

The activities at issue are these:

- The Canadian Foundation – with whatever research, consultation and definition it has considered appropriate – has defined topics and projects for program attention. These projects and their funding might have remained solely under that Canadian legal entity and raised no issues of ‘direction and control’. In fact, the earliest project involving a ‘content partner’ was undertaken solely by the Canadian Foundation with that partner – i.e. a project with Brookings Institution that began formally in February 2016, following discussions initiated immediately after the ‘Congress of Vienna 2015’, the Congress being the first of the projects undertaken by the joint venture of the Canadian and U.S. foundations.
- In anticipation of more third-party funding than materialized - and focused on ensuring that the Canadian Foundation exercise ‘direction and control’ - all activity was subsequently funded by a joint venture of the Sheldon M. Chumir and the U.S. IRS 501-c-3 qualified entity; and, subjected to the separate/double majority in favor of the Canadian Foundation (even as also accorded to the partner) so as to ensure Canadian entity ‘direction and control’, despite external contributions or content participation. A number of the initiatives were, in fact, joined by ‘content partners’ – being leading think tanks on the various topics - also under the ‘direction and control’ procedure and authority for both funding and content. We are preparing to approach donors again with the current agenda of programs and partners.



September 28, 2021

Page 3

- Schedule C of the JVA changes as projects are added, completed, or exploratory assessments discontinued.

As mentioned above, we would be pleased to discuss this matter further with you at any time at your convenience. Further, as you review the Foundation's records, please let us know if you have any questions, require further information or would like to discuss.

Yours truly,

