

October 3, 2024

**REGISTERED MAIL**

Robert Tennant  
Director  
Chomyn-Hunt Foundation  
3923 116 Street NW  
Edmonton AB T6J 1R5

BN: 83721 0111 RR0001  
Case number: 40621541

Dear Robert Tennant:

**Subject: Notice of intention to revoke  
Chomyn-Hunt Foundation**

We are writing with respect to our letter dated September 29, 2022 (copy enclosed), in which Chomyn-Hunt Foundation (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, 2016 to December 31, 2017. Specifically, the Foundation was asked to explain why its registration should not be revoked in accordance with subsection 168(1) of the Income Tax Act (Act).

We have reviewed and considered your written responses dated January 12, 2023, January 15, 2023, January 18, 2023, and February 8, 2023. Your reply has not alleviated our concerns with respect to the Foundation's non-compliance with the requirements of the Act for registration as a charity. Our concerns are explained in Appendix A attached.

**Conclusion**

The audit by the CRA found that the primary activity of the Foundation was to operate as a vehicle for its directors to engage in a series of intentional circular non-arm's length transactions designed for their financial benefit. Furthermore, the audit determined that the Organization did not comply with the requirements set out in the Act. In particular, the Foundation failed to issue donation receipts in accordance with the Act and/or its Regulations, failed to devote resources to charitable activities carried on by the Foundation itself, failed to meet the disbursement quota, and failed to maintain adequate books and records. This non-compliance constitutes a serious breach of the requirements for registration. For these reasons, it is our position that the Foundation no longer meets the requirements for charitable registration.

Although outside of the audit period under review, we note that two of the Foundation's directors are now ineligible individuals. Robert Tennant has served on the board of directors for ten charities that have been revoked for cause over the last three years, five of which included transactions similar to those that occurred during the audit period

under review. John Rooney served as a director alongside Robert Tennant on nine of the same ten charities.

Consequently, for the reasons mentioned in our letter, dated September 29, 2022, and pursuant to subsections 168(1) and 149.1(3) of the Act, we hereby notify you of our intention to revoke the registration of the Foundation. By virtue of subsection 168(2) of the Act, the revocation will be effective on the date of publication of the following notice in the Canada Gazette:

Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(d), 168(1)(e), and subsection 149.1(3), and paragraph 149.1(3)(b), 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>
837210111RR0001	Chomyn-Hunt Foundation Edmonton AB

As noted in our letter dated September 29, 2022, we informed you that the CRA may revoke the charitable registration of the Foundation. We further informed you, that the CRA may, after the expiration of 30 days from the date of the mailing of the notice, publish a copy of the notice in the Canada Gazette, and on the date of that publication, the Foundation's registration would be revoked.

After considering the Foundation's response, this letter is to inform you that the CRA has decided to issue a notice of intention to revoke the Foundation's registration and will 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. It was found that the Foundation demonstrated serious non-compliance with the Act in multiple ways, including:

- failure to issue donation receipts in accordance with the Act and/or its Regulations;
- failure to devote resources to charitable activities carried on by the Foundation itself;
- failure to meet the disbursement quota;
- failure to maintain adequate books and records; and
- failure to meet its disbursement quota and file information returns as and when required.

Should the Foundation 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 Foundation files a notice of objection with the CRA Appeals Branch, 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 Foundation 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**

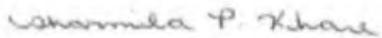
As of the effective date of revocation:

- a) the Foundation will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Foundation would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3) and paragraph 110.1(1)(a) of the Act respectively;
- b) by virtue of section 188 of the Act, the Foundation will be required to pay a tax within one year from the date of the notice of intention to revoke. This revocation tax is calculated on Form T2046, Tax Return where Registration of a Charity is revoked. Form T2046 must be filed, and the tax paid, on or before the day that is one year from the date of the notice of intention to revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix 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**;
- c) the Foundation will no longer qualify as a charity for purposes of subsection 123(1) of the Excise Tax Act. As a result, the Foundation may be subject to obligations and entitlements under the Excise Tax Act that apply to entities other

than charities that may result in significant changes in how the Foundation calculates its Goods and Services Tax/Harmonized Sales Tax (GST/HST) to be collected, input tax credits, and rebate entitlements. If you have any questions about your GST/HST obligations and entitlements, please go to [canada.ca/gst-hst](http://canada.ca/gst-hst) or call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

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 Khare  
Director General  
Charities Directorate

Enclosures

- CRA letter dated September 29, 2022
- Foundation's representations dated January 12, 2023, January 15, 2023, January 18, 2023 and February 8, 2023
- Appendix A, Comment on representations
- Appendix B, Relevant provisions of the Act

c.c.: Albert Jodoin, Director



September 29, 2022

**REGISTERED MAIL**

Robert Tennant  
Director  
Chomyn-Hunt Foundation  
3923 116 Street NW  
Edmonton AB T6J 1R5

BN: 837210111RR0001  
File number: 3045362  
Case number: [REDACTED]

Dear Robert Tennant:

**Subject: Audit of Chomyn-Hunt Foundation**

This letter results from the audit of the Chomyn-Hunt Foundation (the Foundation) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Foundation for the period of January 1, 2016, to December 31, 2017.

**Background**

The Foundation was incorporated on November 30, 2010, and was granted registered charity status as a public foundation effective January 4, 2011, with the purpose to gift funds to qualified donees. The three directors at the time of registration were: Sandra M. Chomyn-Hunt, Robert Tennant, and John Rooney.

According to its annual Form T3010, Registered Charity Information Returns and its books and records, the Foundation was inactive until March 15, 2016, the date upon which Albert Jodoin was added to the board of directors. Additionally on March 15, 2016, the Foundation engaged in its first series of transactions with Albert Jodoin [REDACTED] Since registration, the Foundation's only donors have been [REDACTED]

**Current audit**

On September 27, 2022, you were advised that the CRA had identified specific areas of non-compliance with the provisions of the Income Tax Act (the Act) and/or its Regulations in the following areas.

	Areas of non-compliance	Reference
1.	Failed to issue donation receipts in accordance with the Act and/or its Regulations <ul style="list-style-type: none"> <li data-bbox="409 340 1090 418">a. Failed to reduce the fair market value of a gift in accordance with the loanback provisions</li> <li data-bbox="409 418 1008 496">b. Incorrect information on official donation receipts,</li> <li data-bbox="409 530 1057 566">c. False information on official donation receipts</li> </ul>	149.1(3), 168(1)(d), 118.1(16), 118.1(17), 118.1(19), 188.1(7) 188.1(9), 188.2(2)(c)
2.	Failed to devote resources to charitable activities carried on by the Foundation itself: Fiduciary duty	149.1(3), 168(1)(b)
3.	Failed to meet the disbursement quota	149.1(3)(b), 168(1)(b)
4.	Failed to maintain adequate books and records	149.1(3), 230(2), 168(1)(b), 168(1)(e), 188.2(2)(a)
5.	Failed to file an information return as and when required by the Act and/or its Regulations	149.1(3), 149.1(14), 168(1)(c)

This letter describes the areas of non-compliance identified by the CRA relating to the legislative and common law requirements applicable to registered charities, and which may be subject to sanctions under the Act. The Foundation will also be provided with the opportunity to make representations or present additional information as to why a sanction should not be applied.

As a registered charity, the Foundation must comply with the law. If it fails to comply with the law, it may either be subject to sanctions under sections 188.1<sup>1</sup> and/or 188.2<sup>2</sup> of the Act, and/or have its registered charity status revoked in the manner described in section 168 of the Act.

The balance of this letter describes the identified areas of non-compliance and the sanction(s) proposed in further detail.

### General legal principles

In order to maintain charitable registration under the Act, Canadian law requires that a registered charity demonstrate that it is constituted and operated exclusively for charitable purposes (or objects) and that it devotes its resources to charitable activities

<sup>1</sup> Financial sanctions are assessed under Section 188.1 of the Act.

<sup>2</sup> Suspensions of a registered charity's authority to issue official donation receipt, and qualified donee status, are assessed under section 188.2 of the Act.

carried on by the charity itself in furtherance thereof.<sup>3</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>4</sup> and deliver a public benefit:

- (1) relief of poverty;
- (2) advancement of education;
- (3) advancement of religion; and
- (4) other purposes beneficial to the community as a whole in a way which the law regards as charitable.

An entity’s purposes must fall within one or more of these categories to be considered for registration as a charity. The formal purposes as set out in a registered charity’s governing document must be clear and precise so as to reflect exclusively charitable purposes.

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 may be measurable or intangible. Benefits that are not tangible or objectively measurable should be shown to be valuable or approved by the common understanding of enlightened opinion for the time being.<sup>5</sup> In most cases, the benefit should be a necessary and reasonably direct result of how the purpose will be achieved.<sup>6</sup> An assumed prospect or possibility of gain that

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<sup>3</sup> See subsection 149.1(1) of the Act, which requires that a charity devote all of its resources to “charitable activities carried on by the organization” and Vancouver Society of Immigrant and Visible Minority Women v MNR, [1999] 1 SCR 10, 1999 CanLII 704 (SCC) at paras 156-159. A registered charity may also devote resources to activities that, while not charitable in and of themselves, are necessary to accomplish their charitable purposes (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>4</sup> The Act does not define charity or what is charitable. The exception is subsection 149.1(1) which defines charitable purposes 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 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). The classification approach was explicitly approved of by the Supreme Court of Canada in Guaranty Trust Co of Canada v Minister of National Revenue, [1967] SCR 133, and confirmed in Vancouver Society of Immigrant and Visible Minority Women v MNR, [1999] 1 SCR 10, 1999 CanLII 704 (SCC).

<sup>5</sup> For more information about public benefit, see CRA Policy statement CPS-024, Guidelines for registering a charity: Meeting the public benefit test. See also generally British Columbia (Assessor of Area #09 - Vancouver) v Arts Umbrella, 2008 BCCA 103; and Vancouver Society of Immigrant and Visible Minority Women v MNR, [1999] 1 SCR 10, 1999 CanLII 704 (SCC).

<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, and CRA Guidance CG-019, How to draft purposes for charitable registration. See also; Commissioners for Special Purposes of the Income Tax v Pemsel, [1891] AC 531 (PC) at 583.

is vague, indescribable or uncertain, or incapable of proof, cannot be said to provide a charitable benefit.<sup>7</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>8</sup>

The CRA must be satisfied that a charity'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.

### **Identified areas of non-compliance**

#### **1. Failed to issue donation receipts in accordance with the Act and/or its Regulations**

##### **Legislation and jurisprudence**

- a. Failed to reduce the fair market value of a gift in accordance with the loanback provisions

Pursuant to subsection 118.1(16)<sup>9</sup> of the Act, the loanback provisions apply when a donor makes a gift to a qualified donee, and within 60 months after making the gift, at least one of the following two situations occur:

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<sup>7</sup> Co-operative College of Canada v. Saskatchewan (Human Rights Commission), 1975 CanLII 808 (SKCA) at para 19; Vancouver Society of Immigrant and Visible Minority Women v MNR, [1999] 1 SCR 10, 1999 CanLII 704 (SCC) at para 202; for more information about charitable purposes see CRA Guidance CG-019, How to draft purposes for charitable registration at para 19.

<sup>8</sup> For more information about public benefit, see CRA Policy statement CPS-024, Guidelines for registering a charity: Meeting the public benefit test.

<sup>9</sup> In addition to the loanback provisions, as described in subsection 118.1(16), with respect to non-qualifying securities, subsection 110.1(6) refers to corporations and states, "Subsections 118.1(13) to (14) and (16) to (20) apply to a corporation as if the references in those subsections to an individual were read as references to a corporation and as if a non-qualifying security of a corporation included a share (other than a share listed on a designated stock exchange) of the capital stock of the corporation".

- i. the qualified donee holds a non-qualifying security of the donor that it acquired in the 60 months before the gift was made, or
- ii. the donor (or a person or partnership that does not deal at arm's length with the donor) uses the qualified donee's property under an agreement that was made or modified in the 60 months before the gift was made, and the property was not used by the qualified donee in its charitable activities.

When either situation listed above exists, subsections 110.1(6) and 118.1(16)<sup>10</sup> of the Act will apply to reduce the fair market value<sup>11</sup> of the gift by the following:

- the fair market value of any property of the qualified donee that the donor (or a person or partnership not dealing at arm's length with the donor) uses under an agreement, for purposes other than the qualified donee's charitable activities, whereby the agreement was made or modified in the 60 months prior to the gift being made; or
- any new loan provided by the qualified donee to the donor (or to persons or partnerships who do not deal at arm's length with the donor) within 60 months after the gift was made.

For the purpose of applying subsection 118.1(16) of the Act, subsection 118.1(17)<sup>12</sup> provides that the fair market value of a property, as described in subparagraph 118.1(16)(c)(ii) of the Act, is determined by subtracting the portion of the property's fair market value that has been applied under that subsection to reduce the fair market value of a previous gift made by that donor.

However, subsection 118.1(17) of the Act will apply to corporations as described in subsection 110.1(6), and is applied to a taxpayer on a case by case basis. Where multiple taxpayers make a gift to a qualified donee, and the taxpayers, as well as persons with which these taxpayers do not deal at arm's length, use property of the donee, this provision will apply to each donor separately. Where multiple donors, who do not deal at arm's length with each other, make gifts to the same qualified donee, and an amount is loaned by the qualified donee to one, or more of these donors, the total amount of the loans is taken into account to reduce the fair market value of each donors gift.

The fact that a borrower pays interest, as per the terms of the loan agreements, does not affect the determination as to whether subsections 118.1(16) and 110.1(6) of the Act applies to a particular situation. Furthermore, it should be noted that in the event the property used by the donor, or person not dealing at arm's length with the donor, is returned (or repaid) to the qualified donee, the Act does not provide for the reinstatement of the gift for purposes of subsections 110.1(6) and 118.1(16).

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<sup>10</sup> Section 110.1 of the Act applies to corporations, while section 118.1 applies to individuals.

<sup>11</sup> See CRA publication P113 – Gifts and Income Tax 2021, which defines fair market value as “usually the highest dollar value you can get for your property in an open and unrestricted market between a willing buyer and a willing seller who are acting independently of each other”.

<sup>12</sup> See the Ordering rule at subsection 118.1(17) of the Act.

b. Incorrect information on official donation receipts

Under subsection 188.1(7) of the Act, a qualified donee (for example, a registered charity) may be held liable for a penalty if it issues an official donation receipt (ODR) for a gift whereby the ODR contains incorrect information. Subsection 188.1(7) states,

Except where subsection (8) or (9) applies, every registered charity, registered Canadian amateur athletic association and registered journalism organization that issues, in a taxation year, a receipt for a gift otherwise than in accordance with this Act and the regulations is liable for the taxation year to a penalty equal to 5% of the amount reported on the receipt as representing the amount in respect of which a taxpayer may claim a deduction under subsection 110.1(1) or a credit under subsection 118.1(3).

As per the phrase, “[E]xcept where subsection (8) or (9) applies...” an individual ODR cannot have a penalty assessed for incorrect information, in addition to a penalty assessed under either subsection 188.1(8)<sup>13</sup> or 188.1(9)<sup>14</sup>. Note, however, that penalties under both subsection 188.1(7) and subsection 188.1(9) can be assessed against two different ODRs at the same time.

c. False information on official donation receipts

Under subsection 188.1(9) of the Act, a registered charity may be held liable for a penalty where it knew, or reasonably ought to have known, or conducted actions that equal culpable conduct,<sup>15</sup> that a false statement was made on an ODR. Subsection 188.1(9) states,

If at any time a person makes or furnishes, participates in the making of or causes another person to make or furnish a statement that the person knows, or would reasonably be expected to know but for circumstances amounting to culpable conduct (as defined in subsection 163.2(1)), is a false statement (as defined in subsection 163.2(1)) on a receipt issued by, on behalf of or in the name of another person for the purposes of subsection 110.1(2) or 118.1(2), the person (or, where the person is an officer, employee, official or agent of a registered charity, registered Canadian amateur athletic association or registered journalism organization, the charity, association or organization) is liable for their taxation year that includes that time to a penalty equal to 125% of the amount reported on the receipt as representing the amount in respect of which a taxpayer may claim a deduction under subsection 110.1(1) or a credit under subsection 118.1(3).

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<sup>13</sup> Subsection 188.1(8) is a penalty that is assessed when an incorrect information penalty has been assessed against a particular qualified donee in a subsequent year within a 5 year period.

<sup>14</sup> Subsection 188.1(9) is a penalty that is assessed for false information on ODRs. It is discussed in detail in this letter.

<sup>15</sup> Subsection 163.2(1) defines culpable conduct as “...means conduct, whether an act or a failure to act, that (a) is tantamount to intentional conduct; (b) shows an indifference as to whether this Act is complied with; or (c) shows a willful, reckless or wanton disregard of the law”.

In addition to the financial penalty that can be assessed with respect to the donation value listed on a particular ODR, if the Minister assesses a subsection 188.1(9) false information penalty against a qualified donee that is greater than \$25,000 in any given taxation year, paragraph 188.2(1)(c) of the Act provides that the Minister must also suspend that qualified donee for a period of one year. In particular, subsection 188.2(1) states,

The Minister shall, with an assessment referred to in this subsection, give notice by registered mail to a registered charity, registered Canadian amateur athletic association or registered journalism organization that its authority to issue an official receipt referred to in Part XXXV of the Income Tax Regulations is suspended for one year from the day that is seven days after the day on which the notice is mailed, if the Minister has assessed the charity, association or organization for a taxation year for

(c) a penalty under subsection 188.1(9) if the total of all such penalties for the taxation year exceeds \$25,000.

Note: A registered charity donee, such as the Foundation, can have its registration status revoked under paragraph 168(1)(d) of the Act<sup>16</sup> if it issues ODRs for which the assessment of penalties under either subsection 188.1(7) or 188.1(9) could be considered.

### **Audit findings**

a. Failed to reduce the fair market value of a gift in accordance with the loanback provisions

On March 15, 2016, Albert Jodoin became a board member of the Foundation and the Foundation also recorded its first transaction. The following journal entries were made to the Foundation's accounting books<sup>17</sup> to report a \$250,000 donation from [REDACTED]

March 15, 2016

DR	Cash	250,000.00
CR	Donation revenue	250,000.00
DR	Promissory Note Receivable	250,000.00
CR	Cash	250,000.00

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<sup>16</sup>As discussed above, under paragraph 168(1)(d) of the Act, the Minister may revoke a registered charity of its registration if the charity issues a receipt for a gift (that is, an ODR) other than in accordance with the Act or that contains false information.

<sup>17</sup>These journal entries are supported by the following source documents: bank statements, a signed and dated promissory note, and an agreement for the sale and purchase of [REDACTED] Class "A" Shares). Also, an ODR for \$250,000 was issued [REDACTED] on March 15, 2016.

DR	Loan Payable	250,000.00
CR	Promissory Note Receivable	250,000.00

Each of the above transactions occurred on the same day (that is, March 15, 2016), and below is a summary of what the three journal entries represent in order of occurrence:

1. [REDACTED] made a \$250,000 gift to the Foundation which was received.
2. The \$250,000 in gifted funds were transferred back [REDACTED] in the form of a promissory note.
3. An accounting entry was made with the note "payment of promissory note by purchase of investment contract from [REDACTED]" This journal entry reduced the promissory note receivable to nil (\$0) and created a loan payable of \$250,000 to [REDACTED]

As a result of the above transactions, the \$250,000 "gift" was effectively returned as a loan to the donor on the same day the donation was received. Regardless of how the \$250,000 was used by either party (that is, [REDACTED] and the Foundation), including to settle other pre-existing debts that may have existed between the two parties, as soon as the donation was returned [REDACTED] the loanback provisions of subsection 188.1(16) came into effect.

Accordingly, as soon as the donation was loaned back [REDACTED] via a promissory note<sup>18</sup> the Foundation held a non-qualifying security [REDACTED] and the amount of the promissory note (that is, \$250,000) had to be deducted from the donation value when the ODR was issued.

To demonstrate, below is step-by-step analysis of how the loanback provision of subsection 188.1(16) applies to the series of transactions stated above. Excerpts from the Act are in **bold** font.

### **118.1 (16) Loanbacks**

**For the purpose of this section<sup>19</sup>, where**

**(a) at any particular time an individual makes a gift of property, ... and**

[REDACTED] made a gift of property (that is, \$250,000 in cash) to the Foundation on March 15, 2016.

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<sup>18</sup> Under paragraph 118.1(18) of the Act obligations, such as promissory notes, are considered non-qualifying securities for the purposes of section 118.1 of the Act.

<sup>19</sup> That is, section 118.1 of the Act.

**(c) within 60 months after the particular time**

**(i) the donee holds a non-qualifying security of the individual that was acquired by the donee after the time that is 60 months before the particular time, or ...**

Immediately<sup>20</sup> after [REDACTED] made the donation to the Foundation<sup>21</sup>, the Foundation returned the total amount of the donation [REDACTED] in exchange for [REDACTED] signing a promissory note whereby [REDACTED] owe the Foundation \$250,000.

**the fair market value of the gift is deemed to be that value otherwise determined minus the total of all amounts each of which is the fair market value of the consideration given by the donee to so acquire a non-qualifying security so held or the fair market value of such a property so used, as the case may be.**

As such, since [REDACTED] made a gift of property to the Foundation and within 60 months of receiving that gift the Foundation loaned the gift back [REDACTED] the amount of the loan (that is, the \$250,000 promissory note) must be subtracted from the donated amount on the ODR. The Foundation did not do this when it issued the ODR [REDACTED] on March 15, 2016, and as a result, the ODR issued [REDACTED] was \$250,000 greater than it should have been.

In addition, the Foundation's journal entries indicate that the Foundation offset this new Promissory Note Receivable (the \$250,000) [REDACTED] against an already existing Promissory Note Payable (the \$250,000) [REDACTED]. It should be noted that this does not render the applicability of the loanback provision invalid regarding the new promissory note. As soon as the \$250,000 was loaned back [REDACTED] under subsection 118.1(16) of the Act the loanback had to be accounted for when the ODR was prepared and issued regardless of the events that transpired afterwards and regardless of how quickly those events transpired.

**b. Incorrect information on official donation receipts**

As explained above, when the Foundation issued an \$250,000 ODR [REDACTED] without reducing the value of the donation as required due to the promissory note captured by the subsection 118.1(16) loanback provisions, it issued an ODR that was not correct. Accordingly, the Foundation issued an ODR that was not in accordance with the Act and its Regulations. Therefore, it is our view that the Foundation is liable to a penalty under subsection 188.1(7) of the Act for issuing an ODR for a gift that was not in accordance with the Act or its Regulations.

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<sup>20</sup> "Immediately" is within 60 months of making the donation to the Foundation.

<sup>21</sup> The Foundation is the donee referred to in subparagraph 188.1(16)(c)(i) of the Act.

**Penalty proposed**

Based on the audit findings, it is our view that the Foundation has issued official donation receipts using incorrect information. As a result, we are proposing to assess a penalty under subsection 188.1(7) of the Act.

**Penalty calculation:**

Fiscal Period Ending	Type of Penalty	Penalty %	Penalized Amount	Penalty
December 31, 2016	Incorrect Information	5%	\$250,000	\$12,500

c. False information on official donation receipts

In the preceding section, we explained that the \$250,000 ODR that was issued [REDACTED] [REDACTED] contained incorrect information which has resulted in our proposal to assess a penalty under subsection 188.1(7). However, as discussed earlier in this letter a subsection 188.1(7) penalty, regarding incorrect information, cannot be assessed if a subsection 188.1(9) penalty is assessed against the same amount. For the reasons outlined below, it is our view that the \$250,000 ODR that was issued [REDACTED] was prepared based on a false statement and that a false information penalty under subsection 188.1(9) can be assessed.

In order for a subsection 188.1(9) to be assessed not only does the ODR itself have to be incorrect, but there needs to be evidence that the ODR was prepared using a false statement. For the purposes of this provision, a false statement is one that was made involving culpable conduct. To establish culpable conduct, we must demonstrate that the person who made the false statement either knew, or would be reasonably expected to know, that the statement was false.

In the present case involving the \$250,000 ODR that was issued [REDACTED] there are two variables that have led to our conclusion that the ODR contained false information:

- the profession of the individual who prepared and signed the ODR; and
- the immediacy of the loanback.

During the audit we found that the ODR in question was prepared and signed by Robert Tennant, a director of the Foundation [REDACTED]

Robert Tennant also provided a copy of the receipt with the debit advice and credit advice attached which demonstrating that he was aware of the transaction. These documents indicate that the \$250,000 in funds were transferred from an account [REDACTED] [REDACTED] to the Foundation and then back again. It is our view that

given Mr. Tennant's professional knowledge and experience, he<sup>22</sup> knew or ought to have been aware of the loanback provision and that the ODR that he prepared was not correct and was prepared using a false statement<sup>23</sup>. In our view, he demonstrated culpable conduct when issuing the ODR [REDACTED] without applying the loanback provisions with respect to the \$250,000 donation to the Foundation.

Furthermore, due to the 60 month time period that the loanback provision covers, we acknowledge that in practice it can be a challenging provision to take into account when issuing ODRs. For example, in some cases the "loanback" may occur many years after the ODR was originally issued. However, in this particular case, the loanback occurred on the same day as the original donation. Accordingly, in our view it would be unreasonable to suggest that the Foundation was unaware that the loanback occurred when it issued the ODR. Rather, when Robert Tennant prepared and issued the ODR [REDACTED]

[REDACTED] he was either aware of the implications of the loanback provisions and failed to comply with the provisions as stated in the Act, or he was willingly unaware of the loanback (that is, he ought to have known that the loanback occurred). In either case, it is our view that for this reason the Foundation displayed culpable conduct when it issued the ODR [REDACTED] that was prepared based on a false statement. Accordingly, it is our view that a subsection 188.1(9) penalty can be assessed against the Foundation for issuing an ODR that contained false information.

### **Penalty proposed**

Based on the audit findings, it is our view that the Foundation has issued official donation receipts using false information. As a result, we are proposing to assess a penalty under subsection 188.1(9) of the Act.

### **Penalty calculation:**

<b>Fiscal Period Ending</b>	<b>Type of Penalty</b>	<b>Penalty %</b>	<b>Penalized Amount</b>	<b>Penalty</b>
December 31, 2016	False Information	125%	\$250,000	\$312,500

### **Suspension proposed**

As we are proposing to assess a false information penalty under subsection 188.1(9) of the Act that is in excess of \$25,000 for the fiscal period ending December 31, 2016, we are also proposing to assess a suspension of the Foundation's status as a registered charity for one year. At the conclusion of this audit, if a subsection 188.1(9) penalty is assessed

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<sup>22</sup> Robert Tennant represented the Foundation itself when he issued the ODR.

<sup>23</sup> For clarification purposes, the false statement is that a \$250,000 donation was made when, due to the loanback provision, there was no such donation.

which exceeds \$25,000 in a single taxation year<sup>24</sup>, the Foundation will be suspended under paragraph 188.2(1)(c) of the Act.

### **In summary**

Based on the above audit findings, we are considering revoking and/or penalizing and suspending the Foundation for issuing ODRs not in accordance with the Act and its Regulations.

As the Foundation did not account for the subsection 118.1(16) loanback provision when it issued a \$250,000 ODR [REDACTED] it issued a material ODR that was not correct. Accordingly, it is our view that there are grounds for the Minister to revoke the charitable status of the Foundation under subsection 149.1(3) of the Act in the manner described under paragraph 168(1)(d) of the Act.

### **Financial sanction proposed**

Additionally, it is our view that the above mentioned ODR is subject to a financial penalty under both subsection 188.1(7) and 188.1(9) of the Act. Note that as discussed above, we cannot assess both a subsection 188.1(7) and a subsection 188.1(9) penalty against the same ODR. Accordingly, we will be unable to conclude which penalty, if either, is applicable until the current audit is completed.

### **Conditional Suspension proposed**

If, at the conclusion of the current audit, we assess a penalty under subsection 188.1(9) that, as currently proposed, is in excess of \$25,000, we will also be assessing a mandatory suspension of the Foundation's charitable status under paragraph 188.2(1)(c) of the Act.

## **2. Failed to devote resources to charitable activities carried on by the Foundation itself: Fiduciary Duty**

### **Legislation and jurisprudence**

A charity registered under the Act is required to be **bona fide** - meaning that it must be established and operated to confer a tangible or objectively measurable benefit upon the public, without personal or private gain.<sup>25</sup>

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<sup>24</sup> We are currently proposing to assess a subsection 188.1(9) false information penalty of \$312,500 for ODRs issued by the Foundation during the December 31, 2016 taxation year. A false information penalty of such materiality (that is,  $\$312,500 > \$25,000$ ) would also result in an automatic suspension of the Foundation's registered status for one year under paragraph 188.2(1)(c) of the Act.

<sup>25</sup> M. Chesterman, *Charities, Trusts and Social Welfare* (London: Weidenfeld and Nicolson, 1979) at para 136; and see *Gilmour v. Coats et al*, [1949] 1 All E.R. 848

Further, the courts have placed extensive responsibilities, known as fiduciary duties, on the directors of charities,<sup>26</sup> 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.

## Audit findings

The following examples provide evidence to support our conclusion that the Foundation's directors did not maintain the necessary level of fiduciary duty over the Foundation's assets and resources:

### Example 1: Lack of Internal Controls Regarding Use of the Foundation's Resources

In our initial interview with the Foundation, on October 10, 2018, the Foundation stated that Albert Jodoin made all of its financial decisions. Mr. Jodoin directed the Foundation<sup>27</sup> to make the following purchases of his personally held investments:

March 15, 2016	\$ 133,920.00	
		\$100,000 USD
April 18, 2016	130,810.00	
		\$100,000 USD
April 18, 2016	654,050.00	
		- \$500,000 USD
September 9, 2016	388,050.00	
		\$300,000 USD
<b>Total</b>	<b>\$ 1,306,830.00</b>	

Per a declaration of trust, dated September 9, 2016, and provided by the Foundation during the audit, Albert Jodoin (the Holder) continued to hold these investment in trust for the Foundation (the Beneficiary) after the purchases were finalized. The Foundation did not provide documentation that would have enabled the determination of the fair market value of the investments at the time of their purchase by the Foundation, nor did it provide documentation demonstrating that it attempted to do so.

<sup>26</sup> See for example, Ontario (Public Guardian and Trustee) v. Aids Society for Children (Ontario), [2001] OJ No.2170 (QL) (O.S.C.J.); Ontario (Public Guardian and Trustee) v. National Society for Abused Women, [2002] O.J. No. 607 (O.S.C.J.); Pathak v. Sabha, (2004) CanLII 10850 (O.S.C.). See also Lac Minerals Ltd. v. International Corona Resources Ltd., [1989] 2 S.C.R. 574 (S.C.C.); Hodgkinson v. Simms, [1994] 3 S.C.R. 377, 1994 CanLII 70 (S.C.C.); M. (K.) v. M. (H.), [1992] 3 S.C.R. 6, 1992 CanLII 31 at pg. 31 (S.C.C.)

<sup>27</sup> See Agreement for the sale and purchase of Assets between Bert Jodoin and Chomyn-Hunt Foundation dated September 9, 2016 enclosed.

It is our view that, due to Albert Jodoin's ability to unilaterally make the Foundation's investment decisions, the Foundation lacked adequate internal controls to mitigate the mis-use of its resources by its directors. This has directly led to the Foundation repeatedly becoming involved in high-risk investment transactions with its own director without first requiring documentary evidence that the purchase prices of the prospective investments were equal to the investments' fair market value. This means that the Foundation has failed to meet the fiduciary duty to be accountable for the charity's property and funds.

#### Example 2: Lack of Support Showing the Interest Income was Received

As mentioned in the previous example, each of the above listed investments had been previously purchased by Albert Jodoin before he sold them to the Foundation. A March 28, 2016, investor agreement<sup>28</sup> between Albert Jodoin and [REDACTED] shows an investment (by Albert Jodoin) of 100,000 USD [REDACTED] which included a clause promising 2% simple interest per month on the principal.

In the Foundation's records, however, there was no documentary evidence to support that the interest income already accrued on the investment was received by the Foundation on purchase. The interest income of 2% per month between the time the investment was purchased on March 28, 2016, by Albert Jodoin and when it was sold to the Foundation on September 9, 2016 would have made up part of the investment's value. The fair market value of the investment would not have been the same as the day it was originally purchased if the Organization was to receive less of a return yet the investment was transferred at the original purchase price paid by Albert Jodoin.

Furthermore, the Foundation recorded interest income of \$66,558.24 in 2016 and \$60,044 in 2017 with an accounting entry, however, the Foundation did not provide documentation indicating that the interest revenues were ever deposited into any of the Foundation's bank accounts. The Foundation's bank statements showed no such deposits nor any documents showing Albert Jodoin had received interest cheques in these amounts that were then used to offset the debts were provided. As such, notwithstanding what was recorded in the financial statements, there is no documentary evidence that the Foundation ever received the interest payments from [REDACTED]

It is our view, that by not ensuring that the Foundation received the interest income it was entitled to as part of the agreement with [REDACTED], the directors failed to meet the fiduciary duties of:

- acting honestly and in good faith, in the best interests of the charity and not in a manner that is self-serving, and
- being accountable for the charity's property and funds.

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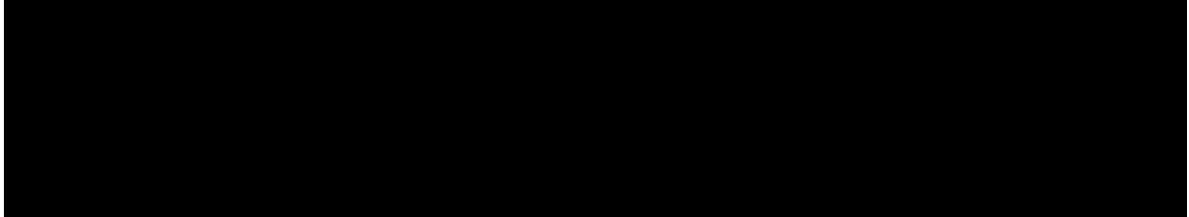
<sup>28</sup> See the enclosed document for more information.

### Example 3: Speculative Nature of Investments

Regarding the speculative nature of Albert Jodoin's investment in [REDACTED] shares, it is noteworthy that before entering the purchase agreement, Albert Jodoin was required to sign a representation letter for Accredited Investors that included a Risk Acknowledgement Form<sup>29</sup>. This form included a prominent disclaimer stating: "Warning! This investment is risky. Don't invest unless you can afford to lose all the money you pay for this investment." It is our view that by signing this form, Albert Jodoin – one of the Foundation's directors – knew that the investments he made [REDACTED] were very risky, and that when he sold these same investments to the Foundation, he also knew – as director of the Foundation – of the financial risk that he was exposing the Foundation's resources to.

Furthermore, the Foundation's investments [REDACTED] were unregistered securities and as such, according to the US Securities and Exchange Commission (SEC), should have also only been made available to "accredited investors". Unregistered investments have fewer investor protections and pose different kinds of risk. Investment rules state that unregistered investments should only be sold to "accredited investors". To be considered a "accredited investor" you must be a high-net worth individual or a high-income investor.<sup>30</sup>

In addition to the speculative nature of the Foundation's investment [REDACTED] in the years that followed the transactions listed above, the [REDACTED] have been scrutinized by the SEC.



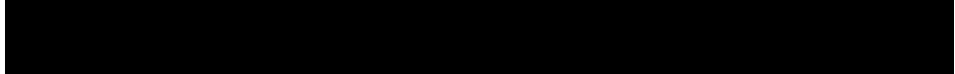
It is our view, that by subjecting the Foundation's resource to a high degree of financial risk, that the directors failed to meet the fiduciary duties of:

- acting honestly and in good faith, in the best interests of the charity and not in a manner that is self-serving, and
- being accountable for the charity's property and funds.

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<sup>29</sup> Document enclosed

<sup>30</sup> <https://www.sec.gov/education/capitalraising/building-blocks/accredited-investor>



**Example 4: Non-Arm's Length Transactions with Unverified Fair Market Values**

On January 3, 2017, the Foundation sold the above investments back to Albert Jodoin for \$990,544<sup>33</sup> and the remaining investment balance on the books per financials were written down as a loss of \$342,989.<sup>34</sup> Similar to the original purchase, the Foundation did not provide any documentation to support that the sale price, of \$990,544<sup>35</sup> was on par with the fair market value of the investments at the time of sale.

Moreover, at the time of sale to an non-arm's length party,<sup>36</sup> there was no attempt by the Foundation to establish the fair market value of the investments, nor was any documentation maintained that would have enabled such a valuation.

It is our view, that by not ensuring that the purchase prices of the financial securities the Foundation was purchasing from himself were on par with the financial securities' fair market values, Albert Jodoin—as director of the Foundation—failed to meet the fiduciary duty of acting honestly and in good faith, in the best interests of the charity and not in a manner that is self-serving.

**Example 5: High Risk Investment** [REDACTED]

On August 3, 2017, the Foundation entered into an agreement to purchase 10,000 Class "A" shares [REDACTED] for \$350,000.

As described above in "Example 3", prior to making the purchase of the [REDACTED] shares, [REDACTED] were required to complete FORM 45-106 F9 "Risk Acknowledgement Form". As previously stated above, this form required the purchaser to certify that they are accredited investors, and to acknowledge the high level of risk associated with the investment. Additionally, this form included the following statement: "This investment is risky. Don't invest unless you can afford to lose all money you pay for this investment.". It then asked the purchaser to complete the following risk acknowledgement section:

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<sup>33</sup> See Agreement for sale and purchase of assets between Chomyn-Hunt Foundation and Bert Jodoin dated January 3, 2017

<sup>34</sup> See General Ledger 2017 Account 5810 Loss on Writedown of Investments entry dated 12/31/2017.

<sup>35</sup> Other than a spreadsheet prepared by the Foundation and attached to the Agreement for sale and purchase of assets between Chomyn-Hunt Foundation and Bert Jodoin dated January 3, 2017 no third party evidence was found to support this value. Also of note, the journal entry for the write-down occurred on 12/31/2017 but the agreement was signed on January 3, 2017.

<sup>36</sup> Between Albert Jodoin and the Foundation that was controlled by a related group.

SECTION 2 TO 4 TO BE COMPLETED BY THE PURCHASER	
<b>2. Risk acknowledgement</b>	
This investment is risky. Initial that you understand that:	<b>Your Initials</b>
<b>Risk of loss</b> – You could lose your entire investment of <b>\$250,000.00</b> .	[REDACTED]
<b>Liquidity risk</b> – You may not be able to sell your investment quickly – or at all.	[REDACTED]
<b>Lack of information</b> – You may receive little or no information about your investment.	[REDACTED]
<b>Lack of advice</b> – You will not receive advice from the salesperson about whether this investment is suitable for you unless the salesperson is registered. The salesperson is the person who meets with, or provides information to, you about making this investment. To check whether the salesperson is registered, go to <a href="http://www.aretheyregistered.ca">www.aretheyregistered.ca</a> .	[REDACTED]

The form further stated that “you [the investor] must meet at least one of the following criteria to be able to make the investment”:

<b>3. Accredited investor status</b>	
You must meet at least <b>one</b> of the following criteria to be able to make this investment. Initial the statement that applies to you. The person identified in section 6 is responsible for ensuring that you meet the definition of accredited investor. That person, or the salesperson identified in section 5, can help you if you have questions about whether you meet these criteria.	<b>Your Initials</b>
<ul style="list-style-type: none"> <li>• Your net income before taxes was more than \$200,000 in each of the 2 most recent calendar years, and you expect it to be more than \$200,000 in the current calendar year. (You can find your net income before taxes on your personal income tax return.)</li> </ul>	[REDACTED]
<ul style="list-style-type: none"> <li>• Your net income before taxes combined with your spouse's was more than \$300,000 in each of the 2 most recent calendar years, and you expect your combined net income before taxes to be more than \$300,000 in the current calendar year.</li> </ul>	[REDACTED]
<ul style="list-style-type: none"> <li>• Either alone or with your spouse, you own more than \$1 million in cash and securities, after subtracting any debt related to the cash and securities.</li> </ul>	[REDACTED]

Although [REDACTED] personal financial situation may have met the above criteria, the Foundation's financial situation would not, as the definition of accredited investor according to Alberta Securities Commission Section 1.1 of the National Investment 45-106 Prospectus Exemptions “Accredited Investor” includes:

(r) “a registered charity under the income tax act (Canada) that, in regards to the trade has obtained advice from the eligibility advisor or an advisor registered under the securities legislation of the jurisdiction of the registered charity to give advice on the security being traded.

The Foundation has not provided documentation indicating that it met these terms.

It is our view, that by subjecting the Foundation's resource to a high degree of financial risk, that the directors failed to meet the fiduciary duties of:

- acting honestly and in good faith, in the best interests of the charity and not in a manner that is self-serving, and
- being accountable for the charity's property and funds.

Also, due to the lack of evidence that the Foundation met the definitional requirements to be an accredited investor,<sup>37</sup> it is our view that the directors did not meet the fiduciary duty to act in with honesty and in good faith when they made decisions on the Foundation's behalf.

#### General Comment on the Foundation's Investment Decisions

It is noteworthy that each of the investments the Foundation has made since 2016 have failed to generate a return on investments (for the Foundation). While there is no manner in which an investor can guarantee the success of its investments, it our view that the Foundation's lack of success with its investment portfolio can be partially attributed to the fact that no documentation was provided indicating the Foundation's investment decisions were being vetted and approved by the entire Board of Directors.

Rather, according to documents that were made available to the CRA for the current audit, Albert Jodoin unilaterally directed the Foundation's investments without any additional insight or approval from the rest of the Foundation's board of directors and without obtaining advice as required under the securities legislation<sup>38</sup>.

A consequence of the Foundation's directors lack of involvement in the investment decisions that Albert Jodoin made on the Foundation's behalf directly led to the Foundation exposing its resources to an unacceptably high level of risk. Furthermore, the level of risk was well documented and explained in the aforementioned "FORM 45-106 F9", and so the Foundation's directors, if they had met their fiduciary duty requirements, ought to have been aware of the elevated risk purchasing the investments could expose the Foundation to.

#### In summary

The above findings raise concerns that the Foundation's board of directors was not acting in a fiscally prudent manner as the charity's resources do not appear to have been managed using good judgement in a wise, sensible, and reasonably cautious manner<sup>39</sup>.

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<sup>37</sup> Being an accredited investor was a requirement for the transaction.

<sup>38</sup> Based on the definition of Accredited Investor defined in section 1.1 of National Instrument 45-106 Prospectus Exemption. <https://www.bscsc.ca/-/media/PWS/New-Resources/Securities-Law/Instruments-and-Policies/Policy-4/45106-NI-January-7-2022.pdf>

<sup>39</sup> Prudent as defined by Black's Law Dictionary 2<sup>nd</sup> Ed. <https://thelawdictionary.org/prudent/>

Moreover, it appears [REDACTED] taking in the above-mentioned investments the Foundation reduced [REDACTED] personal financial risk while raising its own financial risk to an unnecessary high level. As such it is our view that the Foundation failed to demonstrate that its board of directors were fulfilling their fiduciary duties as directors of the Foundation.

As such the charity does not appear to be **bona fide**.<sup>40</sup> Nor has it met its fiduciary duties as established by the courts<sup>41</sup> including: 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 use all charitable property and funds for only charitable purposes, and the duty to be accountable for the charity's property and funds.

Due to its involvement in aggressive investment activities without any discernible charitable purpose, the Foundation has failed to show that they have devoted resources to a charitable purpose. As indicated under General legal principles, to be registered as a charity under the Act, Canadian law requires that an organization's purposes be exclusively charitable, must fall within one or more of the four categories of charity and deliver a charitable public benefit.

As a result, the Organization failed to meet the requirements of 149.1(3) of the Act that it devote its resources to charitable activities carried on by the Foundation itself. As such, there are grounds for the Minister to revoke the charitable status of the Foundation in the manner as described under paragraph 168 (1)(b) of the Act.

Furthermore, while outside the CRA's purview, the failure of the Foundation's board of directors to fulfil their fiduciary duties could put the corporate status of the Foundation in jeopardy. As such, we wish to inform the Foundation that if it loses its corporate status for any reason, then it would no longer qualify for registration as a charity under the Act. Hence, it is vitally important that the Foundation's board of directors is aware of all of its responsibilities under all applicable legislations.

### **3. Failed to meet the disbursement quota**

#### **Legislation and jurisprudence**

The disbursement quota is the minimum amount a registered charity is required to spend each year on its own charitable activities, or on gifts to qualified donees (for example, other registered charities). The disbursement quota calculation is based on the value of property (for example, cash in bank accounts, inventory, stocks, bonds, mutual funds,

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<sup>40</sup> M. Chesterman, *Charities, Trusts and Social Welfare* (London: Weidenfeld and Nicolson, 1979) at para 136; and see *Gilmour v. Coats et al*, [1949] 1 All E.R. 848

<sup>41</sup> See for example, *Ontario (Public Guardian and Trustee) v. Aids Society for Children (Ontario)*, [2001] OJ No.2170 (QL) (O.S.C.J.); *Ontario (Public Guardian and Trustee) v. National Society for Abused Women*, [2002] O.J. No. 607 (O.S.C.J.); *Pathak v. Sabha*, (2004) CanLII 10850 (O.S.C.). See also *Lac Minerals Ltd. v. International Corona Resources Ltd.*, [1989] 2 S.C.R. 574 (S.C.C.); *Hodgkinson v. Simms*, [1994] 3 S.C.R. 377, 1994 CanLII 70 (S.C.C.); *M. (K.) v. M. (H.)*, [1992] 3 S.C.R. 6, 1992 CanLII 31 at pg. 31 (S.C.C.)

GICs, land, and buildings) that a charity does not use for carrying out its own charitable activities or by way of gifts to qualified donees, or for its administrative expenses such as fundraising costs.

The disbursement quota for a public foundation is calculated as follows:

If the average value of a registered charity's property not used directly in charitable activities or by way of gifts to qualified donees, or for its administrative expenses during the 24 months before the beginning of the fiscal year exceeds \$100,000, the charity's disbursement quota is: 3.5% of the average value of that property.

The maximum allowances for carry-forward and carry-back of disbursement quota excesses are defined in subsection 149.1(20) of the Act (i.e., maximum carry-back of 1 fiscal year reporting period, maximum carry-forward of 5 fiscal year reporting periods).

Paragraph 149.1(3)(b) of the Act allows for revocation of a public foundation, stating the Minister may revoke a foundation in the manner described in subsection 168(1) of the Act if the foundation fails to meet its disbursement quota, for any reason described in subsection 168(1). Paragraph 168(1)(a) of the Act applies where a registered charity ceases to comply with the requirements of the Act for its registration; these requirements include meeting the disbursement quota.

### **Audit findings**

The Foundation had the following charitable purposes when it was registered in 2011.

1. To solicit and receive gifts, bequests, trusts, funds and property and beneficially, or as a trustee or agent, to hold, invest, develop, manage, accumulate and administer funds and property for the purpose of disbursing funds and property exclusively to registered charities as well as "qualified donees" under the provisions of the Act; and,
2. To undertake activities ancillary and incidental to the attainment of the aforementioned charitable purposes.

The Foundation's books and records indicate that it did not carry out activities from 2011 to 2015. During the 2016 fiscal period, a donation was received for \$250,000. This amount was immediately loaned back to Albert Jodoin, which resulted in the donor signing a promissory note. The only expenses incurred by the Foundation in 2016 were \$478.49 in bank charges and interest fees.

In 2017, The Foundation signed an agreement to pay [REDACTED] \$350,000 for the purchase of 10,000 Class "A" shares [REDACTED]

[REDACTED] No money was received for the purchase, but the following journal entries were found in the Foundations accounting records:

August 1, 2017

DR	Investment	[REDACTED]	175,000.00
CR	Bank	[REDACTED]	175,000.00

DR	Bank	[REDACTED]	175,000.00
CR	Loan payable	[REDACTED]	175,000.00

August 3, 2017

DR	Investment	[REDACTED]	175,000.00
CR	Bank	[REDACTED]	175,000.00

DR	Bank	[REDACTED]	175,000.00
CR	Loan payable	[REDACTED]	175,000.00

Other than journal entries related to the above-mentioned investments, the Foundation's only expenditures for the 2017 fiscal period were: minor bank service (\$69.16) and interest (\$0.15) related entries, a \$100 funds transfer, a \$6,000 donation received from [REDACTED] and a \$5,600 gift that the Foundation made to St. Emile's Parish, a registered charity.

The disbursement quota as calculated below for the 2011-2016 fiscal periods would be zero as the Foundation did not own any property. However the disbursement quota for 2017 was calculated by the CRA to be \$27,244.54. The charitable expenditures recorded by the Foundation totalled \$5,600 for that fiscal period. As such, the Foundation did not meet its disbursement quota for that period, nor did it have any excess from the following fiscal period to apply against this shortfall.<sup>43</sup>

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<sup>43</sup> It should also be noted that in an email from Robert Tennant to [REDACTED] (the bookkeeper), Mr. Tennant stated that "Bert's loan of \$350,000 to the Foundation also reduces the Foundation's assets and thereby reduces the 2017's distribution quota." Please note that the disbursement quota (DQ) calculation is based on the gross value of all property not used in charitable activities. Accordingly, the full amount of the investment in [REDACTED] shares (\$350,000) has been included in our calculation of the DQ, and we have not factored the associated loan into the calculation.

	2017	2016	2015	2014
Bank balance	431.67	0.98		
\$100k Mar 15	-	133,920.00		
\$100k Apr 18	42,989.00	130,810.00	See Note 1	
\$500k Apr 18	-	654,050.00		
\$300k Sep 9	300,000.00	388,050.00		
shares	350,000.00	-	See Note 1	
Promissory Note receivable	250,000.00	250,000.00	See Note 2	
Total	943,420.67	1,556,830.98	-	-
Line 5900	778,415.49	-		
Line 5910	1,250,125.83	778,415.49		

Note 1: Some of the [REDACTED] investments were sold back to Mr. Jodoin in 2016; the amount remaining was \$342,989. This has been split between two lines on this working paper, given the nature of the line descriptions.

Note 2: The Promissory Note was still in existence in 2016, but had been re-classified as a credit to the loan payable to Bert Jodoin. Notes receivable and notes payable are different things and should be kept separate on the financial statements. The act of netting the note receivable and the note payable created an artificial loss in 2017; had the loss not occurred, the note receivable would still be in existence. It is therefore also included in the 2017 assets.

Line 5900 and Line 5910 are included in Schedule 6 of Form T3010. Line 5900 represents “the average value of property not used for charitable activities or administration during ~ The 24 months before the beginning of the fiscal period”, while Line 5910 represents “..the average value of property not used for charitable activities or administration during ~ ~ The 24 months before the end of the fiscal period”. These amounts were incorrect (understated) in both years.

#### Disbursement Quota for Public and Private Foundations

	2017	2016
Line 5900 (Must exceed \$25,000 to Calculate DQ)	778,415.49	
Multiply line 5900 by 3.5%	27,244.54	-
Disbursement quota requirement for the fiscal period	27,244.54	-
Total expenditures spent on charitable programs	5,600.00	
DQ exceeded/(not met)	- 21,644.54	-

A review of the Foundation's Form T3010s filed since its registration in 2011 indicates that the Foundation did not expend any funds, excluding the transactions that we have identified above in this letter. Excluding the \$5,600 gift to St. Emile's Parish on August 26, 2017, the Foundation did not conduct any charitable activities. Other than that gift, the only expenses the Foundation incurred during the audit period were related to interest expenses, bank fees and a large write-down on investments, which are not considered charitable expenses and therefore cannot be used to contribute towards the Foundation's disbursement quota.

### **In summary**

Based on the above audit findings, the Foundation has not met its disbursement quota requirement. Accordingly, it is our view that there are grounds for the Minister to revoke the charitable status of the Foundation under subsection 149.1(3) of the Act in the manner described under paragraph 168(1)(b) of the Act.

### **4. Failed to maintain adequate books and records**

#### **Legislation and jurisprudence**

Subsection 230(2) of the Act requires that every registered charity shall maintain adequate records<sup>44</sup> 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."

This provision is necessary to enable a charity to accurately provide the CRA with the information required by the Act, as well as ensuring the CRA can verify the accuracy of reported information through an audit and determine whether there are any grounds for revocation of the charity's registration.

Subsection 231.1(1) of the Act permits an authorized person to inspect, audit, or examine the books and records of a taxpayer, as well any document of the taxpayer, or of any other person that relates, or may relate, to the information that is, or should be, contained in the books and records of the taxpayer, or to any amount payable by the taxpayer under the Act.

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<sup>44</sup> Subsection 248(1) of the Act defines a record in the following way: "record includes an account, an agreement, a book, a chart or table, a diagram, a form, an image, an invoice, a letter, a map, a memorandum, a plan, a return, a statement, a telegram, a voucher, and any other thing containing information, whether in writing or in any other form."

In order to meet these requirements, a charity's books and records must allow the CRA to verify the charity's revenues and expenses, as well as any official donation receipts it may have issued. Further, the Act requires that a charity's records contain such information to allow the CRA to determine whether the charity's activities continue to be charitable at law.

Subsection 230(4) also states that every person required by this section to keep records and books of account shall retain:

- (a) the records and books of account referred to in this section in respect of which a period is prescribed, together with every account and voucher necessary to verify the information contained therein, for such period as is prescribed; and
- (b) all other records and books of account referred to in this section, together with every account and voucher necessary to verify the information contained therein, until the expiration of six years from the end of the last taxation year to which the records and books of account relate.

Subsection 230(2) of the Act requires that registered charities maintain adequate books and records<sup>45</sup> of account, at an address in Canada registered with the CRA, containing information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under the Act.

The requirement relating to the maintenance of books and records, and books of account, is based on several court decisions, which have held, among other things, that:

- the onus is on the registered charity to prove that its charitable status should not be revoked.<sup>46</sup>
- 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 books and records at some later date.<sup>47</sup>
- Paragraph 168(1)(e) of the Act provides that the Minister may propose to revoke registration of a registered charity if it fails to comply with,

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<sup>45</sup> Subsection 248(1) of the Act defines a record in the following way: "record includes an account, an agreement, a book, a chart or table, a diagram, a form, an image, an invoice, a letter, a map, a memorandum, a plan, a return, a statement, a telegram, a voucher, and any other thing containing information, whether in writing or in any other form."

<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 v Canada, 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. See also The Lord's Evangelical Church of Deliverance and Prayer of Toronto v Canada, 2004 FCA 397.

or contravenes, any of sections 230 to 231.5 of the Act., and the Federal Court of Appeal has determined that non-compliance with section 230(2) of the Act is a proper basis upon which the Minister may issue such a notice.<sup>48</sup>

- Paragraph 188.2(2)(a) of the Act provides that the Minister may suspend the authority of a registered charity to issue official donation receipts for one year if it fails to comply with, or contravenes any of sections 230 to 231.5 of the Act.
- The requirement to keep proper books and records is foundational and non-compliance with the requirement is serious and justifies revocation.<sup>49</sup>

While paragraph 230(2)(a) of the Act does not explicitly set out the types of books and records that a registered charity is required to maintain, which could therefore lead to a technical failure to comply with the Act, given the significant privileges that flow from registration as a charitable foundation under the Act, the Minister must be able to monitor the continuing entitlement of charitable foundations to those privileges. In that regard, the Federal Court of Appeal has held that there exists a serious obligation for registered charities to maintain adequate books and records, and that material or significant, and/or repeated, non-compliance with the requirements of subsection 230(2) of the Act constitutes sufficient grounds for revocation.<sup>50</sup>

## Audit Findings

The Foundation maintains a corporate minute book, but does not maintain any minutes for the director meetings. In response to question 18 of our initial interview, the Foundation indicated that “Bert [Albert Jodoin] is a director and lender, and makes all of the decisions as to where the money will be spent and/or invested.”

The Foundation retained source documents in support of some of its activities however, it did not provide any source documentation to support the fair market value of the Foundation’s investments, which comprised the majority of the Foundation’s transactions.

Regarding the investment-related activity, the following record inconsistencies creating areas of non-compliance were noted:

- The majority of the investment activities were related to transactions that occurred between the Foundation and its director, Albert Jodoin.

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<sup>48</sup> Opportunities for the Disabled Foundation v Canada (National Revenue), 2016 FCA 94 at para 39; and Ark Angel Foundation v Canada (National Revenue), 2019 FCA 21 at para 43.

<sup>49</sup> Jaamiah Al Uloom Al Islamiyyah Ontario v Canada (National Revenue), 2016 FCA 49 at para 15; and Ark Angel Foundation v Canada (National Revenue), 2019 FCA 21 at para 43.

<sup>50</sup> Ark Angel Foundation v Canada (National Revenue), 2019 FCA 21 at para 43.

However, the transactions were not based on established and verifiable fair market values, rather the documentation provided regarding their valuation were records based on Albert Jodoin's costs.

- The dates of the transactions between Albert Jodoin and [REDACTED] were not the same as the dates per the Trust Declaration between the Foundation and Albert Jodoin. As such, the exchange rates used by the Foundation to convert the values of the transactions between Albert Jodoin and the Foundation to Canadian dollars are not always accurate. The Foundation used the exchange rate<sup>51</sup> from the dates of the transactions between Albert Jodoin and [REDACTED]
- According to the Foundation's accounting books, the value of the investments increased, but there were no source documents provided to support that the investments had increased in value.
- Interest revenue was recognized by the Foundation in the general ledger, but there were no source documents to support that the interest was realized, measurable or earned other than a spreadsheet that was prepared by the Foundation. The bank statements provided showed no income of this nature.
- On March 15, 2016, a promissory note was received and recorded in the general ledger. A second entry was made for the same day that indicated the promissory note was repaid with a loan receivable, thereby converting the promissory note into a loan. Proper documentation to support this conversion was not provided.

#### Write-off

On December 31, 2017, the Foundation wrote off \$342,988.77 as a "loss on the write-down of investments", however, there is no documentation demonstrating that there was a reason to write down the investments. Conversely, a review of the relevant records support that the investments had gained in value due to the changes in the exchange rate. Albert Jodoin purchased the investments in his name and then sold them on paper only to the Foundation. According to the original purchase contracts, \$500,000 would be returned to the investor, who they recognized as Albert Jodoin, a further \$100,000 of the investment would be returned on March 11, 2017, and the remaining \$400,000<sup>52</sup> would be returned in 2018. Meaning that the investment still had value in 2017. As such the loss being written off is inaccurate.

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<sup>51</sup> That is, a fluctuating rate.

<sup>52</sup> That is, the remaining principal and interest.

Further there was no documentation to support the following journal entry:

December 31, 2017

DR	Loss on write-down of investments	342,988.77
DR	Investment [REDACTED]	309,791.23
CR	March 15 investment (\$100,000)	133,920.00
CR	April 18 investment (\$100,000)	130,810.00
CR	September 9 investment (\$300,000)	388,050.00

Lack of support for income, asset and liability values

The Foundation failed to ensure that the fair market values were properly established in regards to the purchase and sale of investments between the Foundation and its Director, Albert Jodoin. The Foundation also failed to maintain sufficient documentation in regards to revenue recognition for the interest revenue reported, as well as documents in regards to loans payables and promissory notes. As a result, the Foundation is unable to support many of the values it reported in either its accounting books or its Form T3010 for the fiscal periods ending December 31, 2016 and December 31, 2017.

### **In summary**

It is our view that the Foundation failed to maintain adequate books and records or to make records available to the CRA during our audit. 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. For these reasons, it appears there may be grounds for revocation of the Foundation's charitable status.

### **Suspension proposed**

In addition, as it is our view that the Foundation has failed to comply with subsection 230(2) of the Act, under paragraph 188.2(2)(a) of the Act the Minister may suspend the Foundation's authority to issue official donation receipts for one year.

### **5. Failed to accurately file an information return as and when required by the Act and/or its Regulations**

#### **Legislation and jurisprudence**

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 a charity to ensure that the information provided in its Form T3010, 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 a significant number of inaccuracies, or beyond what might reasonably be viewed as minor, in a Form T3010 are a sufficient basis for revocation.<sup>53</sup>

### **Audit findings**

Registered charities are required to accurately complete Form T3010 annually. During the audit, we noted the following errors on Form T3010:

- a. The assets on line 4140 “Long-term assets” and Line 4200 “Total assets” in both the 2016 and 2017 fiscal periods were incorrectly reported.
- b. The interest income from the Foundation’s investments was overstated, causing the total revenue to also be overstated.
- c. The \$250,000 given [REDACTED] was not a gift, and therefore should not have been included on line 4500 “Total eligible amount of all gifts for which the charity issued tax receipts” in 2016, but rather on line 4530 “Total non-receipted gifts”.
- d. In 2017, the loss on the write-down of investments (line 4920) is an artificial loss and therefore should not be included. As a result, the total expenditures were also overstated in 2017.
- e. Line 5010 “Total Management & Administrative” was not completed in either year.
- f. Line 5900 “..the average value of property not used for charitable activities or administration during ~ The 24 months before the beginning of the fiscal period” and Line 5910 ““..the average value of property not used for charitable activities or administration during ~ ~ The 24 months before the end of the fiscal period” was incorrect (understated) in both years.

### **In summary**

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

### **Clarification regarding proposals to both revoke and sanction the Foundation**

In multiple instances, we have proposed to both sanction<sup>54</sup> and revoke the Foundation for non-compliant activity that we have identified during the current audit.

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<sup>53</sup> Opportunities for the Disabled Foundation v MNR, 2016 FCA 94 at paras 50-51.

<sup>54</sup> That is, assess a financial penalty and/or a suspension of the Foundation’s registered status.

The above listed findings are our proposed audit findings, and the Foundation will be given an opportunity to provide its representations against any of the audit findings that have been discussed in this letter. Accordingly, the current audit will not be completed until the CRA considers any representations that the Foundation provides in response to this letter.

Given that the audit is not complete, we are unable at this time to conclude what the most reasonable final outcome of the current audit should be. As such, we are presently unable to determine if, for example, it would be more reasonable to revoke the Foundation for failing to maintain adequate books and records, or suspend the Foundation for this non-compliance. It is for this reason, that we have proposed to identify each of the applicable alternatives in this letter. This will provide the Foundation with an opportunity to prepare representations for each possible audit outcome.

At the conclusion of the current audit, and after considering any representations submitted, we will inform the Foundation of our final decision regarding which, if either, of the aforementioned compliance measures has been selected as the most reasonable given the audit findings.

### **Ineligible Individual**

It was noted during our review that during the audit period one of the Foundation's directors was an ineligible individual according to the definition provided in section 149.1(1) of the Act. Although this individual ceased being an ineligible individual in November 2018, it is important to note that if an ineligible individual is found to be serving on a registered charity's board of directors the CRA may either to suspend the charity's qualified donee status under paragraph 188.2(2)(d) of the Act, or revoke the charity under paragraph 149.1(4.1)(e) of the Act..

Please refer to our policy guidance for further information at [canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/ineligible-individuals.html](https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/ineligible-individuals.html).

### **The Foundation's options:**

#### **a) Respond**

Should you choose to make representations regarding this proposal, please provide your written representations and any additional information regarding the findings outlined above **within 30 days** from the date of this letter. After considering the representations submitted by the Foundation, we will decide on the appropriate course of action, which may include:

- no compliance action necessary;
- the issuance of an educational letter;

- resolving these issues through the implementation of a Compliance Agreement;
- the application of penalties and/or suspensions provided for in sections 188.1 and/or 188.2 of the Act; or
- giving notice of its intention to revoke the registration of the Foundation by issuing a notice of intention to revoke in the manner described in subsection 168(1) of the Act.

**b) Do not respond**

You may choose not to respond. In that case, we may proceed with the application of penalties and/or suspensions described in sections 188.1 and/or 188.2 of the Act or give notice of its intention to revoke the registration of the Foundation by issuing a notice of intention to revoke in the manner described in subsection 168(1) of the Act.

The Act provides the Minister the discretion to revoke a charity's registration. Section 168 of the Act describes the manner in which the Minister may revoke a charity's registration. In accordance with subsection 168(1) of the Act, when proposing to revoke, the charity is given notice by registered mail of the Minister's intention to revoke the charity's registration. The charity's registration is not revoked until a copy of the notice is published in the Canada Gazette. Paragraph 168(2)(b) of the Act allows the Minister to publish the notice in the Canada Gazette any time after the expiration of 30 days from the date of the mailing of the notice.

After considering the Organization's response to this letter, the Minister may decide to exercise her authority to revoke its charitable registration. If so, the Minister will issue a notice of intention to revoke the Organization's registration and will indicate in the notice whether the Minister intends to publish the notice in the Canada Gazette immediately after the expiration of 30 days from the date of the mailing of the notice.

If you appoint a third party to represent you in this matter, please send us a written authorization with the party's name, contact information, and clearly specify the appropriate access granted to the party to discuss the file with us. For more information on how to authorize a representative, go to [canada.ca/en/revenue-agency/services/forms-publications/forms/aut-01.html](http://canada.ca/en/revenue-agency/services/forms-publications/forms/aut-01.html).

If you have any questions or require further information or clarification, please do not hesitate to contact me at the numbers below. My team leader, Crystal Scott, may also be reached at 587 335-1670.

Yours sincerely,



Pamela Tribiger  
Audit Division  
Edmonton TSO

Telephone: 587-545-8175  
Toll Free: 1-800-267-2384 (Charities Directorate)  
Facsimile: 780-495-6908  
Address: Suite 10, 9700 Jasper Avenue NW  
Edmonton AB T5J 4C8

Enclosures

Agreement for the sale and purchase of assets, September 9, 2016  
Agreement for sale and purchase of assets, January 3, 2017  
[REDACTED] investor agreement, March 28, 2016  
Representation letter for accredited investors  
Press Release [REDACTED]

# AGREEMENT FOR THE SALE AND PURCHASE OF ASSETS

BETWEEN:

Bert Jodoin  
an Individual resident in the Province of Alberta  
(herein referred to as the "Vendor")

OF THE FIRST PARTY

AND

Chomyn-Hunt Foundation  
Incorporated pursuant to the Canada Not-for-profit Corporations Act  
(herein referred to as the "Purchaser")

OF THE SECOND PART

THIS AGREEMENT is made as of the 9th day of September 2016 (herein the "effective date")

## RECITALS

A. The Vendor desires to sell and the Purchaser desires to purchase [REDACTED] (refer to the attached Schedule) as of the respective dates referred to in the attached Schedule.

THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements herein contained, the Parties covenant and agree as follows:

1. The Purchaser shall pay or issue a Promissory Note to the Vendor for the amount of One Million Three Hundred and Six Thousand Eight Hundred and Thirty (\$1,306,830) Dollars (herein called the "Purchase Price").

2. Each Party shall perform all acts and things necessary to carry out the terms of this Agreement.
3. Every representation, warranty, indemnity, covenant, and agreement contained in this Agreement shall survive the completion of the purchase and sale under this Agreement.
4. This Agreement enures to the benefit of and is binding on the Parties and their respective successors and permitted assigns.

IN WITHNESS WHEREOF the Parties have executed this Agreement as of the 9th day of September 2016.

VENDOR



Bert Jodoin

PURCHASER



Chomyn-Hunt Foundation

SUMMARY

9-Sep-16

\$

15-Mar-16

[\$100,000 U.S.]

133,920

18-Apr-16

[\$100,000 U.S.]

130,810

18-Apr-16

[\$500,000 U.S.]

654,050

9-Sep-16

[\$300,000 U.S.]

388,050

9-Sep-16

1,306,830

**AGREEMENT FOR THE SALE AND PURCHASE OF ASSETS**

BETWEEN:

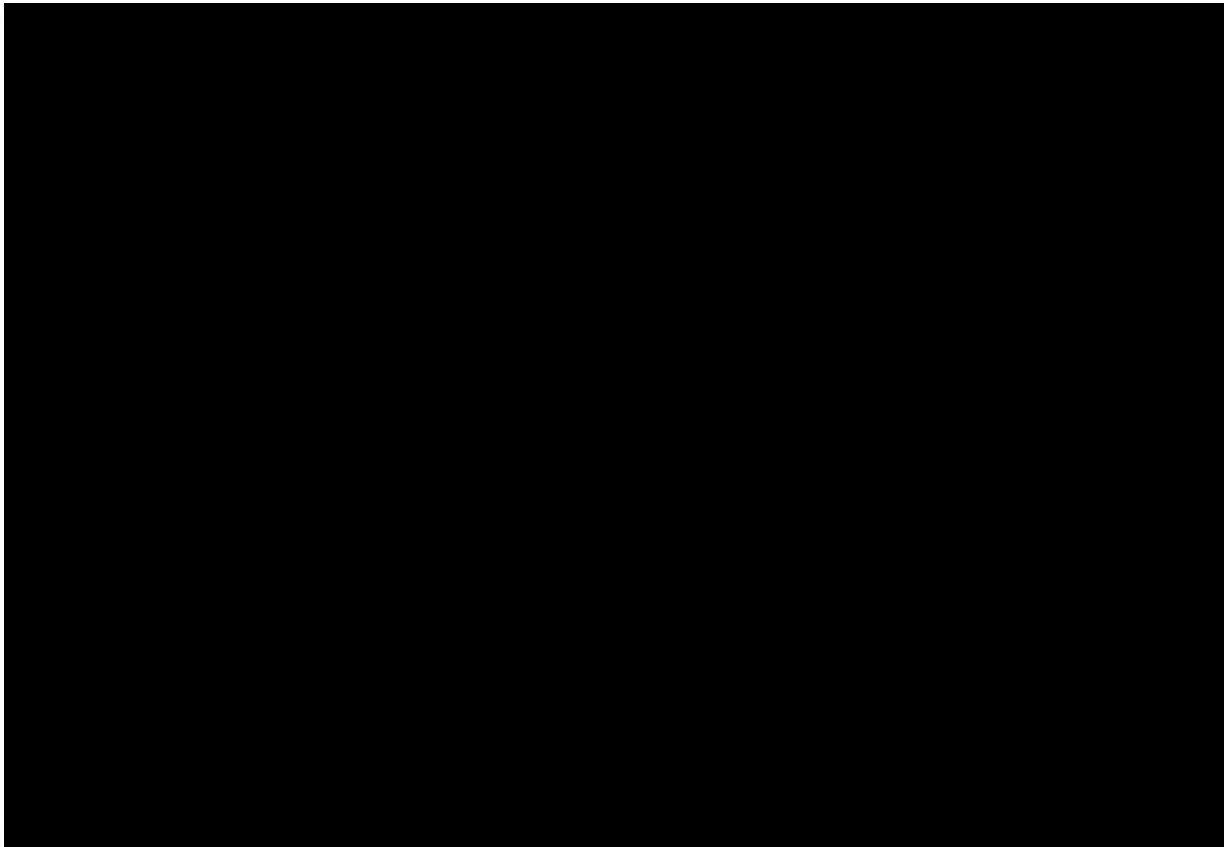
Chomyn-Hunt Foundation  
Incorporated pursuant to Canada Not-for-Profit Corporations Act  
(herein referred to as the "Vendor")

OF THE FIRST PARTY

AND

Bert Jodoin  
An Individual resident in the Province of Alberta  
(herein referred to as the "Purchaser")

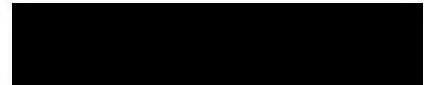
OF THE SECOND PART



**VENDOR**

  
Chomyn-Hunt Foundation

**PURCHASER**

  
Bert Jodoin



Chomyn-Hunt Foundation  
December 31, 2017

	Foundation Cost US \$	Foundation Cnd \$	Jan 3, 2017 Exchange Rate	Jan 3, 2017 FMV Cnd \$	Jan 3, 2017 Unrealized Gain	Jan 3, 2017 Gain Foundation
[REDACTED] (03/15/16)	100,000	133,920	1.3435	134,350		
[REDACTED] (04/18/16)	100,000	130,810	1.3435	134,350		
[REDACTED] (09/09/16)	300,000	388,050	1.3435	403,050		
	500,000	652,780		671,750	18,970	
[REDACTED]	500,000	654,050	1.3435	671,750	17,700	17,700
	1,000,000	1,306,830		1,343,500		
Promissory note		990,544		990,544		
Transfer [REDACTED] B.Jodoin	257,739	336,494		318,794	47.46%	9,003
Transfer [REDACTED] - B.Jodoin	500,000	654,050		671,750		
Balance [REDACTED] to remain in Foundation	242,261	316,286				
Total interest earned [REDACTED]	88,000	114,277				
Interest allocated to B.Jodoin	41,762	54,233				
Interest allocated to Foundation	41,762	60,044				26,703

2

March 28, 2016

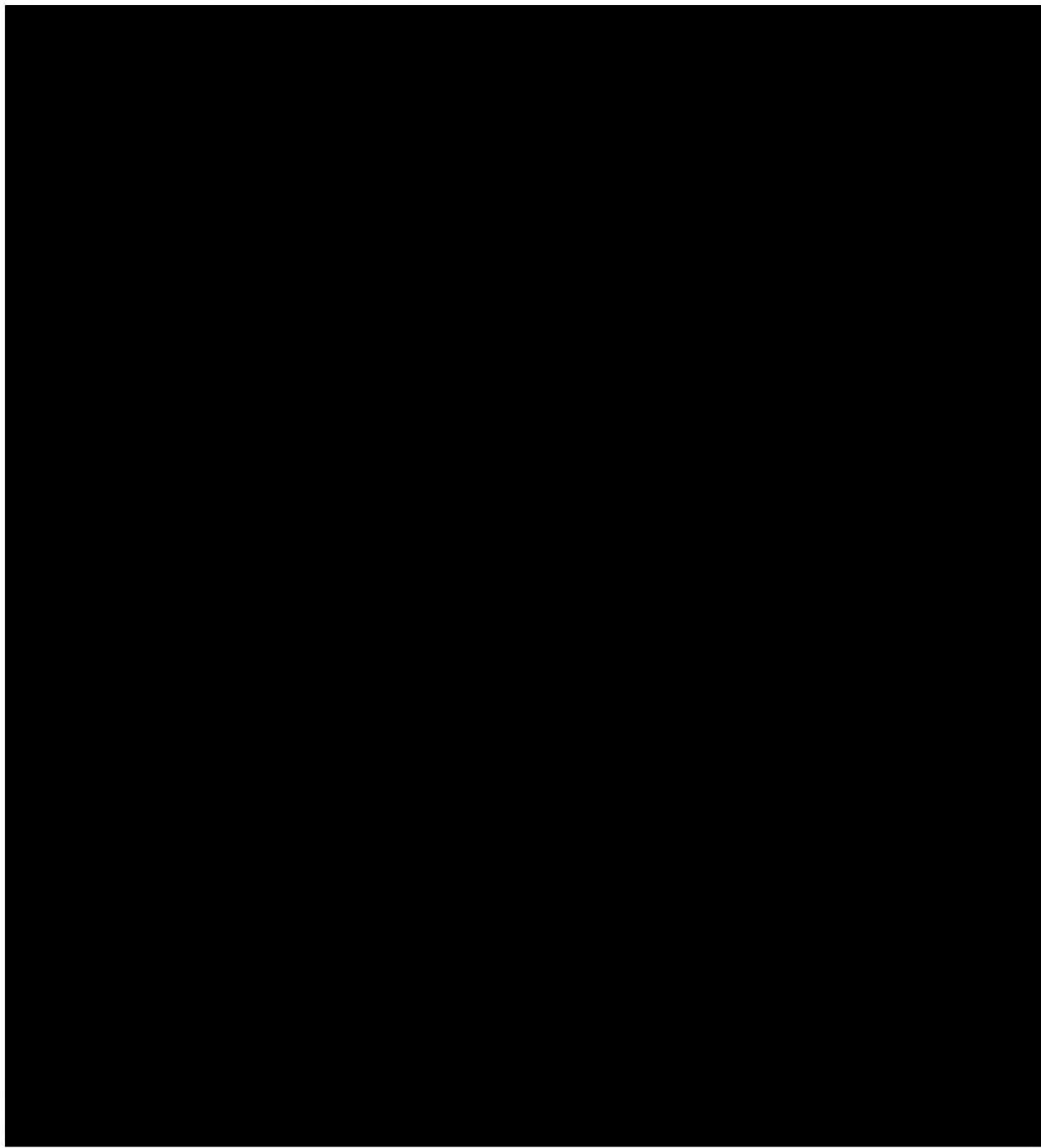
\$100,000 US

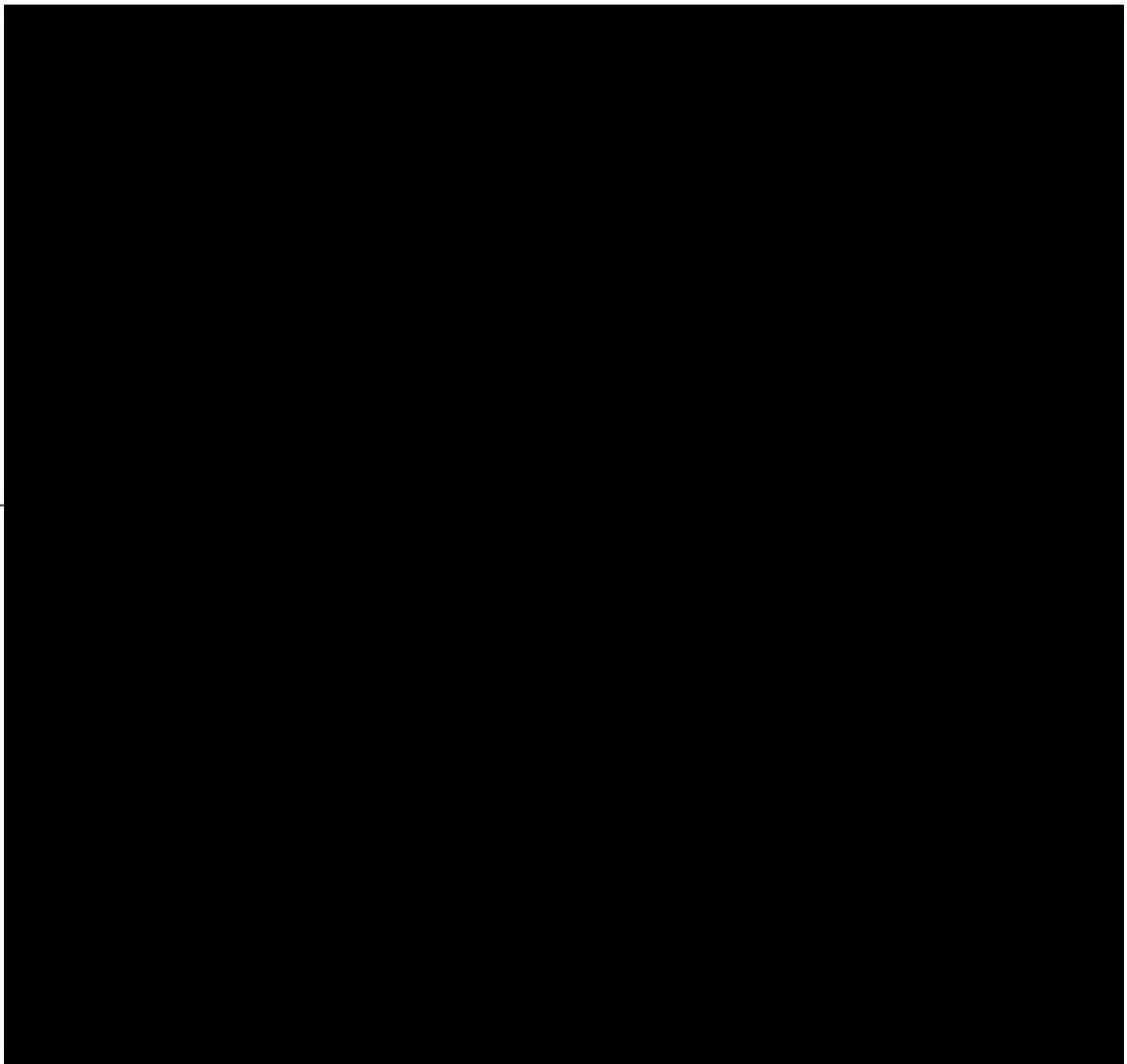
April 18, 2016

## INVESTOR AGREEMENT

This Agreement is entered into by the following parties:

, and Bert Jodoin







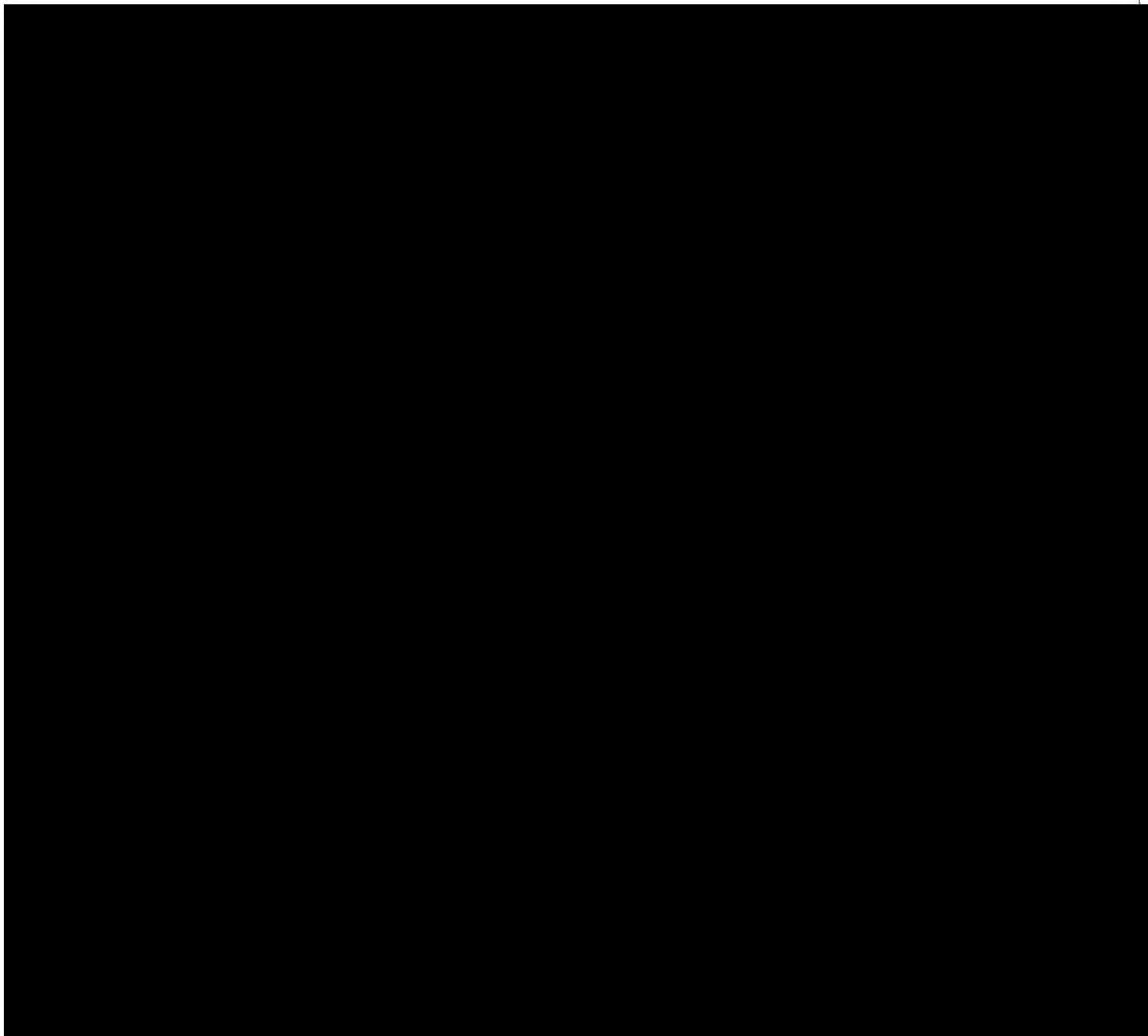
(2)

**INVESTOR AGREEMENT**

This Agreement is entered into by the following parties:

and Bert Jodoin





**REPRESENTATION LETTER**  
**FOR ACCREDITED INVESTORS**

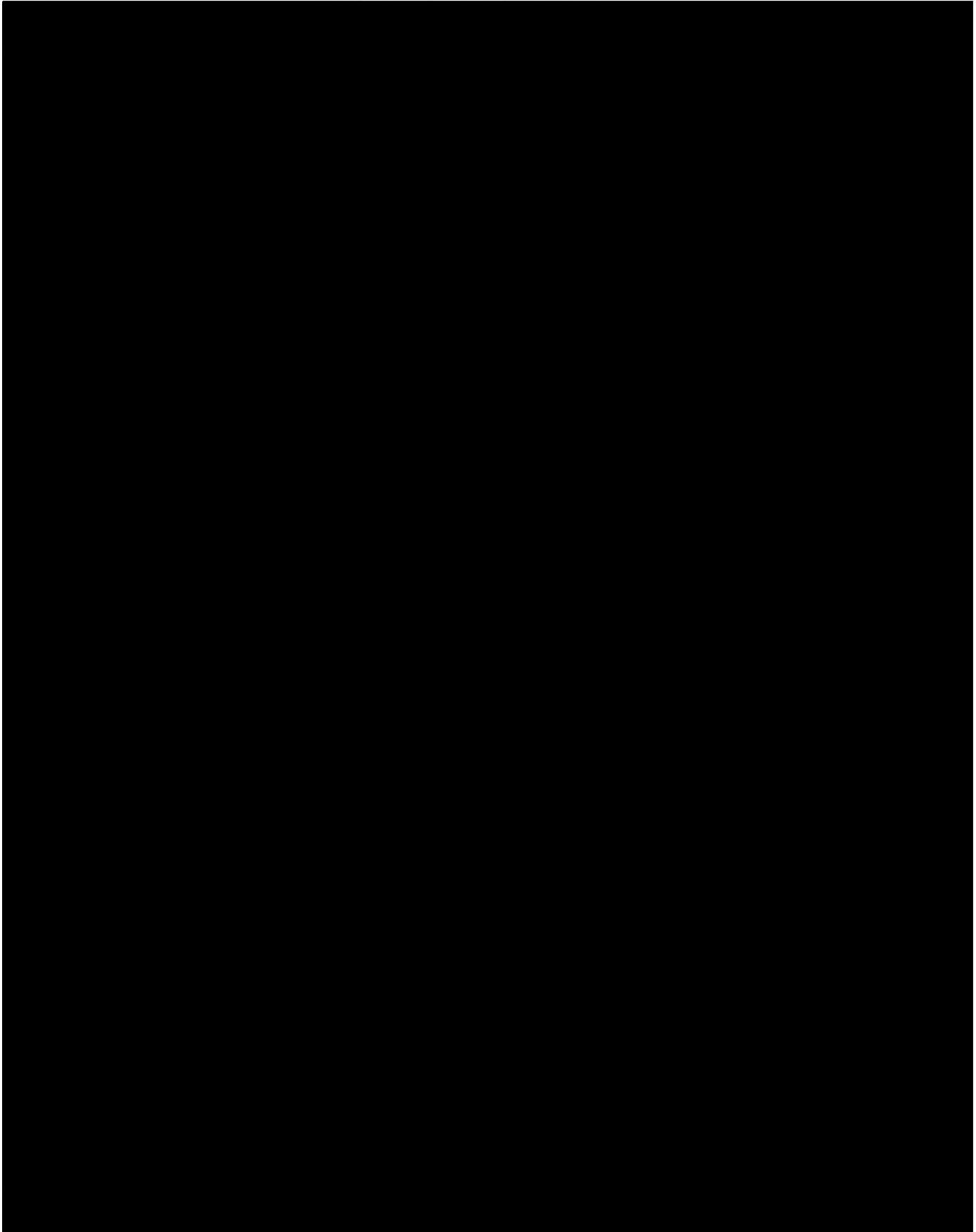
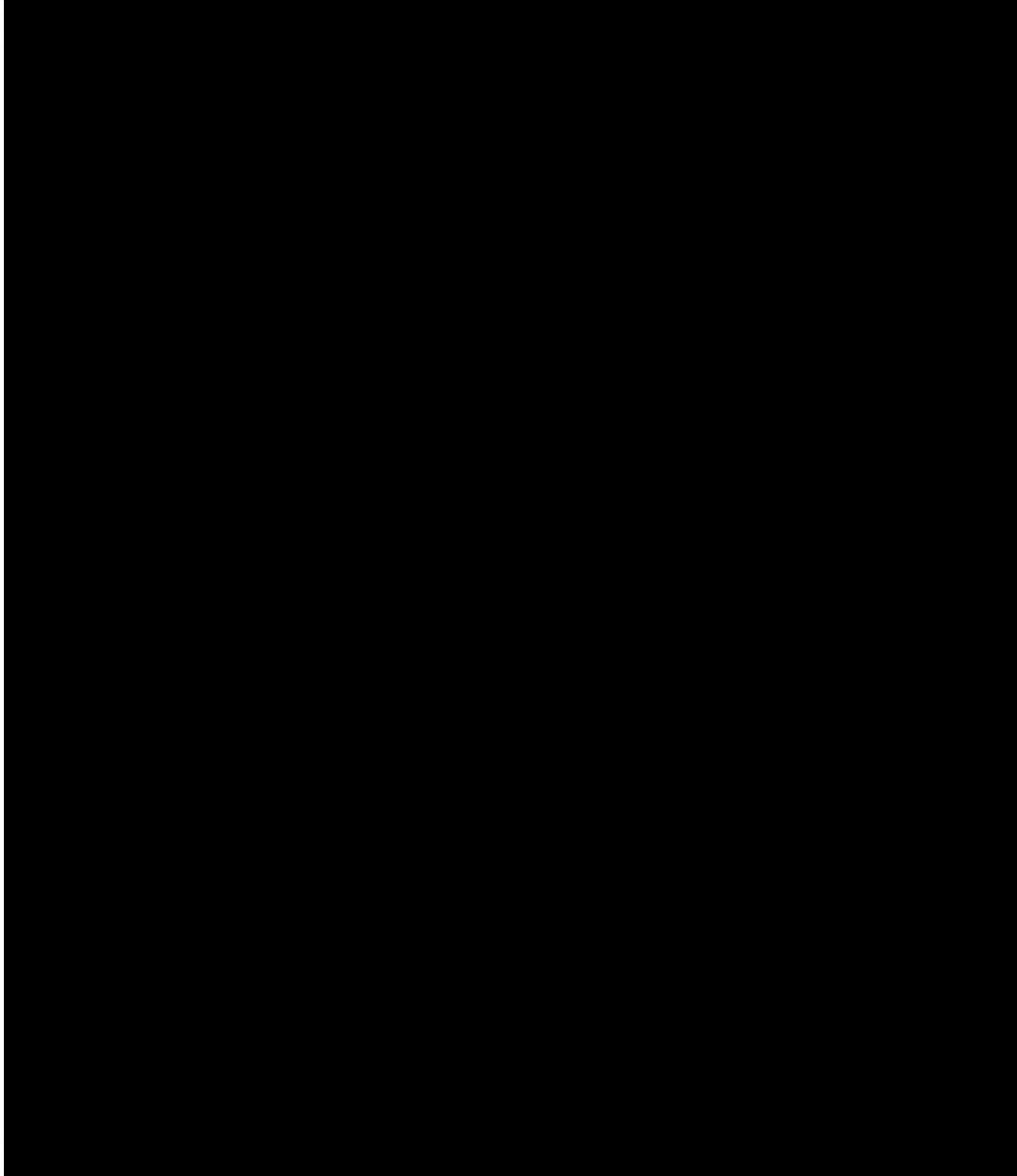


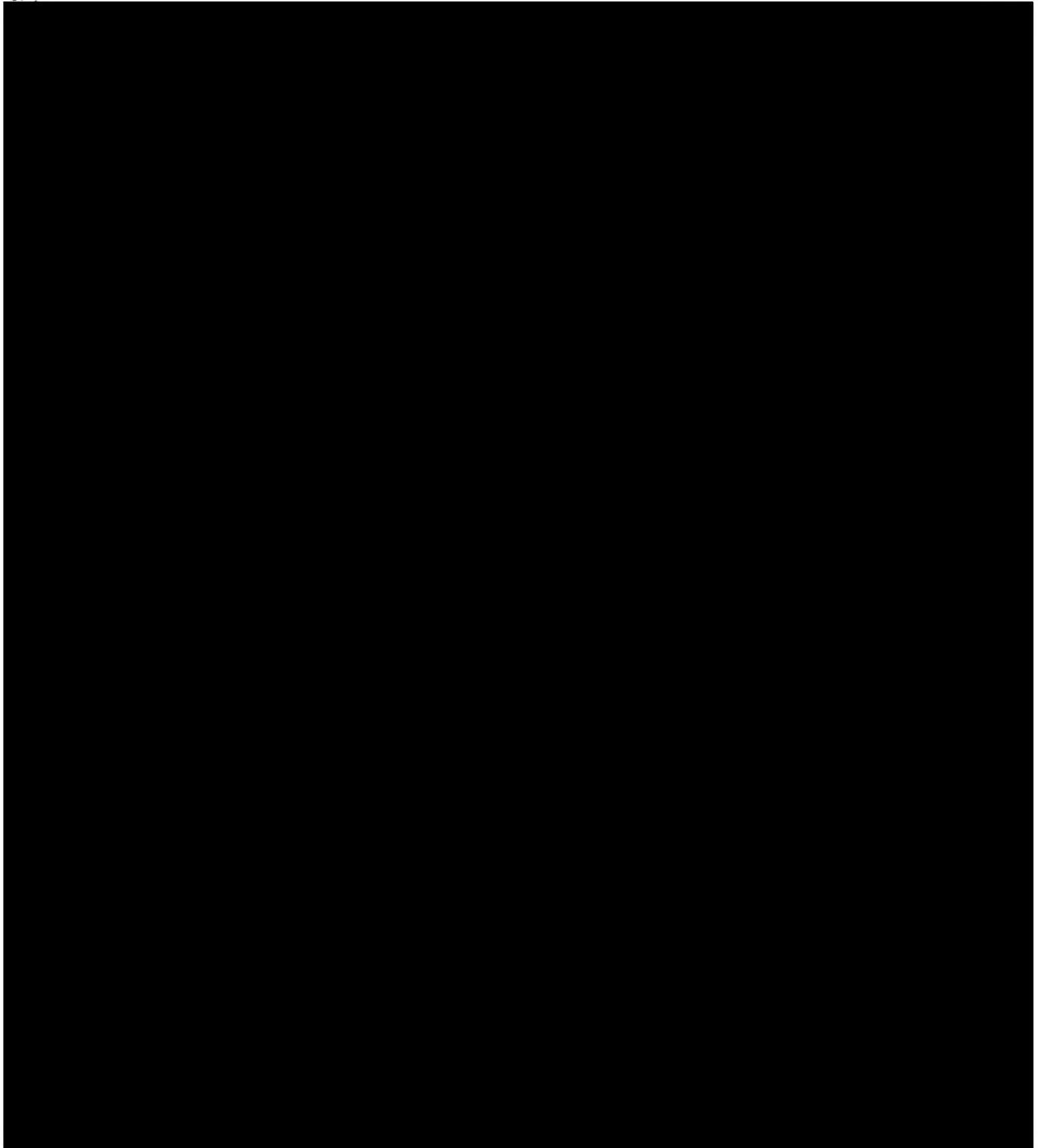
EXHIBIT 1 - FORM 45-106 F9

*Form for Individual Accredited Investors*

**WARNING!**

This investment is risky. Don't invest unless you can afford to lose all the money you pay for this investment.





Canada Revenue Agency  
Suite 10, 9700 Jasper Avenue NW  
Edmonton, Alberta  
T5J 4C8

Via Fax: 780-495-6908

Attention: Pamela Tribiger

Re: Chomyn-Hunt Foundation  
BN: 837210111RR0001  
File No. 3045362  
Case No. 40621541

Please be advised we are the solicitors for Chomyn-Hunt Foundation and have been provided with your September 29, 2022 correspondence directed to the Foundation.

In specific, I have been asked to address the first noted area of non-compliance in your September 29, 2022 correspondence, the alleged failure to issue donation receipts in accordance with the Act. This failure is alleged in respect of \$250,000.00 donation made by Bert Jodoin to the Foundation on the 15<sup>th</sup> of March, 2016 for which a receipt was properly issued. A copy of the receipt is enclosed.

Parenthetically, I would note that there has been a previous audit of the Chomyn-Hunt Foundation commenced and the auditors at that time reviewed the circumstances surrounding the issue of the enclosed charitable donation receipt and were satisfied with its authenticity and propriety. It seems disingenuous to the writer that some 6 years after the transaction CRA would purport to challenge a series of events which has previously been accepted as legitimate.

In any event, as we apprehend the series of events, they are as follows:

- (a) In March of 2016, the Chomyn-Hunt Foundation determined that it would be advisable to invest in a U.S. entity [REDACTED] and [REDACTED]  
[REDACTED]
- (b) The Chomyn-Hunt Foundation did not have available funds in order to make those investments;

- (c) Bert Jodoin agreed to make available to the Chomyn-Hunt Foundation funds necessary to permit the Foundation to make those investments. We understand that the approximate amount that was intended to be invested would aggregate the sum of \$1,400,000.00;
- (d) Bert Jodoin agreed to advance up to \$1,400,000.00 to Chomyn-Hunt Foundation to permit it to make investments in [REDACTED] The provision of those funds became an obligation due and payable by Chomyn-Hunt Foundation to Bert Jodoin;
- (e) To account for the fact that the funds being made available by Bert Jodoin would not be deposited into the bank account of the Chomyn-Hunt Foundation, Mr. Jodoin executed a Trust Declaration regarding those funds;
- (f) Over the course of time between March 15, 2016 and September 9, 2016 investments in [REDACTED] aggregating \$1,306,830.00 were made. Those investments were clearly for the account of and the property of Chomyn-Hunt Foundation notwithstanding the fact that Mr. Jodoin provided the funds for that purpose. The Trust Declaration was executed concurrently with the advance of funds by Bert Jodoin;
- (h) Additionally, on the 15<sup>th</sup> of March, 2016, Bert Jodoin made a donation to the Chomyn-Hunt Foundation in the amount of \$250,000.00 in the aggregate. He was provided with a receipt, a copy of which is enclosed with this correspondence;
- (i) The Chomyn-Hunt Foundation then repaid to Bert Jodoin, the sum of \$250,000.00 in partial satisfaction of the obligation for which the Foundation was responsible in respect of the money provided by Bert Jodoin to permit the Foundation to make the investment in [REDACTED]

Based upon the foregoing, we are satisfied that the charitable donation receipt issued to Mr. Jodoin was properly issued in respect of a valid donation made by him to the Chomyn-Hunt Foundation and consequently the alleged area or non-compliance in this regard referred to in your September 29, 2022 correspondence cannot be maintained.

We trust the foregoing is in order. If you have any questions or concerns please do not hesitate to contact the writer.

Yours truly,

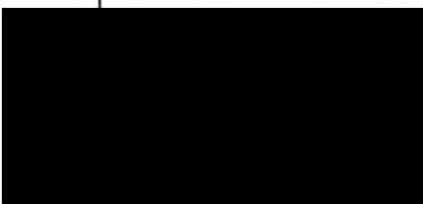
**Official Donation Receipt for Income Tax Purposes**

Chomyn-Hunt Foundation  
Suite 1165  
5328 Calgary Trail NW  
Edmonton, Alberta  
T6H 4J8

Charity BN/Registration #83721 0111 RR0001

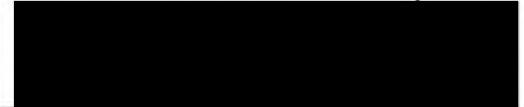
Receipt 

Donations received: March 15, 2016

Donated by:  


Eligible amount of gift for tax purposes: \$250,000.00

Location issued: Edmonton, Alberta

Date of receipt issued: March 15, 2016  


Authorized signature:

For information on all registered charities in Canada under the Income Tax Act please visit:

Canada Revenue Agency [www.cra.gc.ca/charities](http://www.cra.gc.ca/charities)

DEMAND PROMISSORY NOTE

DATE: March 15, 2016

FOR VALUE RECEIVED, CHOMYN-HUNT FOUNDATION promises to pay to BERT  
JODOIN the amount of ONE MILLION FOUR HUNDRED THOUSAND--XX/100  
(\$1,400,000.00) DOLLARS without interest on Demand.

THE UNDERSIGNED HEREBY WAIVES PRESENTMENT, NOTICE OF  
PROTEST AND DISHONOUR.

CHOMYN-HUNT FOUNDATION

Per: [REDACTED]

TRUST DECLARATION

BERT JODOIN HEREBY ACKNOWLEDGES AND DECLARES that he holds the sum of ONE MILLION FOUR HUNDRED THOUSAND.....XX/100 (\$1,400,000.00) in trust for CHOMYN-HUNT FOUNDATION.

DATED at the City of Edmonton, in the Province of Alberta as of the 15<sup>th</sup> day of March, 2016.

[REDACTED]  
WITNESS

[REDACTED]  
BERT JODOIN

# CHOMYN-HUNT FOUNDATION

3923 – 116 Street NW  
Edmonton, AB T6J 1R5  
(780) 953-6291

## **REGISTERED MAIL**

January 15, 2023

Charities Directorate  
Canada Revenue Agency  
Edmonton Tax Service Office  
Suite 10, 9700 Jasper Avenue NW  
Edmonton, AB T5J 4C8

Attention: Pamela Tribiger  
Audit Division

Subject: Audit of Chomyn-Hunt Foundation  
BN: 837210111RR0001  
File number: 3045362  
Case number: [REDACTED]

In your letter dated September 29, 2022 (Exhibit "A") you outlined five (5) Areas of Non-Compliance regarding the Chomyn-Hunt Foundation ("Foundation") that you wanted the Foundation to address and to respond. Due to the size of your CRA letter (31 pages + attachments), the time for the Foundation to respond was extended to January 15, 2023. Since January 15, 2023 is a Sunday, the Foundation letter and its Exhibits will be sent to you by registered mail on Monday January 16, 2023, and its tracking number will be telephoned to you.

I appreciated that you telephoned me on the morning of Friday January 13, 2023 to clarify and to discuss audit matters to be included the Foundation response letter. The audit matters discussed are:

1. You confirmed that you had received a legal letter [REDACTED] dated January 12, 2023 on behalf of the Foundation to address your first Area of Non-Compliance in your letter dated September 29, 2022, the alleged failure to issue donation receipts in accordance with the Act.
2. I confirmed that I had attempted several times to fax my letter dated January 12, 2023 to you that stated that the legal firm [REDACTED] had been retained to address the first noted Area on Non-Compliance in your September 29, 2023 letter, the alleged failure to issue donation receipts in accordance with the Act, and that they would send you their legal letter directly to you. I also confirmed that I would send you a letter discussing the other four (4) Areas of Non-Compliance. (Exhibit "B")
3. I stated that I thought that the first Area of Non-Compliance was the most important, that the other four (4) Areas of Non-Compliance were of lesser importance and that I intended to keep my comments very brief (a few sentences for each) since I believe that these other four (4) Areas of Non-Compliance were also inapplicable.
4. You informed me that you needed more details and exhibits for these four (4) Areas of Non-Compliance than the minimum that I suggested and I will therefore do so.
5. I also stated that I intended to include a few partial exhibits and that you could access the full texts of these partial exhibits at your Edmonton CRA Office. This would have saved me preparing 100s of pages of exhibits. You informed me that you do not have the authority to access other foundation files at your Edmonton CRA Office so that I would have to provide all the exhibits in full. I therefore will do so.

The relevant facts are:

1. On September 17, 2018, Jason Letkemann, the original CRA auditor, sent a letter to me, a Director of the Foundation, outlining the information that he required to be available for a meeting on October 10, 2018 for the charity audit period from January 1, 2016 to December 31, 2017.
2. On October 10, 2018, I met with Mr. Jason Letkemann at the accounting office [REDACTED] provided him with a package of all the Foundation incorporation documents, copies of the Foundation Minute Book, and copies of the Foundation Financial Statements for December 31, 2016 and December 31, 2017, the Foundation accounting records and bank statements for the charity audit period from January 1, 2016 to December 31, 2017.

On October 10, 2018, after he reviewed all this Foundation information and I after I had answered all his questions, and since there were only 6 major transactions during the audit period (refer to paragraph 5 below), I believed that he had enough information and understanding to complete his audit file. Consequently, I did not expect any follow up letter with any Area(s) of Non-Compliance from either him or Francis Yu, his Team Leader.

[REDACTED]

At this meeting on October 10, 2018, I was impressed with Mr. Jason Letkemann (to his credit) asked me face to face a difficult question, namely, what I thought about the CRA (Ottawa) definition of me as an "*Ineligible individual*" in 2016. I said at that time that CRA (Ottawa) "botched" it and that I was never in fact an "*Ineligible individual*".

3. On September 14, 2018, I met Mr. Francis Yu, Team Leader, [REDACTED] and had the opportunity to explain the evidence supporting the exponential growth of the fair market value ("FMV") of the shares [REDACTED] from \$22.50 per [REDACTED] share to \$35.00 per [REDACTED] share. On February 13, 2019,

I provided [REDACTED] a letter that provided evidence supporting the FMVs based on multiple sales of [REDACTED] shares for cash with third party independent parties which the investment community refers to as the *"gold standard.* [REDACTED]

[REDACTED] (Exhibit "D"). This FMV evidence is Court quality documentation.

4.

[REDACTED] provided Francis Yu with three (3) letters with attachments as follows:

i)

letter #1

[REDACTED]  
(Exhibit "D")

ii)

letter #2

[REDACTED] ("Exhibit  
"F")

iii)

letter #3

[REDACTED]  
(Exhibit "G").

These three (3) [REDACTED] letters are Court quality documents.

5. During the audit period from January 1, 2016 to December 31, 2017, there were only six (6) major transactions:

i)

Purchase of

[REDACTED]  
and

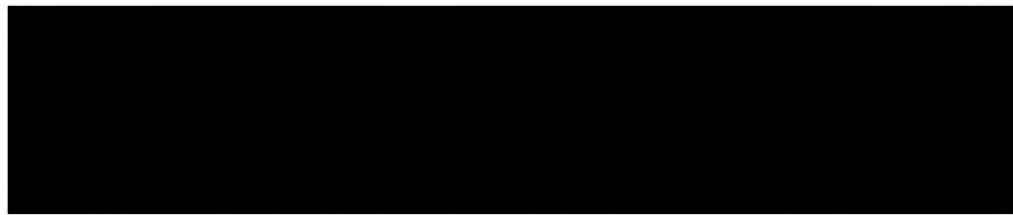
(in the 6 months from March 15, 2016  
to September 9, 2016)

1,306,830

- ii) Loss on sale of [REDACTED] and [REDACTED] (324,989)
- iii) Accepted and receipted 2 Charitable Donations [REDACTED] (\$250,000 (2016) + \$6,000 (2017) = \$256,000) 256,000
- iv) Payment to Bert Jodoin (based on the legal right of Set-off) – March 16, 2016 250,000
- v) Interest earned and foreign exchange profits from [REDACTED] and [REDACTED] [REDACTED]  $[(\$66,558 + \$60,044 = \$126,602 \text{ (interest)}) \text{ plus foreign exchange profits from the sale of }]$  [REDACTED] and [REDACTED] [REDACTED] 153,305
- vi) Gifts to Qualified Donees 5,600

6.

prepared the Journal Entries, the Schedules, the Financial Statements, the Distribution Quota calculations for the audit period from January 1, 2016 to December 31, 2017. [REDACTED] also prepared the same for 2018, 2019 and 2020.



8. Since December 31, 2017 to December 31, 2021, there was only one (1) major transaction to 2 Gifts to Qualified Donees in the amount of 13,203 (\$8,793 (2019) and \$4,410 (2020) = \$13,203)

The Foundation's responses to your five (5) Areas of Non-Compliance follow:

1. **Failed to issue donation receipts in accordance with the Act and Regulations**

The Foundation's accounting and Financial Statements were based on financial information from two (2) bank accounts:

- i) Bank account #1 – the Foundation's bank account
- ii) Bank account #2 – Bert Jodoin's bank account

More funds flowed through Bank account #2 (Bert Jodoin's bank account) on behalf of the Foundation than Bank account #1 (the Foundation's bank account).

On March 15, 2016, when I prepared and signed the Foundation Charitable Donation receipt [REDACTED] dated March 15, 2016 [REDACTED] it was based on [REDACTED] Credit Advice of \$250,000 (Exhibit "H")

Then, the Foundation made a payment of \$250,000 Bert Jodoin based on the legal principle of the right of set-off. I did see a gift and loan back situation.

Other indicators that the payment of \$250,000 to Bert Jodoin was based on the legal principle of the right of set-off, and not a gift and loan back situation follow:

- (i) Jason Letkemann, and Francis Yu, his Team Leader, andalso did not see a gift and loan back situation.
- (ii) Bert Jodoin funded the Foundation with \$1,556,830 (\$1,306,830 + \$250,000 (gift) = \$1,556,830) in the 6 months from March 15, 2016 to September 9, 2016; consequently, it is impossible for a gift and loan back situation when the Foundation owed Bert Jodoin over \$1,000,000.
- (iii) Bert Jodoin could have claimed another 2016 charitable donation of \$990,544 based on the Foundation's Loan Payable to Bert Jodoin of \$990,544 on December 31, 2016, if he had wanted.

The legal letter dated January 12, 2023 [REDACTED] (Exhibit "C") is important since it confirmed that the charitable donation receipt issued to Bert Jodoin was properly issued. This legal letter is also important since it outlines the legal principles and the legal documentation that a Judge would expect if this case ever went Court.

2. **Failed to devote resources to charitable activities carried on by the Foundation itself: Fiduciary Duty**

On January 11, 2023, the [REDACTED] held a meeting and resolved that the Foundation's President Job Description is and has always been as described in the Resolution. This provided the President with the authority to buy and sell investments as he only decides.

Also, review the Exhibits "D", "E", "F" and "G" that effect this Area of Non-Compliance.

3. **Failed to meet the disbursement quota**

The Foundation's Distribution Quota Calculations were correct as filed. The Foundation's Distribution Quota calculations for the charity audit period from January 1, 2016 to December 31, 2017, were prepared by [REDACTED]

As at December 31, 2021, the Foundation has a surplus Distribution Quota of \$339. (Exhibit "K")

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

During the charity audit period from January 1, 2016 to December 31, 2016 there were only 6 major transactions (Paragraph 5 above) and for the period from January 1, 2018 to December 31, 2021 there was only one (1) major transaction, the payment of 2 Distribution Quota payments of \$13,203 (\$8,793 (2019) and \$4,410 (2020) = \$13,203). (Exhibit "K")

[REDACTED] prepared the Journal Entries, and appropriate schedules, based on generally accepted accounting principles. All transactions were based on the Foundation's bank accounts.

I reviewed all the Foundation's final financial documentation and was satisfied that they were correct. I believe that a Judge would consider that 2 Chartered Accountants preparing and reviewing 6 transactions over 2 years would get it right.

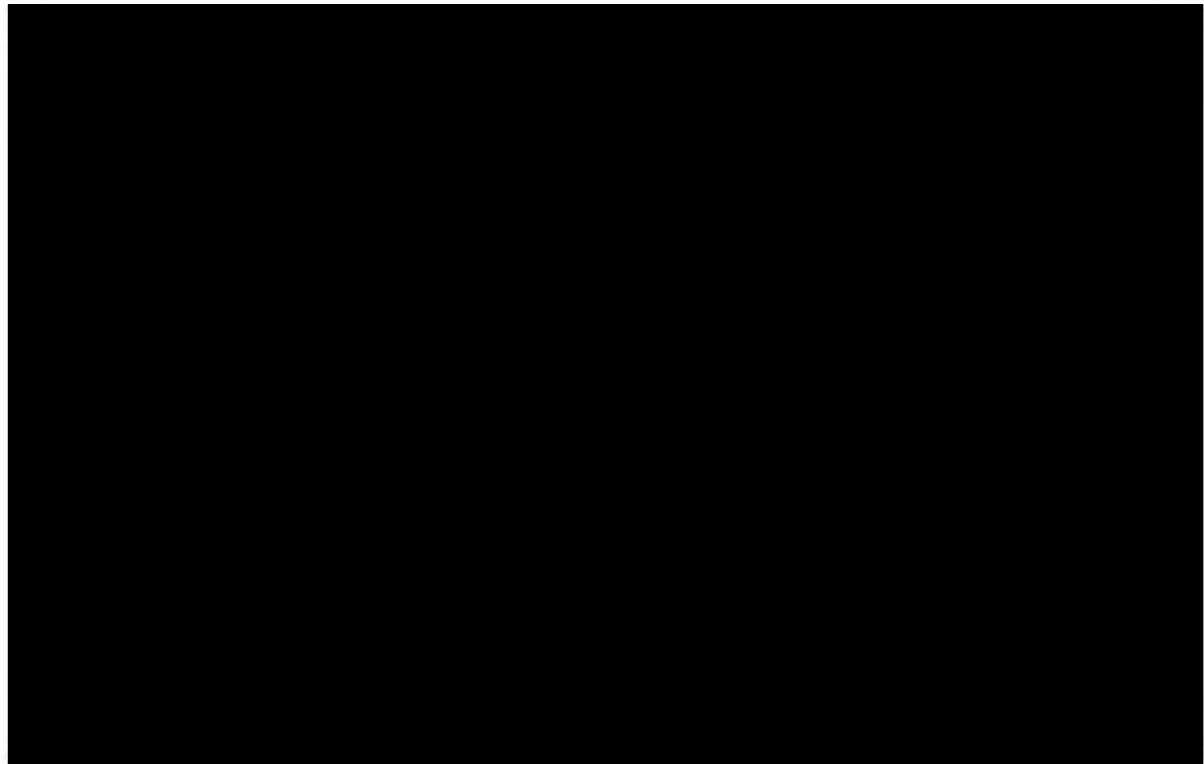
On January 11, 2023, the [REDACTED] held a meeting and resolved that the Foundation's President Job Description is and has always been as described in the Resolution. This provided the President with the authority to buy and sell investments as he only decides.

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

[REDACTED] Attached is a CRA letter dated September 21, 2022 for the Foundation fiscal period ending December 31, 2021 re: Confirmation of annual information return filing. (Exhibit "L") confirming that the Foundation is current in its filings.

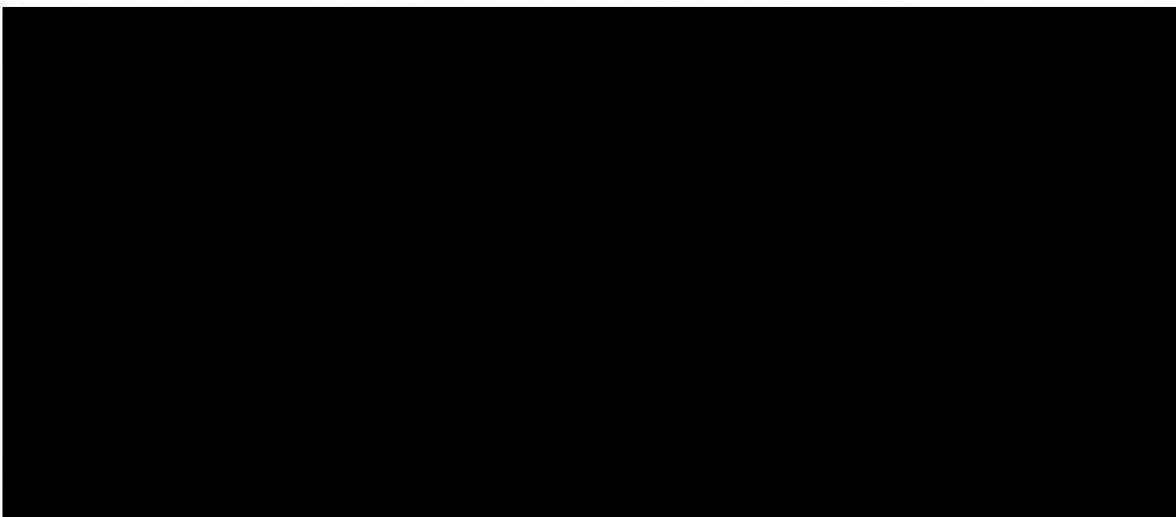
**Ineligible Individual (page 29 of your letter) – your comments were important**

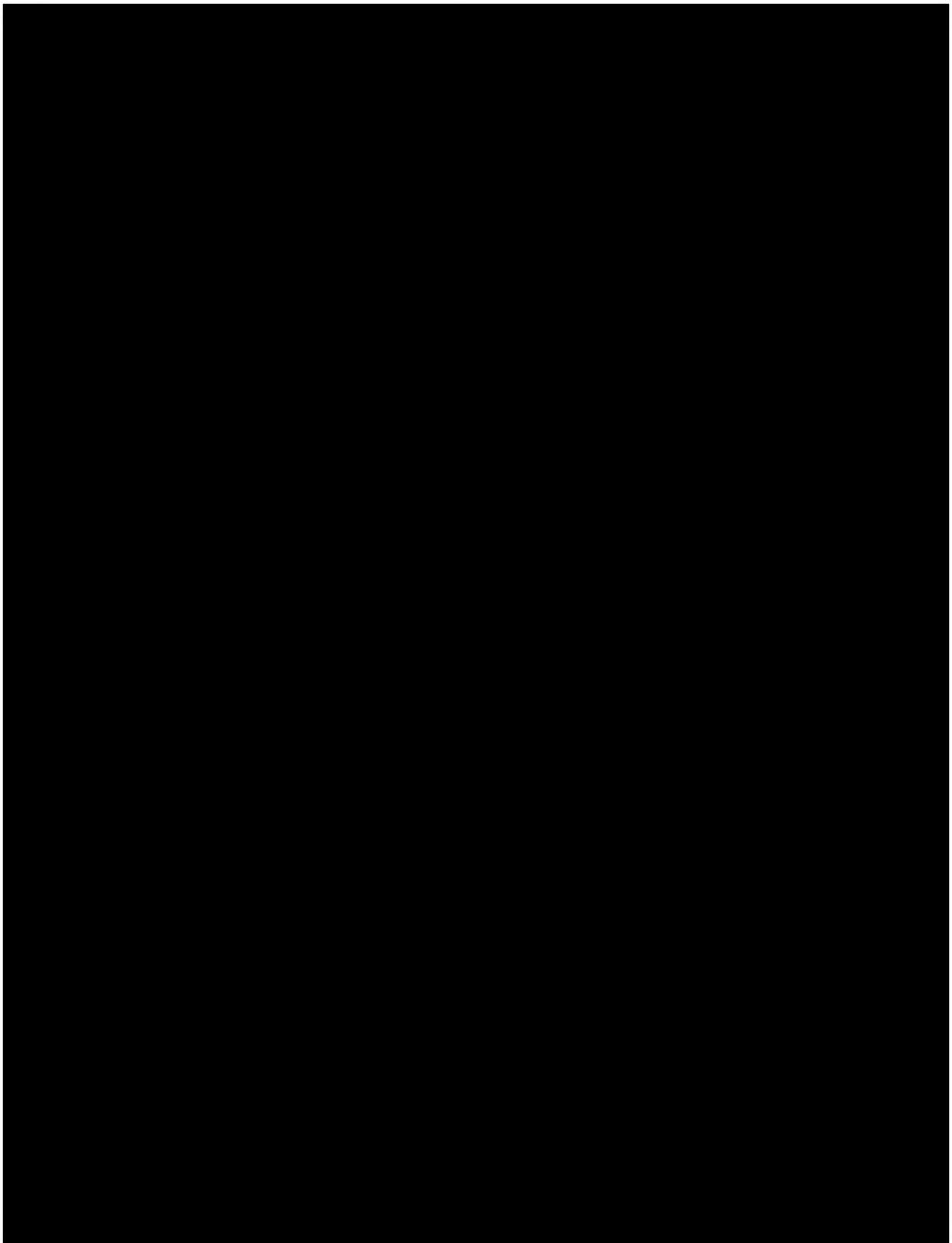
As stated above, at the meeting dated October 10, 2018, when Jason Letkemann asked me about the CRA (Ottawa) interpretation of me on July 26, 2018 as an "Ineligible individual" in 2016, I stated that CRA (Ottawa) "botched" it. I never was in fact an "Ineligible individual".



My understanding of the Rule of Law and Due Legal Process is that CRA's "*Ministerial Discretion*" is not absolute but is subject to the following:

- Facts
- Principle of fairness
- Appeals to CRA Appeals and to the Federal Court of Canada.





## CONCLUSIONS

I appreciate that it was difficult for you to pick up a 4 year old audit file and try to make sense of it. You were basing your comments in your letter dated September 29, 2022 on what was on the CRA file at your office. You did not have the benefit of reviewing your facts with Jason Letkemann or with Francis Yu, the Team Leader, [REDACTED]

[REDACTED] You also did not have the first hand knowledge of attending my meeting with Jason Letkemann on October 10, 2018 or my meeting with Francis Yu, Team Leader, on September 14, 2018 [REDACTED]

[REDACTED] Francis Yu was the Team Leader for [REDACTED] the Foundation's audit [REDACTED] You also did not know that Francis Yu had been provided with the four (4) Court quality letters [REDACTED] regarding the FMV of [REDACTED] shares which is 1 of 2 investments purchased by the Foundation [REDACTED]

[REDACTED] You also did not know that your CRA file was materially deficient (Exhibits "D", "E", "F", and "G").

To keep my responses simple for the five (5) Areas of Non-Compliance, I have focused on evidence that a Court would need and expect for each of them if it ever went to Court. [REDACTED]

I believe that both Jason Letkemann and Francis Yu, the Team Leader, were correct in not issuing a CRA letter in 2018 or 2019 with any Areas of Non-Compliance. If there had been any Area of Non-Compliance issue such as regarding the Foundation's sole investment, the [REDACTED] shares, and its FMV, then, Francis Yu would have issued an Area of Non-Compliance in 2018 or 2019.

Update on the Foundation's sole investment, 10,000 [REDACTED] shares. The

FMV of [REDACTED] shares was and is based on its two (2) Patents – its Canada Patent and its U.S. Patent which are both current and valid. [REDACTED]

[REDACTED] Based on the potential FMV [REDACTED] (Exhibit "G") the Foundation's 10,000 [REDACTED] shares (adjusted cost base of \$350,000 (10,000 [REDACTED] shares @ \$35 = \$350,000) would still has the potential FMV of \$5,000,000 (10,000 [REDACTED] shares at \$500 per share) based on [REDACTED] (Exhibit "G")

In summary, I believe that the five (5) Areas of Non-Compliance outlined in your letter dated September 29, 2022 are inapplicable in this case.

If I can provide you with any further information, please let me know.

Yours truly

[REDACTED]  
Robert I. Tennant  
Director

cc      Crystal Scott  
          Team Leader

# CHOMYN-HUNT FOUNDATION ("Foundation")

## LIST OF EXHIBITS

15-Jan-23

1. Exhibit "A" - CRA (Edmonton) letter dated September 29, 2022 to the Foundation
2. Exhibit "B" - Foundation Fax dated January 12, 2023 to CRA (Edmonton)
3. Exhibit "C" - [REDACTED] letter dated January 12, 2023 to CRA (Edmonton)
4. Exhibit "D" [REDACTED]  
[REDACTED] Gold Standard FMV for Francis Yu, Team Leader
5. Exhibit "E" [REDACTED] letter #1 [REDACTED]
6. Exhibit "F" [REDACTED] letter #2 [REDACTED]
7. Exhibit "G" [REDACTED] letter #3 [REDACTED]
8. Exhibit "H" - Foundation Charitable Donation Receipt [REDACTED] dated March 15, 2016 for \$250,000 [REDACTED]
9. Exhibit "I" - Minutes of a Meeting of the Foundation Board of Directors dated January 11, 2023
10. Exhibit "J" - BNA Act – subsection 92(7) – Exclusive Powers of Provincial Legislatures, the Province of Alberta has the exclusive jurisdiction to Charities

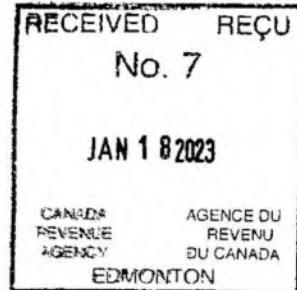
11. Exhibit "K" - Foundation Schedule of Distribution Quota and Payments to Qualified Donees for the period from January 1, 2016 to December 31, 2021
12. Exhibit "L" - CRA letter dated September 21, 2022 – Re: Confirmation of annual information return filing for the Fiscal Period Ending December 31, 2021.

# CHOMYN-HUNT FOUNDATION

3923 – 116 Street NW  
Edmonton, AB T6J 1R5  
(780) 953-6291

January 18, 2023

Charities Directorate  
Canada Revenue Agency  
Edmonton Tax Service Office  
Suite 10, 9700 Jasper Avenue NW  
Edmonton, AB T5J 4C8



Attention: Pamela Tribiger  
Audit Division

Subject: Audit of Chomyn-Hunt Foundation  
BN: 837210111RR0001  
File number: 3045362  
Case number: [REDACTED]

This morning I reviewed my letter dated January 15, 2023 to you. I found one (1) major error on page 7 which should have stated "*I did not see a gift and loan back situation.*" What page 7 incorrectly stated was "*I did see a gift and loan back situation*". Would you please replace this incorrect page 7 with the corrected page 7. (attached)

Also, would ensure that Crystal Scott, your Team Leader, replaces the incorrect page 7 with the corrected page 7 in her duplicate copy of my letter dated January 15, 2023 to you.

Also, during my review this morning, I noted a few typo and other errors in my letter dated January 15, 2023 to you but I do not think that they are material and therefore not worth changing.

Yours truly

A large black rectangular redaction box covering the signature of Robert I. Tennant.

Robert I. Tennant  
Director

cc Crystal Scott  
Team Leader

Then, the Foundation made a payment of \$250,000 Bert Jodoin based on the legal principle of the right of set-off. I did not see a gift and loan back situation.

Other indicators that the payment of \$250,000 to Bert Jodoin was based on the legal principle of the right of set-off, and not a gift and loan back situation follow:

- (i) Jason Letkemann, and Francis Yu, his Team Leader, and [REDACTED]  
[REDACTED], also did not see a gift and loan back situation.
- (ii) Bert Jodoin funded the Foundation with \$1,556,830 (\$1,306,830 + \$250,000 (gift) = \$1,556,830) in the 6 months from March 15, 2016 to September 9, 2016; consequently, it is impossible for a gift and loan back situation when the Foundation owed Bert Jodoin over \$1,000,000.
- (iii) Bert Jodoin could have claimed another 2016 charitable donation of \$990,544 based on the Foundation's Loan Payable to Bert Jodoin of \$990,544 on December 31, 2016, if he had wanted.

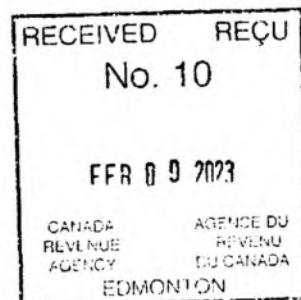
The legal letter dated January 12, 2023 [REDACTED] (Exhibit "C") is important since it confirmed that the charitable donation receipt issued to Bert Jodoin was properly issued. This legal letter is also important since it outlines the legal principles and the legal documentation that a Judge would expect if this case ever went Court.

# CHOMYN-HUNT FOUNDATION

3923 – 116 Street NW  
Edmonton, AB T6J 1R5  
(780) 953-6291

February 8, 2023

Charities Directorate  
Canada Revenue Agency  
Edmonton Tax Service Office  
Suite 10, 9700 Jasper Avenue NW  
Edmonton, AB T5J 4C8



Attention: Pamela Tribiger  
Audit Division

Subject: Audit of Chomyn-Hunt Foundation  
BN: 837210111RR0001  
File number: 3045362  
Case number: [REDACTED]

Further to your request, attached please my comments regarding the Chomyn-Hunt Foundation ("Foundation") Distribution Quota ("DQ") calculations and DQ payments for the audit period from January 1, 2016 to December 31, 2017, and also for the period from January 1, 2018 to December 31, 2021 that resulted in Excess Payments to Qualified Donees to carry forward to December 31, 2022 of \$339 (EXHIBIT "C").

1. I have reviewed all the Foundation's information for its fiscal year end of December 31, 2016 – EXHIBIT "A" [Note on page 10 of the T3010 – Registered Charity Information Return the Foundation disclosed on Line 5910 \* The 24 months before the end of the fiscal period the amount is \$158,143 – the 2017 Distribution Quota payment would be \$5,535]

2. I have reviewed all the Foundation's information for its fiscal year end of December 31, 2017 – **EXHIBIT "B"** [Note on page 10 on the T3010 – Registered Charity Information Return the Foundation disclosed on Line 5910 \* The 24 months before the end of the fiscal period the amount is \$188,381 – the 2018 Distribution Quota payment would be \$6,593]
3. I have reviewed my letter to you dated January 15, 2023 – Exhibit "K" – entitled "*Foundation Schedule of Distribution Quota and Payments to Qualified Donees for the period from January 1, 2016 to December 31, 2021*" – **EXHIBIT "C"** [Note - Excess of Payments to Qualified Donees to carry forward to December 31, 2022 of \$339]
4. I have reviewed the following Sections and Regulations of the Income Tax Act, **EXHIBIT "D"**:
  - 149.1(3)(b) and 168(1)(b) [page 2 of your letter dated September 29, 2022 – Area of Non-Compliance – Failed to meet the disbursement quota]
  - Regulations 3700 – Registered Charities
  - Regulations 3701 – Distribution Quota
  - Regulation 3702 – Determination of Value
5. I have reviewed your CRA letter dated September 29, 2022, pages 1 &2, and pages 19 to 23 – **EXHIBIT "E"**

At the bottom of page 21 of your letter dated September 29, 2022, your reference 43 states:

*"It should also be noted that in an email from Robert Tennant to [REDACTED] [REDACTED] (bookkeeper), Mr. Tennant stated that "Bert's loan of \$350,000 to the Foundation also reduces the Foundation's assets and thereby reduces the*

2017's distribution quota". Please note that the distribution quota (DQ) calculation is based on the gross value of all property not used in charitable activities. Accordingly the full amount of the investment in [REDACTED] shares of (\$350,000) has been included in our calculations of the DQ, and we have not factored the associated loan into the calculation."

The only difference between the Foundation DQ Calculations of \$5,535 for 2017 as filed and your DQ Calculation of \$27,244.54 for 2017 is that your calculation is based on the gross value of the property and not the net value of the property after the offset of the investment loan.

## 6. Canadian Law – The Law of Equity – EXHIBIT “F”

I have reviewed the law of equity which also applies to Canadian Law.

### “Wikipedia – What is the law of equity in Canada?

*The law of equity is as important in Canadian law as statute law and common law. It operates to provide equitable relief when there is a recognizable right but no remedy under the common law. The law of equity has developed over centuries to provide equitable doctrines and equitable maxims.”*

### Regulation 3702(1)(b)(iii) – Determination of Value states:

*“(iii) an interest in real estate or a real right in an immovable, the fair market value on that date of the interest or right less the amount of any debt of the registered charity incurred in respect of the acquisition of the interest or right and secured by the interest or right, where the debt bears a reasonable rate of interest”*

Consequently under the current statute law, only real estate can be offset by debt. All other property do not have this same right of offset and thereby fails to be fair or equitable under the law of equity.

If the Foundation is not allowed to offset its investment loan against the fair market value of the investment under current statute law, then the Foundation would be forced to make an UNEQUITABLE EXTRA DQ payment that would result in an additional DQ payment that is simply not fair or equitable. In simply terms, a specific investment loan should be allowed to offset the fair market value of the investment. I am referring to a specific investment loan and not a general loan for working capital but a specific investment loan.

To remedy this unfair and inequitable tax treatment, on January 7, 2023 the Foundation filed six (6) Forms 1240 – Registered Charity Adjustment Requests for the period from January 1, 2016 to December 31, 2021 [EXHIBIT “G”] that offset the investment loan against the fair market value of the investment for each year. By doing this, the Foundation immediately eliminated the UNEQUITABLE EXTRA DQ payments for the years from January 1, 2016 to December 31, 2021.

### CONCLUSIONS

On February 7, 2023, when the Foundation filed six (6) Forms T1240 – Registered Charity Adjustment Requests for the period from January 1, 2016 to December 31, 2021 [EXHIBIT “G”], the Foundation accomplished two (2) important tax matters:

1. remedied the unfair and inequitable tax treatment based on the law of equity that prevented a Foundation from offsetting its specific investment loan against the fair market value of the investment, and
2. immediately eliminated the UNEQUITABLE EXTRA DQ payments for the years from January 1, 2016 to December 31, 2021 so that the Foundation will have exactly the same DQ Quota and DQ payments that it originally filed as outlined in EXHIBIT “C” [Excess of Payments of Qualified Donees carry forward to December 31, 2022 of \$339].

If you require any further information, please let me know.

Yours truly

Robert I. Tennant  
Director

cc      Crystal Scott  
Team Leader

cc

**CHOMYN-HUNT FOUNDATION (“Foundation”)**  
**LIST OF EXHIBITS**  
**08-Feb-23**

1. Exhibit “A” – Foundation’s information for its fiscal period year end of December 31, 2016
2. Exhibit “B” – Foundation’s information for its fiscal period year end of December 31, 2017
3. Exhibit “C” – Foundation’s Excess Payments to Qualified Donees to carry forward to December 31, 2022 of \$339
4. Exhibit “D” – Sections and Regulations of the Income Tax Act
5. Exhibit “E” – CRA letter dated September 29, 2022, pages 1 & 2, and pages 19 to 23
6. Exhibit “F” – Canadian Law – The Law of Equity (Wikipedia)
7. Exhibit “G” – Foundation’s letter and six (6) Forms T1240 – Registered Charity Adjustment Requests for the period from January 1, 2016 to December 31, 2021 filed by registered mail on February 7, 2023

**1. EXHIBIT "A"**

**Foundation's information for its fiscal period year end**  
**of December 31, 2016**

1. Foundation's Financial Statements for the year ended December 31, 2016 as filed (6 pages)
2. Foundation's T3010 – Registered Charity Information Return, pages 9 and 10 as filed (2 pages)
3. Foundation's Worksheet – Distribution Quota as filed (1 page)

**CHOMYN-HUNT FOUNDATION**  
**Financial Statements**  
**Year Ended December 31, 2016**  
*(Unaudited - See Notice To Reader)*

**CHOMYN-HUNT FOUNDATION**  
**Index to Financial Statements**  
**Year Ended December 31, 2016**  
*(Unaudited - See Notice To Reader)*

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	Page
<b>NOTICE TO READER</b>	<b>1</b>
<b>FINANCIAL STATEMENTS</b>	
Statement of Financial Position	2
Statement of Operations	3
Statement of Changes in Net Assets	4

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### **NOTICE TO READER**

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On the basis of information provided by management, I have compiled the statement of financial position of Chomyn-Hunt Foundation as at December 31, 2016 and the statements of operations and changes in net assets for the year then ended.

I have not performed an audit or a review engagement in respect of these financial statements and, accordingly, I express no assurance thereon.

Readers are cautioned that these statements may not be appropriate for their purposes.

CHOMYN-HUNT FOUNDATION  
Statement of Financial Position  
December 31, 2016  
(Unaudited - See Notice To Reader)

---

**ASSETS**

**CURRENT**

Cash

\$ 1

**LONG TERM INVESTMENT**

1,306,830

\$ 1,306,831

**LIABILITIES AND NET ASSETS**

**DUE TO MEMBERS**

\$ 207

**LOAN PAYABLE**

990,544

990,751

**NET ASSETS**

General fund

316,080

\$ 1,306,831

**CHOMYN-HUNT FOUNDATION**

**Statement of Operations**

**Year Ended December 31, 2016**

*(Unaudited - See Notice To Reader)*

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**REVENUES**

Charitable donations	\$ 250,000
Interest	<u>66,558</u>
	<b>316,558</b>

**EXPENDITURES**

Interest and bank charges	<b>478</b>
---------------------------	------------

**EXCESS OF REVENUES OVER EXPENDITURES**

\$ 316,080
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CHOMYN-HUNT FOUNDATION  
Statement of Changes in Net Assets  
Year Ended December 31, 2016  
(Unaudited - See Notice To Reader)

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	2016
<b>NET ASSETS - BEGINNING OF YEAR</b>	\$ -
Excess of revenues over expenditures	<u>316,080</u>
<b>NET ASSETS - END OF YEAR</b>	<u>\$ 316,080</u>

BN/registration number 837210111RR0001Fiscal period end 2016-12-31

## Detailed financial information

## Schedule 6

Fill out this schedule if any of the following applies to the charity:

(a) The charity's revenue exceeds \$100,000.  
 (b) The amount of all property (for example, investments, rental properties) not used in charitable activities is more than \$25,000.  
 (c) The charity has permission to accumulate funds during this fiscal period.

Was the financial information reported below prepared on an accrual or cash basis? ..... **4020**  Accrual  Cash

## Statement of financial position

Show all amounts to the nearest single Canadian dollar. Do not enter "see attached financial statements." All relevant fields must be filled out.

Assets:	Liabilities:	
Cash, bank accounts, and short-term investments	<b>4100</b>	\$
Amounts receivable from non-arm's length persons	<b>4110</b>	\$
Amounts receivable from all others	<b>4120</b>	\$
Investments in non-arm's length persons	<b>4130</b>	\$
Long-term investments	<b>4140</b>	\$ 1,306,830
Inventories	<b>4150</b>	\$
Land and buildings in Canada	<b>4155</b>	\$
Other capital assets in Canada	<b>4160</b>	\$
Capital assets outside Canada	<b>4165</b>	\$
Accumulated amortization of capital assets	<b>4166</b>	\$
Other assets	<b>4170</b>	\$
10 year gifts	<b>4180</b>	\$
Total assets (add lines 4100 to 4170)	<b>4200</b>	\$ 1,306,831
1 Accounts payable and accrued liabilities	<b>4300</b>	\$
Deferred revenue	<b>4310</b>	\$
Amounts owing to non-arm's length persons	<b>4320</b>	\$ 990,751
Other liabilities	<b>4330</b>	\$
Total liabilities (add lines 4300 to 4330)	<b>4350</b>	\$ 990,751
Amount included in lines 4150, 4155, 4160, 4165 and 4170 not used in charitable activities	<b>4250</b>	\$

## Statement of operations

## Revenue:

Total eligible amount of all gifts for which the charity issued tax receipts	<b>4500</b>	\$ 250,000
Total eligible amount of tax-receipted tuition fees	<b>5610</b>	\$
Total amount of 10 year gifts received	<b>4505</b>	\$
Total amount received from other registered charities	<b>4510</b>	\$
Total other gifts received for which a tax receipt was not issued by the charity (excluding amounts at lines 4575 and 4630)	<b>4530</b>	\$
Total revenue received from federal government	<b>4540</b>	\$
Total revenue received from provincial/territorial governments	<b>4550</b>	\$
Total revenue received from municipal/regional governments	<b>4560</b>	\$
Total tax-receipted revenue from all sources outside of Canada (government and non-government)	<b>4571</b>	\$
Total non tax-receipted revenue from all sources outside Canada (government and non-government)	<b>4575</b>	\$
Total interest and investment income received or earned	<b>4580</b>	\$ 66,558
Gross proceeds from disposition of assets	<b>4590</b>	\$
Net proceeds from disposition of assets (show a negative amount with brackets)	<b>4600</b>	\$
Gross income received from rental of land and/or buildings	<b>4610</b>	\$
Total non tax-receipted revenues received for memberships, dues and association fees	<b>4620</b>	\$
Total non tax-receipted revenue from fundraising	<b>4630</b>	\$
Total revenue from sale of goods and services (except to any level of government in Canada)	<b>4640</b>	\$
Other revenue not already included in the amounts above	<b>4650</b>	\$
Specify type(s) of revenue included in the amount reported at 4650	<b>4655</b>	\$
Total revenue (add lines 4500, 4510 to 4560, 4575, 4580, and 4600 to 4650)	<b>4700</b>	\$ 316,558

BN/registration number 837210111RR0001 Fiscal period end 2016-12-31

**Expenditures:**

Advertising and promotion	4800	\$
Travel and vehicle expenses	4810	\$
Interest and bank charges	4820	\$
Licences, memberships, and dues	4830	\$
Office supplies and expenses	4840	\$
Occupancy costs	4850	\$
Professional and consulting fees	4860	\$
Education and training for staff and volunteers	4870	\$
Total expenditure on all compensation (enter the amount reported at line 390 in Schedule 3, if applicable)	4880	\$
Fair market value of all donated goods used in charitable activities	4890	\$
Purchased supplies and assets	4891	\$
Amortization of capitalized assets	4900	\$
Research grants and scholarships as part of charitable activities	4910	\$
All other expenditures not included in the amounts above (excluding gifts to qualified donees)	4920	\$
Specify type(s) of expenditures included in the amount reported at 4920	4930	
Total expenditures before gifts to qualified donees (add lines 4800 to 4920)	4950	\$
		478

Of the amounts at lines 4950 and 5031 (reported at C5 Political Activities (c)):

(a) Total expenditures on charitable activities	5000	\$
(b) Total expenditures on management and administration	5010	\$
(c) Total expenditures on fundraising	5020	\$
(d) Total expenditures on political activities, inside or outside Canada, from question C5 (b)	5030	\$
(e) Total other expenditures included in line 4950	5040	\$
Total amount of gifts made to all qualified donees	5050	\$
Total expenditures (add lines 4950 and 5050)	5100	\$
		478

**Other financial information**

**Permission to accumulate property:**

Only registered charities that have written permission to accumulate should complete this section.

- Enter the amount accumulated for the fiscal period, including income earned on accumulated funds
- Enter the amount disbursed for the fiscal period for the specified purpose

5500	\$
5510	\$

**Permission to reduce disbursement quota:**

If the charity has received approval to make a reduction to its disbursement quota, enter the amount for the fiscal period

5750	\$
------	----

**Property not used in charitable activities:**

Enter the value of property not used for charitable activities or administration during:

- The 24 months before the beginning of the fiscal period
- The 24 months before the end of the fiscal period

5900	\$
5910	\$

158,143

## Worksheet – Disbursement Quota

The following worksheet is provided to help a charity with a fiscal period ending on or after March 4, 2010, determine if it has met its disbursement quota for the fiscal period, estimate its disbursement quota for the next fiscal period and track its excesses and shortfalls. The worksheet is provided for your use only. Do not file this worksheet with your information return.

### Calculating the disbursement quota requirement for the fiscal period covered by the return

Average value of property not used for charitable activities or administration (line 5900) – If the amount entered at line 5900 is \$25,000 or less for private and public foundations or \$100,000 for charitable organizations, enter "0"

Number of days in the fiscal period	x	366	1
Multiply line 1 by line 2 and divide by 365	=		2
Multiply line 3 by line 4.	x	3.50 %	3
Disbursement quota requirement for the fiscal period – Subtotal	=		4
Additional disbursement quota requirement: Gift of property received (other than a designated gift) from another registered charity with it was not dealing at arm's length during the previous fiscal period	+		5
Add lines 5 and 6.			6
Total disbursement quota requirement	=		7

### Calculating whether the registered charity met its disbursement quota requirement

Amount spent on charitable programs (line 5000)			8
Gifts to qualified donees excluding designated gifts (line 5050)	+		9
Special reduction amount for the fiscal period (line 5750)	+		10
Add lines 8 to 10.			
Total expenditures for the fiscal period	=		11
Disbursement quota requirement from line 7			12
Total expenditures from line 11 above	-		13
Line 12 minus line 13.			
Disbursement quota excess or shortfall*	=		14

\* Excess is a negative amount and shortfall is a positive amount.

### Keeping track of disbursement excesses

Fiscal Period Ending	Available for carry-forward at end of last fiscal period	Minus amount applied to current shortfall*	Available for carry-forward to next fiscal period
2011 (5 years ago)	\$	\$	\$
2012 (4 years ago)	\$	\$	\$
2013 (3 years ago)	\$	\$	\$
2014 (2 years ago)	\$	\$	\$
2015 (1 year ago)	\$	\$	\$
Net disbursement excess from this fiscal period			\$
Total available for carry-forward			\$

\* When covering shortfalls, use available excesses chronologically, starting with the earliest year (5 years ago).

### Estimating the disbursement quota requirement for the next fiscal period

Average value of property not used for charitable activities or administration (line 5910) – If the amount entered at line 5910 is \$25,000 or less for private and public foundations or \$100,000 for charitable organizations, enter "0"

Number of days in the fiscal period	x	365	15
Multiply line 15 by line 16 and divide by 365	=	158,143.00	17
Multiply line 17 by line 18.	x	3.50 %	18
Estimated disbursement quota requirement for the next fiscal period	=	5,535.01	19

**2. EXHIBIT “B”**

**Foundation's information for its fiscal period year end**  
**of December 31, 2017**

1. Foundation's Financial Statements for the year ended December 31, 2017 as filed (6 pages)
2. Foundation's T3010 – Registered Charity Information Return, pages 9 and 10 as filed (2 pages)
3. Foundation's Worksheet – Distribution Quota as filed (1 page)

**CHOMYN-HUNT FOUNDATION**  
**Financial Statements**  
**Year Ended December 31, 2017**  
*(Unaudited - See Notice To Reader)*

**CHOMYN-HUNT FOUNDATION**  
**Index to Financial Statements**  
**Year Ended December 31, 2017**  
**(Unaudited - See Notice To Reader)**

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	Page
<b>NOTICE TO READER</b>	<b>1</b>
<b>FINANCIAL STATEMENTS</b>	
Statement of Financial Position	2
Statement of Operations	3
Statement of Changes in Net Assets	4

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### **NOTICE TO READER**

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On the basis of information provided by management, I have compiled the statement of financial position of Chomyn-Hunt Foundation as at December 31, 2017 and the statements of operations and changes in net assets for the year then ended.

I have not performed an audit or a review engagement in respect of these financial statements and, accordingly, I express no assurance thereon.

Readers are cautioned that these statements may not be appropriate for their purposes.

**CHOMYN-HUNT FOUNDATION**  
**Statement of Financial Position**  
**December 31, 2017**  
*(Unaudited - See Notice To Reader)*

	<b>2017</b>	<b>2016</b>
<b>ASSETS</b>		
CURRENT		
Cash	\$ 432	\$ 1
LONG TERM INVESTMENTS	<u>350,000</u>	<u>1,306,830</u>
	<u><b>\$ 350,432</b></u>	<u><b>\$ 1,306,831</b></u>
<b>LIABILITIES AND NET ASSETS</b>		
DUE TO MEMBERS	\$ 307	\$ 207
LOAN PAYABLE	<u>289,956</u>	<u>990,544</u>
	<u><b>290,263</b></u>	<u>990,751</u>
NET ASSETS		
General fund	<u>60,169</u>	<u>316,080</u>
	<u><b>\$ 350,432</b></u>	<u><b>\$ 1,306,831</b></u>

**CHOMYN-HUNT FOUNDATION**

**Statement of Operations**

**Year Ended December 31, 2017**

*(Unaudited - See Notice To Reader)*

	<b>2017</b>	<b>2016</b>
<b>REVENUES</b>		
Interest	\$ 60,044	\$ 66,558
Gain on sale of investments	26,703	-
Charitable donations	6,000	250,000
Loss on write-down of investments	<u>(342,989)</u>	<u>-</u>
	<u>(250,242)</u>	<u>316,558</u>
<b>EXPENDITURES</b>		
Gift to qualified donee	5,600	-
Bank charges	<u>69</u>	<u>478</u>
	<u>5,669</u>	<u>478</u>
<b>(DEFICIENCY) EXCESS OF REVENUES OVER EXPENDITURES</b>	<b><u>\$ (255,911)</u></b>	<b><u>\$ 316,080</u></b>

**CHOMYN-HUNT FOUNDATION**  
**Statement of Changes in Net Assets**  
**Year Ended December 31, 2017**  
*(Unaudited - See Notice To Reader)*

	<b>2017</b>	<b>2016</b>
<b>NET ASSETS - BEGINNING OF YEAR</b>	\$ 316,080	\$ -
(Deficiency) excess of revenues over expenditures	<u>(255,911)</u>	316,080
<b>NET ASSETS - END OF YEAR</b>	<b>\$ 60,169</b>	<b>\$ 316,080</b>

BN/registration number 837210111RR0001Fiscal period end 2017-12-31

## Detailed financial information

## Schedule 6

Fill out this schedule if any of the following applies to the charity:

- (a) The charity's revenue exceeds \$100,000.
- (b) The amount of all property (for example, investments, rental properties) not used in charitable activities is more than \$25,000.
- (c) The charity has permission to accumulate funds during this fiscal period.

Was the financial information reported below prepared on an accrual or cash basis?

4020  Accrual  Cash

## Statement of financial position

Show all amounts to the nearest single Canadian dollar. Do not enter "see attached financial statements." All relevant fields must be filled out.

## Assets:

Cash, bank accounts, and short-term investments

	Liabilities:
Cash, bank accounts, and short-term investments	4300 \$ 307
Amounts receivable from non-arm's length persons	4310 \$
Amounts receivable from all others	4320 \$ 289,956
Investments in non-arm's length persons	4330 \$
Long-term investments	4350 \$ 290,263
Inventories	4350 \$ 290,263
Land and buildings in Canada	4150 \$
Other capital assets in Canada	4160 \$
Capital assets outside Canada	4165 \$
Accumulated amortization of capital assets	4166 \$
Other assets	4170 \$
10 year gifts	4180 \$
Total assets (add lines 4100 to 4170)	4200 \$ 350,432
Amount included in lines 4150, 4155, 4160, 4165 and 4170 not used in charitable activities	4250 \$

Total assets (add lines 4100 to 4170) 4200 \$ 350,432

## Statement of operations

## Revenue:

Total eligible amount of all gifts for which the charity issued tax receipts	4500 \$ 6,000
Total eligible amount of tax-receipted tuition fees	5610 \$
Total amount of 10 year gifts received	4505 \$
Total amount received from other registered charities	4510 \$
Total other gifts received for which a tax receipt was not issued by the charity (excluding amounts at lines 4575 and 4630)	4530 \$
Total revenue received from federal government	4540 \$
Total revenue received from provincial/territorial governments	4550 \$
Total revenue received from municipal/regional governments	4560 \$
Total tax-receipted revenue from all sources outside of Canada (government and non-government)	4571 \$
Total non tax-receipted revenue from all sources outside Canada (government and non-government)	4575 \$
Total interest and investment income received or earned	4580 \$ 86,747
Gross proceeds from disposition of assets	4590 \$ 990,544
Net proceeds from disposition of assets (show a negative amount with brackets)	4600 \$
Gross income received from rental of land and/or buildings	4610 \$
Total non tax-receipted revenues received for memberships, dues and association fees	4620 \$
Total non tax-receipted revenue from fundraising	4630 \$
Total revenue from sale of goods and services (except to any level of government in Canada)	4640 \$
Other revenue not already included in the amounts above	4650 \$
Specify type(s) of revenue included in the amount reported at 4650	4655 \$
Total revenue (add lines 4500, 4510 to 4560, 4575, 4580, and 4600 to 4650)	4700 \$ 92,747

BN/registration number 837210111RR0001      Fiscal period end 2017-12-31**Expenditures:**

Advertising and promotion	4800	\$
Travel and vehicle expenses	4810	\$
Interest and bank charges	4820	\$ 69
Licences, memberships, and dues	4830	\$
Office supplies and expenses	4840	\$
Occupancy costs	4850	\$
Professional and consulting fees	4860	\$
Education and training for staff and volunteers	4870	\$
Total expenditure on all compensation (enter the amount reported at line 390 in Schedule 3, if applicable)	4880	\$
Fair market value of all donated goods used in charitable activities	4890	\$
Purchased supplies and assets	4891	\$
Amortization of capitalized assets	4900	\$
Research grants and scholarships as part of charitable activities	4910	\$
All other expenditures not included in the amounts above (excluding gifts to qualified donees)	4920	\$ 342,989

Specify type(s) of expenditures included in the amount reported at 4920 4930 Loss on writedown of investmentsTotal expenditures before gifts to qualified donees (add lines 4800 to 4920) 4950 \$ 343,058

Of the amounts at lines 4950 and 5031 (reported at C5 Political Activities (c)):

(a) Total expenditures on charitable activities	5000	\$
(b) Total expenditures on management and administration	5010	\$
(c) Total expenditures on fundraising	5020	\$
(d) Total expenditures on political activities, inside or outside Canada, from question C5 (b)	5030	\$
(e) Total other expenditures included in line 4950	5040	\$

Total amount of gifts made to all qualified donees

Total expenditures (add lines 4950 and 5050) 5050 \$ 5,600 5100 \$ 348,658**Other financial information****Permission to accumulate property:**

Only registered charities that have written permission to accumulate should complete this section.

- Enter the amount accumulated for the fiscal period, including income earned on accumulated funds
- Enter the amount disbursed for the fiscal period for the specified purpose

5500	\$
5510	\$

**Permission to reduce disbursement quota:**

If the charity has received approval to make a reduction to its disbursement quota, enter the amount for the fiscal period

5750	\$
------	----

**Property not used in charitable activities:**

Enter the average value of property not used for charitable activities or administration during:

- The 24 months before the beginning of the fiscal period
- The 24 months before the end of the fiscal period

5900	\$ 158,143
5910	\$ 188,381

## Worksheet – Disbursement Quota

The following worksheet is provided to help a charity with a fiscal period ending on or after March 4, 2010, determine if it has met its disbursement quota for the fiscal period, estimate its disbursement quota for the next fiscal period and track its excesses and shortfalls. The worksheet is provided for your use only. Do not file this worksheet with your Information return.

### – Calculating the disbursement quota requirement for the fiscal period covered by the return

Average value of property not used for charitable activities or administration (line 5900) – If the amount entered at line 5900 is \$25,000 or less for private and public foundations or \$100,000 for charitable organizations, enter "0"	158,143	00	1
Number of days in the fiscal period	x	365	2
Multiply line 1 by line 2 and divide by 365	=	158,143	00
Multiply line 3 by line 4.	x	3.50 %	4
Disbursement quota requirement for the fiscal period – Subtotal	=	5,535	01
Additional disbursement quota requirement: Gift of property received (other than a designated gift) from another registered charity with it was not dealing at arm's length during the previous fiscal period	+		6
Add lines 5 and 6.			
Total disbursement quota requirement	=	5,535	01
			7

### – Calculating whether the registered charity met its disbursement quota requirement

Amount spent on charitable programs (line 5000)			8
Gifts to qualified donees excluding designated gifts (line 5050)	+	5,600	00
Special reduction amount for the fiscal period (line 5750)	+		9
Add lines 8 to 10.			10
Total expenditures for the fiscal period	=	5,600	00
Disbursement quota requirement from line 7		5,535	01
Total expenditures from line 11 above	-	5,600	00
Line 12 minus line 13.			13
Disbursement quota excess or shortfall*	=	-64	99
			14

\* Excess is a negative amount and shortfall is a positive amount.

### – Keeping track of disbursement excesses

Fiscal Period Ending	Available for carry-forward at end of last fiscal period	Minus amount applied to current shortfall*	Available for carry-forward to next fiscal period
2012 (5 years ago)	\$	\$	
2013 (4 years ago)	\$	\$	
2014 (3 years ago)	\$	\$	
2015 (2 years ago)	\$	\$	
2016 (1 year ago)	\$	\$	
	Net disbursement excess from this fiscal period	\$	64.99
	Total available for carry-forward	\$	64.99

\* When covering shortfalls, use available excesses chronologically, starting with the earliest year (5 years ago).

### – Estimating the disbursement quota requirement for the next fiscal period

Average value of property not used for charitable activities or administration (line 5910) – If the amount entered at line 5910 is \$25,000 or less for private and public foundations or \$100,000 for charitable organizations, enter "0"	188,381	00	15
Number of days in the fiscal period	x	365	16
Multiply line 15 by line 16 and divide by 365	=	188,381	00
Multiply line 17 by line 18.	x	3.50 %	17
Estimated disbursement quota requirement for the next fiscal period	=	6,593	34
			19

**3. EXHIBIT "C"**

**Foundation's Excess Payments to Qualified Donees to**  
**carry forward to December 31, 2022 of \$339**

CHOMYN-HUNT FOUNDATION

SCHEDULE OF DISTRIBUTION QUOTAS AND PAYMENTS TO QUALIFIED DONEES  
FOR THE PERIOD FROM JANUARY 1, 2016 TO DECEMBER 31, 2021

Franklin - letter  
dated January 8, 2022 (R)

	Distribution Quota \$	Payments to Qualified Donees \$
31-Dec-16	0	0
31-Dec-17	5,535	5,600
31-Dec-18	6,593	0
31-Dec-19	2,118	8,793
31-Dec-20	2,109	4,410
31-Dec-21	<u>2109</u>	<u>0</u>
	<u>18464</u>	<u>18803</u>
		<u>-18,464</u>
31-Dec-21 Excess of Payments to Qualified Donees to carry forward to December 31, 2022		<u>339</u>

## Worksheet – Disbursement Quota

The following worksheet is provided to help a charity with a fiscal period ending on or after March 4, 2010, determine if it has met its disbursement quota for the fiscal period, estimate its disbursement quota for the next fiscal period and track its excesses and shortfalls. The worksheet is provided for your use only. Do not file this worksheet with your information return.

### - Calculating the disbursement quota requirement for the fiscal period covered by the return

Average value of property not used for charitable activities or administration (line 5900) – If the amount entered at line 5900 is \$25,000 or less for private and public foundations or \$100,000 for charitable organizations, enter "0"

Number of days in the fiscal period	x	366	1
Multiply line 1 by line 2 and divide by 365	=		2
Multiply line 3 by line 4.	x	3.50 %	3
Disbursement quota requirement for the fiscal period – Subtotal	=		4
Additional disbursement quota requirement: Gift of property received (other than a designated gift) from another registered charity with it was not dealing at arm's length during the previous fiscal period	=		5
Add lines 5 and 6.			6
Total disbursement quota requirement	=		7

### - Calculating whether the registered charity met its disbursement quota requirement

Amount spent on charitable programs (line 5000)			8
Gifts to qualified donees excluding designated gifts (line 5050)	=		9
Special reduction amount for the fiscal period (line 5750)	=		10
Add lines 8 to 10.			
Total expenditures for the fiscal period	=		11
Disbursement quota requirement from line 7			12
Total expenditures from line 11 above	-		13
Line 12 minus line 13.			
Disbursement quota excess or shortfall*	=		14

\* Excess is a negative amount and shortfall is a positive amount.

### - Keeping track of disbursement excesses

Fiscal Period Ending	Available for carry-forward at end of last fiscal period	Minus amount applied to current shortfall*	Available for carry-forward to next fiscal period
2011 (5 years ago)	\$	\$	\$
2012 (4 years ago)	\$	\$	\$
2013 (3 years ago)	\$	\$	\$
2014 (2 years ago)	\$	\$	\$
2015 (1 year ago)	\$	\$	\$
		Net disbursement excess from this fiscal period	\$
		Total available for carry-forward	\$

\* When covering shortfalls, use available excesses chronologically, starting with the earliest year (5 years ago).

### - Estimating the disbursement quota requirement for the next fiscal period

Average value of property not used for charitable activities or administration (line 5910) – If the amount entered at line 5910 is \$25,000 or less for private and public foundations or \$100,000 for charitable organizations, enter "0"

Number of days in the fiscal period	x	365	15
Multiply line 15 by line 16 and divide by 365	=	158,143 00	16
Multiply line 17 by line 18.	x	3.50 %	17
Estimated disbursement quota requirement for the next fiscal period	=	5,535 01	19

## Worksheet – Disbursement Quota

The following worksheet is provided to help a charity with a fiscal period ending on or after March 4, 2010, determine if it has met its disbursement quota for the fiscal period, estimate its disbursement quota for the next fiscal period and track its excesses and shortfalls. The worksheet is provided for your use only. Do not file this worksheet with your information return.

### Calculating the disbursement quota requirement for the fiscal period covered by the return

Average value of property not used for charitable activities or administration (line 5900) – If the amount entered at line 5900 is \$25,000 or less for private and public foundations or \$100,000 for charitable organizations, enter "0"	188,381	00	1
Number of days in the fiscal period	x	365	2
Multiply line 1 by line 2 and divide by 365	=	188,381	00
Multiply line 3 by line 4.	x	3.50 %	4
Disbursement quota requirement for the fiscal period – Subtotal	=	6,593	34
Additional disbursement quota requirement: Gift of property received (other than a designated gift) from another registered charity with it was not dealing at arm's length during the previous fiscal period	+		6
Add lines 5 and 6.			
Total disbursement quota requirement	=	6,593	34
			7

### Calculating whether the registered charity met its disbursement quota requirement

Amount spent on charitable programs (line 5000)	8
Gifts to qualified donees excluding designated gifts (line 5050)	+ 9
Special reduction amount for the fiscal period (line 5750)	+ 10
Add lines 8 to 10.	
Total expenditures for the fiscal period	= 11
Disbursement quota requirement from line 7	6,593
Total expenditures from line 11 above	-
Line 12 minus line 13.	
Disbursement quota excess or shortfall*	= 6,593
	34 14

\* Excess is a negative amount and shortfall is a positive amount.

### Keeping track of disbursement excesses

Fiscal Period Ending	Available for carry-forward at end of last fiscal period	Minus amount applied to current shortfall*	Available for carry-forward to next fiscal period
2013 (5 years ago)	\$	\$	\$
2014 (4 years ago)	\$	\$	\$
2015 (3 years ago)	\$	\$	\$
2016 (2 years ago)	\$	\$	\$
2017 (1 year ago)	\$	\$	\$
	Net disbursement excess from this fiscal period	\$	
	Total available for carry-forward	\$	

\* When covering shortfalls, use available excesses chronologically, starting with the earliest year (5 years ago).

### Estimating the disbursement quota requirement for the next fiscal period

Average value of property not used for charitable activities or administration (line 5910) – If the amount entered at line 5910 is \$25,000 or less for private and public foundations or \$100,000 for charitable organizations, enter "0"	60,440	00	15
Number of days in the fiscal period	x	365	16
Multiply line 15 by line 16 and divide by 365	=	60,440	00
Multiply line 17 by line 18.	x	3.50 %	18
Estimated disbursement quota requirement for the next fiscal period	=	2,115	40
			19

## Worksheet – Disbursement Quota

The following worksheet is provided to help a charity with a fiscal period ending on or after March 4, 2010, determine if it has met its disbursement quota for the fiscal period, estimate its disbursement quota for the next fiscal period and track its excesses and shortfalls. The worksheet is provided for your use only. Do not file this worksheet with your information return.

### Calculating the disbursement quota requirement for the fiscal period covered by the return

Average value of property not used for charitable activities or administration (line 5900) – If the amount entered at line 5900 is \$25,000 or less for private and public foundations or \$100,000 for charitable organizations, enter "0"

60,440.00 1

Number of days in the fiscal period

x 365 2

Multiply line 1 by line 2 and divide by 365

= 60,440.00 3

Multiply line 3 by line 4.

x 3.50 % 4

Disbursement quota requirement for the fiscal period – Subtotal

= 2,115.40 5

Additional disbursement quota requirement: Gift of property received (other than a designated gift) from another registered charity with it was not dealing at arm's length during the previous fiscal period

+ 6

Add lines 5 and 6.

Total disbursement quota requirement = 2,115.40 7

### Calculating whether the registered charity met its disbursement quota requirement

Amount spent on charitable programs (line 5000)

8

Gifts to qualified donees excluding designated gifts (line 5050)

+ 8,793.00 9

Special reduction amount for the fiscal period (line 5750)

+ 10

Add lines 8 to 10.

Total expenditures for the fiscal period = 8,793.00 11

Disbursement quota requirement from line 7

2,115.40 12

Total expenditures from line 11 above

- 8,793.00 13

Line 12 minus line 13.

Disbursement quota excess or shortfall\* = -6,677.60 14

\* Excess is a negative amount and shortfall is a positive amount.

### Keeping track of disbursement excesses

Fiscal Period Ending	Available for carry-forward at end of last fiscal period	Minus amount applied to current shortfall*	Available for carry-forward to next fiscal period
2014 (5 years ago)	\$	\$	\$
2015 (4 years ago)	\$	\$	\$
2016 (3 years ago)	\$	\$	\$
2017 (2 years ago)	\$	\$	\$
2018 (1 year ago)	\$ -6,528.35	\$	\$ -6,528.35
Net disbursement excess from this fiscal period			\$ 6,677.60
Total available for carry-forward			\$ 149.25

\* When covering shortfalls, use available excesses chronologically, starting with the earliest year (5 years ago).

### Estimating the disbursement quota requirement for the next fiscal period

Average value of property not used for charitable activities or administration (line 5910) – If the amount entered at line 5910 is \$25,000 or less for private and public foundations or \$100,000 for charitable organizations, enter "0"

60,352.00 15

Number of days in the fiscal period

x 366 16

Multiply line 15 by line 16 and divide by 365

= 60,517.35 17

Multiply line 17 by line 18.

x 3.50 % 18

Estimated disbursement quota requirement for the next fiscal period

= 2,118.11 19

## Worksheet – Disbursement Quota

The following worksheet is provided to help a charity with a fiscal period ending on or after March 4, 2010, determine if it met its disbursement quota for the fiscal period. Estimate its disbursement quota by the end of April and mark it as excess or shortfall. The worksheet is provided for your use only. Do not file this worksheet with your information return.

### Calculating the disbursement quota requirement for the fiscal period covered by the return

Amount spent on charity not used for charitable activities or administration (line 5910 – If the amount entered at line 5910 is \$25,000 or less for private and public foundations or \$100,000 for charitable organizations, enter "0")	60,352.00	1
Number of days in the fiscal period	365	2
Multiply line 1 by line 2 and divide by 365	60,517.35	3
Multiply line 3 by line 4	3.50 1/4	4
<b>Disbursement quota requirement for the fiscal period - Subtotal</b>	<b>2,118.11</b>	<b>5</b>
Additional disbursement quota requirement: Gift of property received, other than a designated gift from another registered charity with it was not being at arm's length during the previous fiscal period		6
Add lines 5 and 6		
<b>Total disbursement quota requirement</b>	<b>2,118.11</b>	<b>7</b>

### Calculating whether the registered charity met its disbursement quota requirement

Amount spent on charitable programs (line 5910)	8	
Gifts to qualified donees excluding designated gifts (line 5910)	4,410.00	9
Special reduction amount for the fiscal period (line 17/18)		10
Add lines 8 to 10	4,410.00	11
<b>Disbursement quota requirement from line 5</b>	<b>2,118.11</b>	<b>12</b>
Total expenditures from line 11 above	4,410.00	13
Line 12 minus line 13		
<b>Disbursement quota excess or shortfall</b>	<b>-2,291.89</b>	<b>14</b>

\* For line 8, if negative amount, enter it as a positive amount.

### Keeping track of disbursement excesses

For a 4-year Ending	Available for carry-forward if used for the fiscal period	Amount spent on charitable programs	Available for carry-forward if used for the fiscal period
2015 (4 years ago)	\$	\$	\$
2016 (3 years ago)	\$	\$	\$
2017 (2 years ago)	\$	\$	\$
2018 (1 year ago)	\$ -6,528.35	\$	\$ -6,528.35
2019 (1 year ago)	\$ 6,677.60	\$	\$ 6,677.60
		<b>Net disbursement excess from this fiscal period</b>	<b>\$ 2,291.89</b>
		<b>Total available for carry-forward</b>	<b>\$ 2,441.14</b>

\* When carrying shortages, use available excesses chronologically, starting with the earliest year (5 years ago).

### Estimating the disbursement quota requirement for the next fiscal period

Amount spent on charity not used for charitable activities or administration (line 5910 – If the amount entered at line 5910 is \$25,000 or less for private and public foundations or \$100,000 for charitable organizations, enter "0")	60,371.00	15
Number of days in the fiscal period	365	16
Multiply line 15 by line 16 and divide by 365	60,271.00	17
Multiply line 17 by line 18	3.50 1/4	18
<b>Estimated disbursement quota requirement for the next fiscal period</b>	<b>2,109.49</b>	<b>19</b>

## Worksheet – Disbursement Quota

The following worksheet is provided to help a charity with a fiscal period ending on or after March 4, 2010, calculate its disbursement quota for the fiscal period, estimate its disbursement quota for the next fiscal period and track its disbursement shortfalls. This worksheet is for charity year use only. Do not file this worksheet with your information return.

### Calculating the disbursement quota requirement for the fiscal period covered by the return

Average value of property not used for charitable or administrative (line 5910) – If the amount entered at line 5910 is \$25,000 or less for private and public foundations or \$100,000 for charitable organizations, enter "0"	60,352.00	1
Number of days in the fiscal period	366	2
Multiply line 1 by line 2 and divide by 365	60,517.35	3
Multiply line 3 by line 4	3.50%	4
<b>Disbursement quota requirement for the fiscal period – Subtotal</b>	<b>2,118.11</b>	<b>5</b>
Additional disbursement quota requirement: Gift of property received (other than a designated gift) from another registered charity with it was not costing at arm's length during the previous fiscal period		6
Add lines 5 and 6		
<b>Total disbursement quota requirement</b>	<b>2,118.11</b>	<b>7</b>

### Calculating whether the registered charity met its disbursement quota requirement

Amount spent on charitable programs (line 5000)	8	
Gifts to qualified donees excluding designated gifts (line 5050)	4,410.00	9
Special reduction amount for the fiscal period (line 5710)		10
Add lines 9 to 10		
<b>Total expenditures for the fiscal period</b>	<b>4,410.00</b>	<b>11</b>
Disbursement quota requirement from line 7	2,118.11	12
Total expenditures from line 11 above	4,410.00	13
Line 12 minus line 13		
<b>Disbursement quota excess or shortfall</b>	<b>-2,291.89</b>	<b>14</b>

\* For each line, a negative amount is a disbursement shortfall and a positive amount is a disbursement excess.

### Keeping track of disbursement excesses

Fiscal Period Ending	Available for carry-forward Amount of last fiscal period	Minus amount applied to current shortfall	Available for carry-forward to next fiscal period
2015 (5 years ago)	\$	\$	\$
2016 (4 years ago)	\$	\$	\$
2017 (3 years ago)	\$	\$	\$
2018 (2 years ago)	\$ -6,528.35	\$	\$ -6,528.35
2019 (1 year ago)	\$ 6,677.60	\$	\$ 6,677.60
	<b>Net disbursement excess from this fiscal period</b>	<b>\$ 2,291.89</b>	
	<b>Total available for carry-forward</b>	<b>\$ 2,441.14</b>	

\* When carrying shortfalls, use available excesses chronologically, starting with the earliest year (5 years ago).

### Estimating the disbursement quota requirement for the next fiscal period

Average value of property not used for charitable activities or administration (line 5910). If the amount entered at line 5910 is \$25,000 or less for private and public foundations or \$100,000 for charitable organizations, enter "0"	60,271.00	15
Number of days in the fiscal period	365	16
Multiply line 15 by line 16 and divide by 365	60,271.00	17
Multiply line 17 by line 15	3.50%	18
<b>Estimated disbursement quota requirement for the next fiscal period</b>	<b>2,109.45</b>	<b>19</b>

#### **4. EXHIBIT “D”**

#### **Sections and Regulations of the Income Tax Act**

1. Paragraph 149.1(3)(b) of the Income Tax Act (1 page)
2. Paragraph 168(1)(b) of the Income Tax Act (1 page)
3. Regulation 3700 – Registered Charities (2 pages)

Regulation 3701 – Distribution Quota

Regulation 3702 – Determination of Value

relevant person in respect of the private foundation who holds a material interest in respect of that class; (*pourcentage de participation totale*)

**Deeming rule — Safe Streets and Communities Act**

(1.01) In this section, a reference to a record suspension is deemed also to be a reference to a pardon that is granted or issued under the *Criminal Records Act*.

**Deeming rule — Listed terrorist entity**

(1.02) If, but for this subsection, a person, partnership, group, fund, unincorporated association or organization becomes a listed terrorist entity at a particular time and ceases to be a listed terrorist entity at a later time further to an application made under subsection 83.05(2) of the *Criminal Code* or as a result of paragraph 83.05(6)(d) of that Act, then the entity is deemed not to have become a listed terrorist entity and to not have been a listed terrorist entity throughout that period.

**Exclusions**

(1.1) For the purposes of paragraphs (2)(b), (3)(b) and (4)(b) and subsection (21), the following shall be deemed to be neither an amount expended in a taxation year on charitable activities nor a gift made to a qualified donee:

- (a) a designated gift;
- (b) [Repealed, 2018, c. 27, s. 17]
- (c) a transfer that has, because of paragraph (c) of the description of B in subsection 188(1.1), paragraph 189(6.2)(b) or subsection 189(6.3), reduced the amount of a liability under Part V; and
- (d) expenditures on administration and management of the charity.

**Authority of Minister**

(1.2) For the purposes of the determination of B in the definition *disbursement quota* in subsection 149.1(1), the Minister may

- (a) authorize a change in the number of periods chosen by a registered charity in determining the prescribed amount; and
- (b) accept any method for the determination of the fair market value of property or a portion thereof that may be required in determining the prescribed amount.

**Revocation of registration of charitable organization**

(2) 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 that are qualifying disbursements, amounts the total of which is at least equal to the organization's disbursement quota for that year; or
- (c) makes a disbursement, other than
  - (i) a disbursement made in the course of charitable activities carried on by it, or
  - (ii) a qualifying disbursement.

**Revocation of registration of public foundation**

(3) 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 that are qualifying disbursements, amounts the total of which is at least equal to the foundation's disbursement quota for that year;

**PART I**

**Income Tax (continued)**

**DIVISION I**

**Returns, Assessments, Payment and Appeals (continued)**

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

**Notice of Intention to revoke registration**

168 (1) 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, registered Canadian amateur athletic association or registered journalism organization, 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 charity, registered Canadian amateur athletic association or registered journalism organization, accepts a gift the granting of which was expressly or implicitly conditional on the charity, association or organization making a gift to another person, club, society, association or organization other than a qualified donee.

**Revocation of registration**

(2) If the Minister gives notice under subsection (1) to a registered charity, to a registered Canadian amateur athletic association or to a registered journalism organization,

- (a) if it 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 on that publication of a copy of the notice, the registration is revoked; 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 is revoked.

***Charities Registration (Security Information) Act***

(3) Notwithstanding subsections (1), (2) and (4), if a registered charity is the subject of a certificate that is determined to be reasonable under subsection 7(1) of the *Charities Registration (Security Information) Act*, the registration of the charity is revoked as of the making of that determination.

**Listed terrorist entities**

(3.1) Notwithstanding subsections (1), (2) and (4), if a qualified donee is a listed terrorist entity for the purposes of section 149.1, the registration of the qualified donee is revoked as of the date on which it became a listed terrorist entity.

**Objection to proposal or designation**

## PART XXXVII

### Registered Charities

[NOTE: Application provisions are not included in the consolidated text; see relevant amending Acts and regulations.] ; SOR/94-686, s. 51(F). ]

#### 3700 [Repealed, 2010, c. 25, s. 83]

[NOTE: Application provisions are not included in the consolidated text; see relevant amending Acts and regulations.] ; SOR/87-632, s. 1; SOR/94-686, ss. 51(F), 73(F); 2007, c. 35, s. 75; 2010, c. 25, s. 83.

### Disbursement Quota

3701 (1) For the purposes of the description of B in the definition *disbursement quota* in subsection 149.1(1) of the Act, the prescribed amount for a taxation year of a registered charity is determined as follows:

- (a) choose a number, not less than two and not more than eight, of equal and consecutive periods that total twenty-four months and that end immediately before the beginning of the year;
- (b) aggregate for each period chosen under paragraph (a) all amounts, each of which is the value, determined in accordance with section 3702, of a property, or a portion of a property, owned by the registered charity, and not used directly in charitable activities or administration, on the last day of the period;
- (c) aggregate all amounts, each of which is the aggregate of values determined for each period under paragraph (b); and
- (d) divide the aggregate amount determined under paragraph (c) by the number of periods chosen under paragraph (a).

(2) For the purposes of subsection (1) and subject to subsection (3),

- (a) the number of periods chosen by a registered charity under paragraph (1)(a) shall, unless otherwise authorized by the Minister, be used for the taxation year and for all subsequent taxation years; and
- (b) a registered charity is deemed to have existed on the last day of each of the periods chosen by it.

(3) The number of periods chosen under paragraph (1)(a) may be changed by the registered charity for its first taxation year commencing after 1986 and the new number shall, unless otherwise authorized by the Minister, be used for that taxation year and all subsequent taxation years.

[NOTE: Application provisions are not included in the consolidated text; see relevant amending Acts and regulations.] ; SOR/87-632, s. 1; SOR/94-686, s. 51(F); 2010, c. 25, s. 84.

### Determination of Value

3702 (1) For the purposes of subsection 3701(1), the value of a property, or a portion of a property, owned by a registered charity, and not used directly in charitable activities or administration, on the last day of a period is determined as of that day to be

- (a) in the case of a non-qualified investment of a private foundation, the greater of its fair market value on that day and its cost amount to the private foundation;
- (b) subject to paragraph (c), in the case of property other than a non-qualified investment that is
  - (i) a share of a corporation that is listed on a designated stock exchange, the closing price or the average of the bid and asked prices of that share on that day or, if there is no closing price or bid and asked prices on that day, on the last preceding day for which there was a closing price or bid and asked prices,

- (ii) a share of a corporation that is not listed on a designated stock exchange, the fair market value of that share on that day;
- (iii) an interest in real property or a real right in an immovable, the fair market value on that day of the interest or right less the amount of any debt of the registered charity incurred in respect of the acquisition of the interest or right and secured by the interest or right, where the debt bears a reasonable rate of interest;
- (iv) a contribution that is the subject of a pledge, nil;
- (v) an interest, or for civil law a right, in property where the registered charity does not have the present use or enjoyment of the interest or right, nil;
- (vi) a life insurance policy, other than an annuity contract, that has not matured, nil, and
- (vii) a property not described in any of subparagraphs (i) to (vi), the fair market value of the property on that day; and
- (c) in the case of any property described in paragraph (b) that is owned in connection with the charitable activities of the registered charity and is a share of a limited-dividend housing company referred to in paragraph 149(1)(n) of the Act or a loan, that has ceased to be used for charitable purposes and is being held pending disposition or for use in charitable activities, or that has been acquired for use in charitable activities, the lesser of the fair market value of the property on that day and an amount determined by the formula

$$(A / 0.036) \times (12 / B)$$

where

- A is the income earned on the property in the period, and
- B is the number of months in the period.

(2) For the purposes of subsection (1), a method that the Minister may accept for the determination of the fair market value of property or a portion thereof on the last day of a period is an independent appraisal made

- (a) in the case of property described in subparagraph (1)(b)(ii) or (iii), not more than three years before that day; and
- (b) in the case of property described in paragraph (1)(a), subparagraph (1)(b)(vii) or paragraph (1)(c), not more than one year before that day.

[NOTE: Application provisions are not included in the consolidated text; see relevant amending Acts and regulations.] : SOR/87-632, s. 1; SOR/94-686, ss. 22(F), 51(F), 73(F), 79(F); 2007, c. 35, s. 76; 2010, c. 25, s. 85.

## Information Returns

3703 For the purpose of subsection 149.1(14) of the Act, the following is prescribed information for the public information return of a charity in a taxation year:

- (a) in respect of each grantee organization that received total qualifying disbursements from the charity in excess of \$5,000 in the taxation year, the name of the grantee organization;
- (b) the purpose of each qualifying disbursement made to a grantee organization referred to in paragraph (a) in the taxation year; and
- (c) the total amount disbursed by the charity to each grantee organization referred to in paragraph (a) in the taxation year.

[NOTE: Application provisions are not included in the consolidated text; see relevant amending Acts and regulations.] : 2022, c. 10, s. 40.

## PART XXXVIII

# Social Insurance Number Applications

3800 Every individual who is required by subsection 237(1) of the Act to apply to the Minister of National Health and Welfare for assignment to him of a Social Insurance Number shall do so by delivering or mailing to the local office of the Canada Employment and Immigration Commission

**5. EXHIBIT "E"**

**CRA letter dated September 29, 2022, pages 1 & 2, and**  
**pages 19 to 23**



September 29, 2022

REGISTERED MAIL

Robert Tennant  
Director  
Chomyn-Hunt Foundation  
3923 116 Street NW  
Edmonton AB T6J 1R5

BN: 837210111RR0001  
File number: 3045362  
Case number: [REDACTED]

Dear Robert Tennant:

**Subject: Audit of Chomyn-Hunt Foundation**

This letter results from the audit of the Chomyn-Hunt Foundation (the Foundation) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Foundation for the period of January 1, 2016, to December 31, 2017.

**Background**

The Foundation was incorporated on November 30, 2010, and was granted registered charity status as a public foundation effective January 4, 2011, with the purpose to gift funds to qualified donees. The three directors at the time of registration were: Sandra M. Chomyn-Hunt, Robert Tennant, and John Rooney.

According to its annual Form T3010, Registered Charity Information Returns and its books and records, the Foundation was inactive until March 15, 2016, the date upon which Albert Jodoin was added to the board of directors. Additionally on March 15, 2016, the Foundation engaged in its first series of transactions with Albert Jodoin [REDACTED]

[REDACTED] Since registration, the Foundation's only donors have been [REDACTED]

**Current audit**

On September 27, 2022, you were advised that the CRA had identified specific areas of non-compliance with the provisions of the Income Tax Act (the Act) and/or its Regulations in the following areas.

	Areas of non-compliance	Reference
1.	Failed to issue donation receipts in accordance with the Act and/or its Regulations <ul style="list-style-type: none"> <li data-bbox="437 383 1084 447">a. Failed to reduce the fair market value of a gift in accordance with the loanback provisions</li> <li data-bbox="437 453 1084 517">b. Incorrect information on official donation receipts,</li> <li data-bbox="437 559 1084 589">c. False information on official donation receipts</li> </ul>	149.1(3), 168(1)(d), 118.1(16), 118.1(17), 118.1(19), 188.1(7) 188.1(9), 188.2(2)(c)
2.	Failed to devote resources to charitable activities carried on by the Foundation itself: Fiduciary duty	149.1(3), 168(1)(b)
3.	Failed to meet the disbursement quota	149.1(3)(b), 168(1)(b)
4.	Failed to maintain adequate books and records	149.1(3), 230(2), 168(1)(b), 168(1)(e), 188.2(2)(a)
5.	Failed to file an information return as and when required by the Act and/or its Regulations	149.1(3), 149.1(14), 168(1)(c)

This letter describes the areas of non-compliance identified by the CRA relating to the legislative and common law requirements applicable to registered charities, and which may be subject to sanctions under the Act. The Foundation will also be provided with the opportunity to make representations or present additional information as to why a sanction should not be applied.

As a registered charity, the Foundation must comply with the law. If it fails to comply with the law, it may either be subject to sanctions under sections 188.1<sup>1</sup> and/or 188.2<sup>2</sup> of the Act, and/or have its registered charity status revoked in the manner described in section 168 of the Act.

The balance of this letter describes the identified areas of non-compliance and the sanction(s) proposed in further detail.

### General legal principles

In order to maintain charitable registration under the Act, Canadian law requires that a registered charity demonstrate that it is constituted and operated exclusively for charitable purposes (or objects) and that it devotes its resources to charitable activities

<sup>1</sup> Financial sanctions are assessed under Section 188.1 of the Act.

<sup>2</sup> Suspensions of a registered charity's authority to issue official donation receipt, and qualified donee status, are assessed under section 188.2 of the Act.

Moreover, it appears that by partaking in the above-mentioned investments the Foundation reduced the Jodoin's personal financial risk while raising its own financial risk to an unnecessary high level. As such it is our view that the Foundation failed to demonstrate that its board of directors were fulfilling their fiduciary duties as directors of the Foundation.

As such the charity does not appear to be *bona fide*.<sup>40</sup> Nor has it met its fiduciary duties as established by the courts<sup>41</sup> including: 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 use all charitable property and funds for only charitable purposes, and the duty to be accountable for the charity's property and funds.

Due to its involvement in aggressive investment activities without any discernible charitable purpose, the Foundation has failed to show that they have devoted resources to a charitable purpose. As indicated under General legal principles, to be registered as a charity under the Act, Canadian law requires that an organization's purposes be exclusively charitable, must fall within one or more of the four categories of charity and deliver a charitable public benefit.

As a result, the Organization failed to meet the requirements of 149.1(3) of the Act that it devote its resources to charitable activities carried on by the Foundation itself. As such, there are grounds for the Minister to revoke the charitable status of the Foundation in the manner as described under paragraph 168 (1)(b) of the Act.

Furthermore, while outside the CRA's purview, the failure of the Foundation's board of directors to fulfil their fiduciary duties could put the corporate status of the Foundation in jeopardy. As such, we wish to inform the Foundation that if it loses its corporate status for any reason, then it would no longer qualify for registration as a charity under the Act. Hence, it is vitally important that the Foundation's board of directors is aware of all of its responsibilities under all applicable legislations.

### **3. Failed to meet the disbursement quota**

#### **Legislation and jurisprudence**

The disbursement quota is the minimum amount a registered charity is required to spend each year on its own charitable activities, or on gifts to qualified donees (for example, other registered charities). The disbursement quota calculation is based on the value of property (for example, cash in bank accounts, inventory, stocks, bonds, mutual funds,

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<sup>40</sup> M. Chesterman, *Charities, Trusts and Social Welfare* (London: Weidenfeld and Nicolson, 1979) at para 136; and see *Gilmour v. Coats et al.*, [1949] 1 All E.R. 848

<sup>41</sup> See for example, *Ontario (Public Guardian and Trustee) v. Aids Society for Children (Ontario)*, [2001] OJ No.2170 (QL) (O.S.C.J.); *Ontario (Public Guardian and Trustee) v. National Society for Abused Women*, [2002] O.J. No. 607 (O.S.C.J.); *Pathak v. Sabha*, (2004) CanLII 10850 (O.S.C.). See also *Lac Minerals Ltd. v. International Corona Resources Ltd.*, [1989] 2 S.C.R. 574 (S.C.C.); *Hodgkinson v. Simms*, [1994] 3 S.C.R. 377, 1994 CanLII 70 (S.C.C.); *M. (K.) v. M. (H.)*, [1992] 3 S.C.R. 6, 1992 CanLII 31 at pg. 31 (S.C.C.)

GICs, land, and buildings) that a charity does not use for carrying out its own charitable activities or by way of gifts to qualified donees, or for its administrative expenses such as fundraising costs.

The disbursement quota for a public foundation is calculated as follows:

If the average value of a registered charity's property not used directly in charitable activities or by way of gifts to qualified donees, or for its administrative expenses during the 24 months before the beginning of the fiscal year exceeds \$100,000, the charity's disbursement quota is: 3.5% of the average value of that property.

The maximum allowances for carry-forward and carry-back of disbursement quota excesses are defined in subsection 149.1(20) of the Act (i.e., maximum carry-back of 1 fiscal year reporting period, maximum carry-forward of 5 fiscal year reporting periods).

Paragraph 149.1(3)(b) of the Act allows for revocation of a public foundation, stating the Minister may revoke a foundation in the manner described in subsection 168(1) of the Act if the foundation fails to meet its disbursement quota, for any reason described in subsection 168(1). Paragraph 168(1)(a) of the Act applies where a registered charity ceases to comply with the requirements of the Act for its registration; these requirements include meeting the disbursement quota.

### **Audit findings**

The Foundation had the following charitable purposes when it was registered in 2011.

1. To solicit and receive gifts, bequests, trusts, funds and property and beneficially, or as a trustee or agent, to hold, invest, develop, manage, accumulate and administer funds and property for the purpose of disbursing funds and property exclusively to registered charities as well as "qualified donees" under the provisions of the Act; and,
2. To undertake activities ancillary and incidental to the attainment of the aforementioned charitable purposes.

The Foundation's books and records indicate that it did not carry out activities from 2011 to 2015. During the 2016 fiscal period, a donation was received for \$250,000. This amount was immediately loaned back to Albert Jodoin, which resulted in the donor signing a promissory note. The only expenses incurred by the Foundation in 2016 were \$478.49 in bank charges and interest fees.

In 2017, The Foundation signed an agreement to pay [REDACTED]  
\$350,000 for the purchase of 10,000 Class "A" shares of [REDACTED]

[REDACTED] No money was received for the purchase, but the following journal entries were found in the Foundations accounting records:

August 1, 2017

DR	Investment	[REDACTED]	175,000.00
CR	Bank	[REDACTED]	175,000.00

DR	Bank	[REDACTED]	175,000.00
CR	Loan payable	[REDACTED]	175,000.00

August 3, 2017

DR	Investment	[REDACTED]	175,000.00
CR	Bank	[REDACTED]	175,000.00

DR	Bank	[REDACTED]	175,000.00
CR	Loan payable	[REDACTED]	175,000.00

Other than journal entries related to the above-mentioned investments, the Foundation's only expenditures for the 2017 fiscal period were: minor bank service (\$69.16) and interest (\$0.15) related entries, a \$100 funds transfer, a \$6,000 donation received from [REDACTED], and a \$5,600 gift that the Foundation made to St. Emile's Parish, a registered charity.

The disbursement quota as calculated below for the 2011-2016 fiscal periods would be zero as the Foundation did not own any property. However the disbursement quota for 2017 was calculated by the CRA to be \$27,244.54. The charitable expenditures recorded by the Foundation totalled \$5,600 for that fiscal period. As such, the Foundation did not meet its disbursement quota for that period, nor did it have any excess from the following fiscal period to apply against this shortfall.<sup>43</sup>

<sup>42</sup> Although entered into the records as [REDACTED] these entries are in relation to the [REDACTED] shares purchased from [REDACTED]

<sup>43</sup> It should also be noted that in an email from Robert Tennant to [REDACTED] (the bookkeeper), Mr. Tennant stated that "Bert's loan of \$350,000 to the Foundation also reduces the Foundation's assets and thereby reduces the 2017's distribution quota." Please note that the disbursement quota (DQ) calculation is based on the gross value of all property not used in charitable activities. Accordingly, the full amount of the investment in [REDACTED] shares (\$350,000) has been included in our calculation of the DQ, and we have not factored the associated loan into the calculation.

	2017	2016	2015	2014
Bank balance	431.67	0.98		
\$100k Mar 15	-	133,920.00		
\$100k Apr 18	42,989.00	130,810.00	See Note 1	
\$500k Apr 18	-	654,050.00		
\$300k Sep 9	300,000.00	388,050.00		
shares	350,000.00	-	See Note 1	
Promissory Note receivable	250,000.00	250,000.00	See Note 2	
Total	943,420.67	1,556,830.98		
Line 5900	778,415.49	-		
Line 5910	1,250,125.83	778,415.49		

Note 1: Some of the investments were sold back to Mr. Jodoin in 2016; the amount remaining was \$342,989. This has been split between two lines on this working paper, given the nature of the line descriptions.

Note 2: The Promissory Note was still in existence in 2016, but had been re-classified as a credit to the loan payable to Bert Jodoin. Notes receivable and notes payable are different things and should be kept separate on the financial statements. The act of netting the note receivable and the note payable created an artificial loss in 2017; had the loss not occurred, the note receivable would still be in existence. It is therefore also included in the 2017 assets.

Line 5900 and Line 5910 are included in Schedule 6 of Form T3010. Line 5900 represents "the average value of property not used for charitable activities or administration during ~ The 24 months before the beginning of the fiscal period", while Line 5910 represents "...the average value of property not used for charitable activities or administration during ~ ~ The 24 months before the end of the fiscal period". These amounts were incorrect (understated) in both years.

#### Disbursement Quota for Public and Private Foundations

	2017	2016
Line 5900 (Must exceed \$25,000 to Calculate DQ)	778,415.49	
Multiply line 5900 by 3.5%	27,244.54	-
Disbursement quota requirement for the fiscal period	27,244.54	-
Total expenditures spent on charitable programs	5,600.00	
DQ exceeded/(not met)	- 21,644.54	-

A review of the Foundation's Form T3010s filed since its registration in 2011 indicates that the Foundation did not expend any funds, excluding the transactions that we have identified above in this letter. Excluding the \$5,600 gift to St. Emile's Parish on August 26, 2017, the Foundation did not conduct any charitable activities. Other than that gift, the only expenses the Foundation incurred during the audit period were related to interest expenses, bank fees and a large write-down on investments, which are not considered charitable expenses and therefore cannot be used to contribute towards the Foundation's disbursement quota.

#### **In summary**

Based on the above audit findings, the Foundation has not met its disbursement quota requirement. Accordingly, it is our view that there are grounds for the Minister to revoke the charitable status of the Foundation under subsection 149.1(3) of the Act in the manner described under paragraph 168(1)(b) of the Act.

#### **4. Failed to maintain adequate books and records**

##### **Legislation and jurisprudence**

Subsection 230(2) of the Act requires that every registered charity shall maintain adequate records<sup>44</sup> 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."

This provision is necessary to enable a charity to accurately provide the CRA with the information required by the Act, as well as ensuring the CRA can verify the accuracy of reported information through an audit and determine whether there are any grounds for revocation of the charity's registration.

Subsection 231.1(1) of the Act permits an authorized person to inspect, audit, or examine the books and records of a taxpayer, as well any document of the taxpayer, or of any other person that relates, or may relate, to the information that is, or should be, contained in the books and records of the taxpayer, or to any amount payable by the taxpayer under the Act.

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<sup>44</sup> Subsection 248(1) of the Act defines a record in the following way: "record includes an account, an agreement, a book, a chart or table, a diagram, a form, an image, an invoice, a letter, a map, a memorandum, a plan, a return, a statement, a telegram, a voucher, and any other thing containing information, whether in writing or in any other form."

**6. EXHIBIT “F”**

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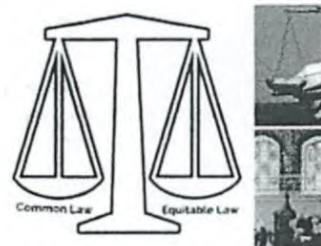
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**7. EXHIBIT "G"**

**Foundation's letter and six (6) Forms T1240 – Registered  
Charity Adjustment Requests for the period from  
January 1, 2016 to December 31, 2021 filed by  
registered mail on February 7, 2023**

# CHOMYN-HUNT FOUNDATION

3923 – 116 Street NW  
Edmonton, AB T6J 1R5  
(780) 953-6291

February 7, 2023

## REGISTERED MAIL

Charities Directorate  
Canada Revenue Agency  
Ottawa, ON K1A 0L5

Subject: Form 1240 – Registered Charity Adjustment Request  
for December 31, 2016, 2017, 2018, 2019, 2020 and 2021

Attached please find six (6) Forms 1240 – Registered Charity Adjustment Request for Chomyn-Hunt Foundation (the “Foundation”) for the following years:

- December 31, 2016
- December 31, 2017
- December 31, 2018
- December 31, 2019
- December 31, 2020
- December 31, 2021.

These six (6) Forms 1240 are required to offset the Foundation’s investment loan under Line 4320 against the investments under Line 4140 for each year.

Yours truly



Robert I. Tennant  
Director













**APPENDIX A****Chomyn-Hunt Foundation**  
**Comments on Representations**

In our administrative fairness letter (AFL) dated September 29, 2022, we explained that the audit conducted by the Canada Revenue Agency (CRA) for the period from January 1, 2016, to December 31, 2017, identified that the Chomyn-Hunt Foundation (the Foundation) is not operating in compliance with the provisions of the Income Tax Act (the Act) in the following areas:

1. Failed to issue donation receipts in accordance with the Act and/or its Regulations
  - (i) Failed to reduce the fair market value of a gift in accordance with the loanback provisions
  - (ii) Incorrect information on official donation receipts
  - (iii) False information on official donation receipts
2. Failed to devote resources to charitable activities carried on by the Foundation itself: Fiduciary duty
3. Failed to meet the disbursement quota
4. Failed to maintain adequate books and records
5. Failed to file an information return as and when required by the Act and/or its Regulations

We have reviewed and considered the Foundation's representations dated January 12, 2023, January 15, 2023, January 18, 2023 and February 8, 2023, and we maintain our position that the non-compliance issues identified during our audit represent a serious breach of the requirements of the Act. The Foundation has failed to provide additional documentation or reasonable explanations to address many of the areas of non-compliance identified during the audit. As a result, the Foundation's registration as a charity should be revoked.

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

- i. a summary of the issues raised in our Administrative Fairness letter (AFL) of September 29, 2022;
- ii. a summary of the Foundation's representations dated January 12, 2023, January 15, 2023, January 18, 2023 and February 8, 2023 (the representation); and
- iii. the CRA's response with respect to each issue.

## **Identified areas of non-compliance**

### **1. Failed to issue donation receipts in accordance with the Act and/or its Regulations**

#### **a. Failed to reduce the fair market value of a gift in accordance with the loanback provisions**

As outlined in our AFL, the Foundation failed to issue official donation receipts in accordance with the Act and/or its Regulations as it did not reduce the fair market value (FMV) of the donation amounts in accordance with the loanback provisions.

Specifically, on March 15, 2016, Albert Jodoin made a \$250,000 gift to the Foundation that was transferred back to him on the same day in the form of a promissory note. As further outlined in our AFL, regardless of how the \$250,000 was used by either party (that is, Albert Jodoin and the Foundation), including to settle other pre-existing debts that may have existed between the two parties, subsection 118.1(16) of the Act would apply to the value of the official donation receipt (related to the aforementioned \$250,000 gift). In our letter, we presented our view that as soon as the donation was returned to the donor, the loanback provisions of subsection 118.1(16) of the Act came into effect, and the donation amount on the official donation receipt (ODR) should have been reduced accordingly (that is, by \$250,000).

### **The Foundation's representations**

The CRA received two letters, with enclosures, from the Foundation, as part of the representations, regarding the applicability of the loanback provision to the aforementioned ODR:

- 1) January 12, 2023 letter from [REDACTED] and
- 2) January 15, 2023 letter from Robert Tennant.

1) The representations dated January 12, 2023, from [REDACTED]

The Foundation submits that the ODR was properly issued, and the \$250,000 gift was legitimate. Further, the Foundation indicated that it believed that it would be disingenuous of the CRA to question the amount of the gift, because a previous CRA auditor didn't inform the Foundation of any concerns related to the ODR. In short, the Foundation questioned the legitimacy of the CRA's present concerns given that—according to the Foundation—the ODR had already been accepted as legitimate by a previous auditor.

The Foundation provided a timeline of the series of transactions that occurred on March 15, 2016<sup>1</sup> and concluded that the details of the series demonstrated that the ODR as issued was proper and valid, and accordingly that the alleged non-compliance referred to in our AFL is not consistent with the facts.

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<sup>1</sup> This series of transaction is provided on pages 1 and 2 of the Foundation's letter dated January 12, 2023.

2) The representations dated January 15, 2023, from Robert Tennant

In the representations of January 15, 2023, the Foundation asserted that it disagreed with our proposed audit findings that the loanback provisions should have applied to the donation value for the ODR that the Foundation issued [REDACTED] March 15, 2016 gift of \$250,000.

The Foundation submits that the \$250,000 it paid [REDACTED] immediately after receiving their gift was not a loan. Rather, the Foundation provided information to support that at the time of [REDACTED] \$250,000 gift the Foundation already owed Bert Jodoin more than \$250,000 and so the \$250,000 the Foundation transferred back [REDACTED] could not be considered a loanback due to the legal right of set-off<sup>3</sup>. Accordingly, the \$250,000 ODR was correctly issued and therefore the Foundation should not be subject to sanction or revocation as concluded in our AFL.

It is the Foundation's view that "it is impossible for a gift and loan back situation when the Foundation owed Bert Jodoin over \$1,000,000." Per the representations, the Foundation supported this assertion by explaining that, in its view, the legal principle of the right of set-off applied the series of transactions such that the \$250,000, as an off-setting loan rather than a proper payment, should not have been captured by the loanback provisions.

In addition to the above, the representations provided the following arguments as additional support for why the Foundation believes that loanback provision should not apply to the \$250,000 ODR.

- a) This case has had multiple CRA auditors work on it, and Pamela Tribiger (the author of the AFL) is the first CRA auditor to identify this as a scenario affected by the loanback provisions.
- b) [REDACTED], did not consider this to be a scenario affected by the loanback provisions.
- c) If the intent of the donor was to maximize the donation value, Albert Jodoin could have requested a larger donation amount given the additional \$990,544 the Foundation owes him.

### **CRA's Response**

The Foundation's representations have not alleviated the concerns set out in our AFL.

The applicability of subsection 118.1(16) of the Act is based entirely on the specific facts of the particular case in question. As such, the opinions regarding the applicability of subsection 118.1(16) of the Act of either a previous auditor or an authorized representative with a professional background in accounting do not supersede the importance of the facts of the case.

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<sup>2</sup> That is Albert Jodoin [REDACTED]

<sup>3</sup> In basic terms, per the Representations the Foundation believes that according to the legal right of set-off the amount the Foundation owed Albert Jodoin could be netted against any amounts Albert Jodoin owed the Foundation (such as the \$250,000 promissory note we identified in our September 29, 2022 letter).

<sup>4</sup> [REDACTED] is the Foundation's bookkeeper.

Accordingly, if per the facts of a case the loanback rules **do** apply then it must be accounted for when the related official donation receipt is prepared and issued regardless of either the intent of the donor or any pre-existing opinion, professional or otherwise, the issuer of the ODR received.

Furthermore, despite the Foundation's representations to the contrary, we have found no evidence that any of the CRA auditors that previously worked on the current audit indicated to the Foundation that the loanback provision did not apply to the scenario discussed in the current audit. Accordingly, the Foundation's representations have failed to alleviate the concerns set out in the AFL.

While the Foundation claims that the audit findings we discussed in our AFL, regarding the application of the loanback provisions, were not consistent with the facts, the Foundation has failed to provide information which supports that claim. We also disagree with the Foundation's position that from a legal perspective the loanback provision does not apply to the ODR due to the legal principle of set-off.

As indicated above, while the Foundation acknowledged that after receiving the \$250,000 from Albert Jodoin, it immediately<sup>5</sup> transferred the amount back to Albert Jodoin in the form of a promissory note (i.e., a \$250,000 loan [receivable] to the Foundation), the Foundation believes that the \$250,000 promissory note was immediately reduced to NIL as it was off set against another loan between the two parties.<sup>6,7</sup>

The Foundation's representations attempted to demonstrate that its \$250,000 transfer (in the form of a promissory note) to Albert Jodoin could not have been a payment caught by the loanback provisions as the balance of the promissory note was immediately reduced to NIL due to the right to set-off. Moreover, the representations allege that because its balance was immediately reduced to NIL, the promissory note—and thus the \$250,000 transfer to Albert Jodoin—effectively never truly existed.<sup>8</sup>

We disagree with these representations. Our position in this regard is set out below.

#### a. Analysis of the Right to Set-off

Set-off, also known as offset, is a legal concept that can be applied to persons or businesses with mutual rights and liabilities. In this concept, gross positions are replaced with a net position. In practice, set-off is a legal event and therefore a legal basis is required for the proposition that two or more gross claims can be netted against each other. Typically, “set-off” is used as a legal defence that permits both parties to defer payment until their respective claims have been heard in court. Upon judgment (in court), both claims would be extinguished and replaced by a single

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<sup>5</sup> Both transactions occurred on the same day: March 15, 2016.

<sup>6</sup> Per the Representations of January 15, 2023, the Foundation owed Albert Jodoin \$1,306,830 at the time of the \$250,000 gift/promissory note.

<sup>7</sup> As explained in our September 29, 2022 letter, this initial transfer is captured by the loanback provisions, reducing the \$250,000 “donation” to NIL.

<sup>8</sup> Per the Representations, “it is impossible for a gift and loan back situation when the Foundation owed Bert Jodoin over \$1,000,000.”

lump sum.<sup>9</sup> Further, in such a case the right to set-off would be used as a last resort by the debtor to collect payment from the borrower.

Alternatively, in some cases a “set-off” clause will be incorporated by contractual agreements between two parties whereby if the borrower defaults on the amount owing to the lender, then mutual amounts are automatically offset against each other.

For more information on the right to set-off, please see the CRA’s website at: <https://www.canada.ca/en/financial-consumer-agency/services/banking/right-of-offset.html>.

As described above, the right to set-off is not an automatic right shared by participants in mutually off-setting liabilities. Rather, “set-off” is either:

- a) used as a “last resort” effort to collect debt via a formal legal dispute; and/or
- b) a clause built into the loan contract between the two parties.

The representations claim that the right to set-off was automatically invoked to reduce the Foundation’s loan to Albert Jodoin immediately upon its creation. In our view, this is not an acceptable use of such a clause as there is no evidence that:

- a) The right to set-off was being used as a last resort to settle the debt. Rather, the Foundation claimed that it was used immediately and without any other attempts of collection. Similarly, there were no legal proceedings in this regard for a judgment to be made.
- b) There is no evidence that a set-off clause was incorporated into any of the loan agreements between the Foundation and Albert Jodoin that were provided to us during the current audit.

To summarize, in our view neither the Foundation nor Albert Jodoin had any legal basis for using the right to set-off to net their offsetting liabilities against one another. Similarly, we do not accept the representations that Albert Jodoin’s right to set-off immediately reduced his liability to the Foundation to NIL. As such, it remains our view that the \$250,000 promissory note is caught by the loanback provisions to reduce the donation amount to NIL.

In addition, even if a right to set-off could be successfully used to offset the loans between the Foundation and Albert Jodoin, we maintain our position that the promissory note would continue to be caught by the loanback provisions. While the use of a set-off clause is related to the **payment** of a particular debt, it does not have an effect on the **existence** of the loan itself. As such, even if Albert Jodoin and the Foundation had each loaned \$250,000 to each other, and even if the balance of each loan could be reduced to nil via the enactment of a set-off clause, that does not mean that the loan from the Foundation to Albert Jodoin would have never existed. Rather, the use of a set-off clause would **confirm** that each of the offsetting loans existed. [Emphasis added.]

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<sup>9</sup> For example, the Foundation’s \$250,000 loan **to** Albert Jodoin could be netted against its \$1,306,830 loan from Albert Jodoin, to reduce its total payable to Albert Jodoin to \$1,056,830.

Moreover, both loans legally exist and even if clauses existed in the agreements allowing for set-off—which the Foundation has not proven to be the case—this does not change the fact that the loans legally existed. Again, the concept of “set-off” is only related to the **payment** of the loans. [Emphasis added.]

Accordingly, the Foundation’s response has failed to alleviate our concerns and it remains our position that loanback provisions were triggered when the Foundation loaned \$250,000 to Albert Jodoin, via a promissory note<sup>10</sup> on the same day<sup>11</sup> Albert Jodoin donated \$250,000 to the Foundation. Similarly, it remains our position that the Foundation issued an ODR not in accordance with the Act and the Regulations when it did not account for the Act’s subsection 118.1(16) loanback provision when it issued a \$250,000 [REDACTED]. For this reason, there are grounds for revocation of the Foundation’s charitable status under subsection 149.1(3) of the Act and the Foundation’s registration should be revoked in the manner described in paragraph 168(1)(d) of the Act.

b. Incorrect information on official donation receipts

As explained above, we maintain the position outlined in our AFL that the Foundation issued a \$250,000 ODR on March 15, 2016 [REDACTED] that was not correct as it did not reduce the value of the donation according to the loanback provisions of subsection 118.1(16) of the Act. This oversight led to the Foundation issuing an ODR that was not in accordance with the Act and its Regulations. Therefore, it remains our position that the Foundation is liable to a penalty of \$12,500<sup>12</sup> under subsection 188.1(7) of the Act for issuing an ODR that contained incorrect information.

c. False information on official donation receipts

Further to above, we also maintain our position that the \$250,000 ODR issued by the Foundation [REDACTED] on March 15, 2016, contained false information.

As explained in our AFL, given Robert Tennant’s professional background and experience<sup>13</sup> along with the immediacy of the loanback, we feel that the Foundation displayed culpable conduct when it prepared and issued the \$250,000 ODR based on a false statement.

While the Foundation provided representations to our AFL, those representations did not contain any information to support why the Foundation believes that it did not display culpable conduct when it prepared the ODR using a false statement. Rather, the representations focused on demonstrating why the Foundation did not agree that the loanback provisions captured the Foundation’s \$250,000 promissory note to Albert Jodoin. However, we have already

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<sup>10</sup> A promissory note is a “non-qualifying security” per the definition provided in subsection 118.1(18) of the Act.

<sup>11</sup> March 15, 2016.

<sup>12</sup> As outlined in our September 29, 2022 letter, the incorrect information penalty would have been 5% of \$250,000.

<sup>13</sup> Robert Tennant, the individual who signed the ODR, has several decades of related experience within the charitable sector as a lawyer.

demonstrated why we maintain our position that the loanback provisions do apply to the promissory note. Our AFL outlined the factors we considered in our conclusion that the Foundation's failure to apply the loanback provisions as per subsection 118.1(16) constitutes a false statement<sup>14</sup>. To review our analysis, please refer to that letter which we have included as an enclosure to this letter.

Therefore, it remains our position that the Foundation is liable to a penalty of \$312,500<sup>15</sup> for issuing an ODR that contained false information.

We maintain our position that the Foundation issued an official donation receipt that was not in accordance with the Act and the Regulations when it did not account for the loanback provision legislated in subsection 118.1(16) of the Act. Accordingly, it remains our position that there are grounds for the Minister to revoke the charitable status of the Foundation under subsection 149.1(3) of the Act in the manner described under paragraph 168(1)(d) of the Act.

We also maintain our positions that the \$250,000 ODR the Foundation issued [REDACTED] on March 15, 2016 contained both incorrect information, which is sanctionable under subsection 188.1(7) of the Act, and false information, which is sanctionable under subsection 188.1(9) and paragraph 188.2(1)(c) of the Act. However, we are no longer considering assessing either Part V sanction against the Foundation, as we have now declared our intention to instead revoke the Foundation's registered status.

## **2. Failed to devote resources to charitable activities carried on by the Foundation itself: Fiduciary duty**

As outlined in our AFL, the Foundation failed to demonstrate that it devoted its resources to a charitable purpose.

Our AFL also explained that the Foundation's board of directors failed to maintain the necessary level of fiduciary duty over the Foundation's assets and resources, and as a result put the Foundation's resources at risk. Several examples were provided in our AFL to support this finding, including:

- A lack of internal controls over the use of the Foundation's resources, which led to Albert Jodoin, one of the Foundation's directors, to unilaterally make the Foundation's investment decisions. Notable investments included high-risk investment transactions between the Foundation and Albert Jodoin himself.
- The directors failed to ensure that the Foundation received the accrued interest income that it was entitled to as part of its agreement with [REDACTED]

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<sup>14</sup> Namely, the immediacy of the loanback and the profession of the individual who prepared and signed the ODR (Robert Tennant). For a detailed analysis of our findings in this regard, please refer to our letter dated September 29, 2022.

<sup>15</sup> As outlined in our September 29, 2022 letter, the false information penalty would have been 125% of \$250,000. If we assessed such a penalty, the Foundation's qualified donee status would also be automatically suspended under paragraph 188.2(1)(c) of the Act.

- The directors exposed the Foundation to unnecessary risk by making high-risk speculative unregistered investments on behalf of the Foundation.
- At the direction of its director, Albert Jodoin, the Foundation purchased investments from a non-arm's individual (Albert Jodoin) without verifying the fair market value of the investments.
- The directors put the Foundation at risk by participating in a high risk investment [REDACTED] shares) via [REDACTED]

In our AFL, we explained that due to its involvement in aggressive investment activities without any discernible charitable purpose, in our view the Foundation has failed to show that it has devoted resources to a charitable purpose.

### **The Foundation's representations**

Note: regarding confidentiality of taxpayer information

As part of its Representations to address this non-compliance issue, the Foundation provided information and documentation [REDACTED]

[REDACTED]

Despite the fact that the information is not directly related to the current audit of the Foundation, we have addressed the submissions below. Accordingly, we have included these representations in this section of this letter and will also refer to them in our response below. Moreover, as the information was provided to us by the Foundation, and also because it is relevant to our audit findings, we do not regard the inclusion of this information to be a violation of section 241 of the Act.<sup>17</sup>

The representations to address this area of non-compliance were provided in the Foundation's letter dated January 15, 2023, and in various "Exhibits" that the Foundation enclosed with that letter. Specifically, the Foundation provided the following arguments to demonstrate that in its view, its directors met their fiduciary duty requirements.

The Foundation alleges that, as President of the Foundation, Albert Jodoin has the authority to unilaterally make investment decisions on the Foundation's behalf and accordingly he cannot have breached the fiduciary duty requirement by doing so regardless of the financial impact his decisions have on the Foundation.

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<sup>17</sup> Paragraph 241(4)(a) of the Income Tax Act authorizes an official to provide any person taxpayer information that can be "reasonably regarded as necessary" for the purposes of the administration and enforcement of the Act.

Regarding the method for determining the FMV of purchasing the of the [REDACTED] Class "A" shares<sup>18</sup> from [REDACTED] the representations indicated that the "gold standard"<sup>19</sup> methodology was used, which resulted in:

- a FMV of \$22.50 per share for all purchases in 2016, and up to the period ending on March 31, 2017; and
- a FMV of \$35.00 per share of \$35.00 after March 31, 2017.

As additional support for the valuation of the FMV of the [REDACTED] shares, [REDACTED] In this letter, [REDACTED]

[REDACTED]:

the value of the [REDACTED] shares is determined by [REDACTED] based on their analysis of the advancement of [REDACTED] and not on the accounting figures and expenses on [REDACTED] financial statements.

In this letter, [REDACTED] also informed the CRA that:

[REDACTED] the value of the [REDACTED] shares five (5) times as follows<sup>20</sup>:

- From incorporation on October 28, 2014 to January 15, 2016 — 1 [REDACTED] share was sold for \$1.00 each.
- March 3, 2016 (from January 15, 2016 to March 3, 2016) - 500,000 [REDACTED] shares were sold at \$1.70 per share = \$850,000.
- September 9, 2016 (from January 15, 2016 to September 9, 2016<sup>21</sup>) - 200,000 [REDACTED] Shares were sold for \$6.00 = \$1,200,000.
- May 12, 2017 (from January 15, 2016 to May 12, 2017) - [REDACTED] accepted the subscriptions to sell 700,000 shares @ \$21.50 = \$15,050,000.<sup>22</sup>
- April 18, 2018 [REDACTED] accepted subscriptions to sell 500,000 [REDACTED] shares @ \$6.00 = \$3,000,000<sup>23</sup>.

<sup>18</sup> Please see Exhibit "D" of the Representations dated January 15, 2023.

<sup>19</sup> Per the Representations, the "gold standard" method of valuating FMV of a private share (such as [REDACTED] Class "A" shares) is "for a multiple of sales of the private shares for cash to independent third-party purchasers".

<sup>20</sup> Please see Exhibit "E" and Exhibit "G" of the Representations dated January 15, 2023.

<sup>21</sup> Note: this period partially overlaps with the period from provided above in (ii).

<sup>22</sup> Per the Representations, "These subscriptions for \$15,050,000 were not funded due to the massive negative and outside factors including federal and provincial government policies against bitumen and the drop in the price of oil."

<sup>23</sup> Per the Representations, "These subscriptions for \$3,000,000 were also not funded due to the increasing massive negative and outside factors including federal and provincial government policies against bitumen and the drop in the price of oil."

Finally, to explain why the Foundation believed that investing in the [REDACTED] shares was a prudent investment the Foundation shared the following information:

The economic potential for [REDACTED] was similarly<sup>25</sup> enormous; ... Combined with lower recovery costs and much reduced environmental remediation costs, [REDACTED] Because of this, it was entirely possible that [REDACTED] could become a company earning hundreds of millions of dollars profit per year, which would ultimately result in public market valuations of over a billion dollars – what the venture capital community calls a “unicorn”. ... There are very few unicorns in the world. This is part of what made [REDACTED] share valuation trajectory unusual.

Balanced against this great promise was great risk.<sup>26</sup>

### CRA's Response

The representations have not mitigated the concerns raised in our AFL. Specifically, that the Foundation failed to demonstrate that it devoted its resources to a charitable purpose. Instead, the audit found that the primary activity of the Foundation was to operate as a vehicle for its directors to engage in a series of high-risk investment transactions designed to reduce their own personal investment risk and pass on that risk to the Foundation.

According to the Foundation's annual Form T3010, Registered Charity Information Returns and its books and records, the Foundation was inactive until March 15, 2016, the date upon which Albert Jodoin was added to the board of directors. On that same day, the Foundation engaged in its first series of transactions with Albert Jodoin [REDACTED] and Albert Jodoin directed the Foundation to begin purchasing a series of high-risk investments—from himself [REDACTED] [REDACTED] for which he was listed as the beneficiary. From registration to the end of the audit period under review, the Foundation's only donors have been [REDACTED] It is our view that these donations were not intended to further the Foundation's charitable purposes, but to minimize personal investment risk.

Further, although outside of the audit period under review, we also note that two of the Foundation's directors are now ineligible individuals.<sup>27</sup> Robert Tennant has served on the board of directors for ten charities that have been revoked for cause over the last three years, five of which included transactions similar to those that occurred during the audit period under review. John Rooney served as a director alongside Robert Tennant on nine of the same ten charities.

<sup>24</sup> According to the Representations, [REDACTED]

<sup>25</sup> According to the Representations, [REDACTED]

<sup>26</sup> Please see Exhibit “G” of the Representations dated January 15, 2023.

<sup>27</sup> The term “ineligible individual” is defined in subsection 149.1(1) of the Act. Per paragraph (d) of the definition, ineligible individuals include: an individual who controlled or managed, directly or indirectly, in any manner whatever, a registered charity or a registered Canadian amateur athletic association during a period in which the charity or association engaged in conduct that can reasonably be considered to have constituted a serious breach of the requirements for registration under this Act and for which its registration was revoked in the five-year period preceding that time.

Two of the Foundation's directors, Robert Tennant and John Rooney, were directors for the Engelking Foundation (formerly Soby Foundation), which was revoked for cause on June 22, 2024, in part for non-compliance linked to high risk investments, including transactions relating to purchasing the of the [REDACTED] Class "A" shares from [REDACTED]  
[REDACTED]

The audit findings and our analysis of the representations indicate that the Foundation's directors failed to demonstrate any fiduciary responsibility. Moreover, the Foundation was unable to demonstrate that the board acted in good faith, in the best interests of the charity and not in a manner that is self-serving (to the directors), followed the laws and rules that apply to charities, used all charitable property and funds for only charitable purposes and was accountable for the charity's property and funds.

Specifically:

1: Lack of internal controls regarding use of the Foundation's resources

The Representations contained a statement that appeared to be in regard to internal controls, noting specifically that Albert Jodoin makes all decisions unilaterally. The Representations also mentioned that the records were entered and reviewed by Chartered Accountants for accuracy. However, no mention was made as to whether any policies, procedures, or controls were in place within the Foundation to prevent decisions being made that might be self-serving (for the director(s)) or in contravention of the laws and rules as required.

As stated above, the Foundation has noted that a single individual, Albert Jodoin, unilaterally made all the Foundation's major decisions. This fact alone implies that there is a lack of internal controls within the Foundation's internal protocols and operational procedures. Additionally, our audit findings regarding incorrect and unsupported records, incorrect T3010 filings, and official donation receipts that were not issued in accordance with the Act, also support that the Foundation internal controls processes were either non-existent or inadequate.

2: Lack of supporting documentation to demonstrate that interest income was received

The Foundation was unable to provide any supporting documentation or representations to show that the accrued interest income owed to the Foundation was received.

3: Speculative Nature of Investments

The Foundation did not address the concern we raised in our September 29, 2022 letter regarding the high level of risk that the Foundation exposed itself to by partaking in such objectively speculative (that is, high risk) investments.

The Foundation implied in the Representations that the investments were risky, but that it considered the risk to be justifiable. For example, per [REDACTED] letter “Balanced against great promise was great risk.”<sup>28</sup>

Also, the Foundation provided us with documentation that effectively confirmed the high level of risk involved in its investments. In the Representations, the Foundation included the “Representation Letter for ACCREDITED INVESTORS”<sup>29</sup> with a signed Form 45-106 F9 attached, warning investors of the risky nature of the investment.

#### 4: Non-Arm’s Length Transactions with Unverified Fair Market Values (FMVs)

As outlined in the AFL, on January 3, 2017 the Foundation sold the same [REDACTED] to Albert Jodoin that it had purchased from him in multiple installments in 2016. In total, according to the Foundation’s calculations the investments were sold back to Albert Jodoin for \$342,989<sup>31</sup> less than the Foundation had paid Albert Jodoin for the investments only a few months prior. In the AFL, while we acknowledged that investment losses occur, we explained that in our view the Foundation had failed to demonstrate it had properly valued the investments prior to selling them back to Albert Jodoin at the significant loss it claimed to have endured.

In response to our letter, the Foundation did not provide any specific objective representations, such as a professionally prepared business equity valuation report, regarding either if or how it had reasonably determined the FMV of the above-mentioned investments at the time of the January 3, 2017 sale.

Rather, in an attempt to demonstrate that its valuation method was sound, the Foundation provided a letter dated February 13, 2019 that was written by Robert Tennant to [REDACTED] regarding the FMV of [REDACTED] shares. This letter was written in response to a letter that the CRA had written to the Soby Foundation (the former operating name of Engelking Foundation) on January 29, 2019<sup>32</sup> [REDACTED]

[REDACTED] On page 1 of the February 13, letter, Robert Tennant claimed that he used “gold standard” of valuation to determine the FMV of the shares for each transaction. This letter defined the “gold standard” of valuation to be “multiple sales of the private shares for cash to independent third-party purchasers” and enclosed with that letter a listing of 6 sales of the shares which occurred in 2016 and 2017. In each of these 6 sales, the price per share was \$22.50 even though some of the sales occurred several months apart from one another<sup>33</sup>.

<sup>28</sup> Please see Exhibit “G” of the Representations dated January 15, 2023.

<sup>29</sup> Please see pages 23-24 of Exhibit “D” of the Representations dated January 15, 2023.

<sup>30</sup> In a summary prepared by the Foundation itself dated September 9, 2016, the [REDACTED] were the Foundation’s investments, totalling \$1,306,830, in [REDACTED] and [REDACTED]

[REDACTED] A copy of this summary was enclosed with the AFL.

<sup>31</sup> As stated in the AFL, this figure was taken from Foundation’s the GL for 2017. We could not reconcile it to any source documents but have used the figure as it is the figure used by the Foundation.

<sup>32</sup> Please see above note regarding “confidentiality of taxpayer information”.

<sup>33</sup> The six sales occurred on May 26, 2016, July 21, 2016, August 17, 2016, September 6, 2016, September 7, 2016 and November 3, 2016. Again, in each of the 6 sales, the price per share was \$22.50.

**Note:** It is important to note that the concerns in the AFL regarding “Non-Arm’s Length Transactions with Unverified Fair Market Values” were related to the Foundation’s \$1,306,830 investment in the “US Diamond Investments”—which it bought from [REDACTED] in 4 installments between March and September 2016 and later sold back to [REDACTED] in January 2017—and not its later \$350,000 investment in [REDACTED] shares in August 2017. As such, the relevance of the representations in this regard is limited<sup>34</sup>. However, we have considered these representations in the general sense to be an explanation of the methodology the Foundation claims to use to estimate fair market values of shares; that is, it claims to value such shares by using the “gold standard” of valuation. It is in this light that we provide the following response.

While historical private, independent and arm’s length sales can be used to approximate the fair market value of a particular asset, the data used in any such analyses must be complete. For the reasons below, however, it is our view that the list of sales included in the Foundation’s analysis was not complete. For instance, the following information was not included in Robert Tennant’s data wherein he arrived at what he claimed to be FMV-based sales price of \$22.50<sup>35</sup> per share for each of the six sales.:

(i) March 15, 2016 purchase for \$12.50 per share:

According to the Agreement Sale and Purchase of shares between [REDACTED]

[REDACTED] and [REDACTED] dated March 15, 2016, [REDACTED] paid \$250,000 for the purchase of 20,000 Class “A” shares of [REDACTED] for an average price of **\$12.50 per share** on March 15, 2016. This value is in contrast to the information provided by the Foundation in the representations which suggested that the fair market value of those same shares to be **\$22.50 per share**<sup>36</sup>. Given the proximity of the dates of the six sales in question, it would seem reasonable to include the \$12.50 price per share of the March 15, 2016 transaction in the valuation of the May 26, 2016 sale; however, it does not appear that this was done. The Foundation has not explained this omission.

(ii) In a letter to the CRA from [REDACTED] indicated that [REDACTED] the value of the [REDACTED] shares had only been valued five times:

- From October 28, 2014 to January 15, 2016, the [REDACTED] shares were valued at \$1.00 per share.
- On March 3, 2016, the [REDACTED] shares were valued at \$1.70 per share.
- On September 9, 2016, the [REDACTED] shares were valued at \$6.00 per share.

<sup>34</sup> The reasonableness of the Foundation’s valuation of [REDACTED] shares is not necessarily directly related to the reasonableness of its valuation of the [REDACTED].

<sup>35</sup> Please see Exhibit “D” of the Representations dated January 15, 2023. Notably, these sales were between the six purchasers and [REDACTED] (Robert Tennant signed as the “Vendor”).

<sup>36</sup> Please see Exhibit “D” of the Representations dated January 15, 2023.

- d) On May 12, 2017, the [REDACTED] shares were valued at \$21.50 per share.
- e) On April 18, 2018, the [REDACTED] shares were valued at \$6.00 per share.

At no time did [REDACTED] value its own shares at \$22.50 per share and so it is unclear how Robert Tennant, both the foundation's director and the individual who signed as "Vendor" [REDACTED] determined that \$22.50 per share was the fair market value of the [REDACTED] shares. Rather, the Foundation provided representations that indicated that there is compelling evidence that in 2016 that the [REDACTED] shares were worth significantly less than \$22.50 per share. For example, on September 6 and September 7, 2016 [REDACTED] sold a combined 50,000 [REDACTED] shares to two different purchases for an average of \$22.50 per share. Conversely, according to [REDACTED] as of September 9, 2016—that is, only 2-3 days after [REDACTED] sold the same shares for \$22.50 per share—the shares were only worth \$6.00. The Foundation provided no information to explain this material variance of \$16.50<sup>37</sup> per share.

As stated above, the representations provided by the Foundation suggest that the Foundation, and its director Robert Tennant, use the golden rule of valuation, however a scrutinization of the representations leads to a conclusion that this claim is untrue, the Foundation is inconsistent in its method of valuation and that its methodology of valuation is not based on all known facts and variables. Accordingly, and based on the information the Foundation provided to us in its representation, we have no reason to believe that the Foundation used a reasonable methodology when it valued the [REDACTED] [REDACTED] at the time of their purchase and sale from/to [REDACTED] in 2016 and 2017.

As a result of the above information and analysis, we do not accept these representations as evidence that the Foundation had accurately estimated the FMV of its [REDACTED] [REDACTED]

5: High Risk Investment with [REDACTED]

No direct comment was made regarding the riskiness of the investment (in [REDACTED] shares) made with [REDACTED] [REDACTED]

We maintain our position that the Foundation failed to devote resources to charitable activities carried on by the Foundation itself. Accordingly, it remains our position that there are grounds for the Minister to revoke the charitable status of the Foundation under subsection 149.1(3) of the Act in the manner described under paragraph 168(1)(b) of the Act.

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<sup>37</sup> \$22.50 - \$6.00 = \$16.50.

### **3. Failed to meet the disbursement quota**

As outlined in our letter of September 29, 2022, it is our position that the Foundation has not met its disbursement quota (DQ) requirement.

Specifically, we calculated the DQ to be \$27,244.54 in the fiscal period ending December 31, 2017. Conversely, the charitable expenditures recorded by the Foundation in its T3010 *Registered Charity Information Return* (T3010) totalled \$5,600 for that fiscal period. As such, the Foundation did not meet its DQ for that period, nor did it have any excess from the following fiscal period to apply against this shortfall.<sup>38</sup>

A review of the T3010s filed since the Foundation's registration on January 4, 2011, indicates that the Foundation did not expend any funds, with the exception of the \$5,600 gift made to St. Emile's Parish on August 26, 2017.

#### **The Foundation's representations**

The Representations to address this non-compliance issue were provided in the Foundation's letters dated January 15, 2023 and February 8, 2023 and in various "Exhibits" that the Foundation enclosed with those letters.

In the January 15, 2023 letter, the Foundation represented that the DQ calculations for the audit period were correct as filed. At exhibit K of the letter, a chart was included that illustrated the Foundation's DQ calculation in comparison to its gifts to QDs from December 31, 2016 to December 31, 2021. According to this chart, over the 6-year period (January 1, 2016 – December 31, 2021) the Foundation made \$339 worth of gifts to QDs in excess of its DQ.

The Foundations represented that in the calculation of its DQ it should be able to use the net value of an investment asset in lieu of using the investment's fair market value. Specifically, that it should be able to reduce its gross investment assets (that is, non-charitable assets) by a \$350,000 loan that it took out to purchase an investment. The Foundation asserts that failure to accept this calculation, using the net value of the investment, would not be consistent with the "Law of Equity".

The Foundation submitted its calculation of its DQ, in the Representations letter dated February 8, 2023, Appendix A.

The Representations acknowledged that, according to the Act, only the value of real property can be offset against related liabilities for purposes of the DQ calculation, however, by citing the Law of Equity the Foundation questioned the fairness of the legislation. According to the Foundation:

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<sup>38</sup> The detailed method for the calculation of the 3.5% disbursement quota is outlined in sections 3700, 3701, and 3702 of the *Income Tax Regulations*. A DQ shortfall is the amount that the DQ exceeds the actual amount spent on by a charity to further its charitable purposes.

“If the Foundation is not allowed to offset its investment loan against the fair market value of the investment under current statute law, then the Foundation would be forced to make an **UNEQUITABLE EXTRA DQ payment** that would result in an additional DQ payment that is simply not fair or equitable. In simple terms, a specific investment loan should be allowed to offset the fair market value of the investment. I am referring to a specific investment loan and not a general loan for working capital but a specific investment loan.”

The Representations explained that to remedy what it considered to be unfair and inequitable tax treatment, on January 7, 2023 the Foundation filed six (6) Form 1240 - *Registered Charity Adjustment Requests* for the period from January 1, 2016 to December 31, 2021<sup>39</sup> that offset the investment loan against the fair market value of the investment for each of the six years. According to the Foundation, this “immediately eliminated the **UNEQUITABLE EXTRA DQ payments** for the years from January 1, 2016 to December 31, 2021”, and accomplished the following:

- 1) “remedied the unfair and inequitable tax treatment based on the law of equity that prevented a Foundation from offsetting its specific investment loan against the fair market value of the investment; and
- 2) immediately eliminated the UNEQUITABLE EXTRA DQ payments for the years from January 1, 2016 to December 31, 2021 so that the Foundation will have exactly the same DQ Quota and DQ payments that it originally filed as outlined in EXHIBIT “C” [Excess of Payments of Qualified Donees carry forward to December 31, 2022 of \$339]”.

#### CRA’s Response:

We have reviewed the Representations, and we disagree with the assertions submitted by the Foundation regarding its calculation of its DQ. We maintain our findings from our September 29, 2022 letter that the Foundation incorrectly calculated its DQ by netting an investment loan against the fair market value of the corresponding investment.

As explained above, there is no ambiguity in either the Act or the Regulations regarding the determination of value for purposes of calculating the DQ for this type of property.

The investment asset referred to above was a \$350,000 purchase of [REDACTED] Class “A” shares<sup>40</sup>. As [REDACTED] Class “A” shares were not traded on a designated stock exchange, under subparagraph 3072(1)(b)(ii) of the Income Tax Regulations the value of the shares to be used in the calculation of the Foundation’s DQ should have been the FMV of the shares on that day<sup>41</sup>. This means that contrary to the Representations, the calculation of a property’s FMV<sup>42,43</sup> for the purpose of

<sup>39</sup> Please see Exhibit “G” of the Representations dated February 8, 2023.

<sup>40</sup> These are the same shares [REDACTED] shares which we discussed in our analysis of the Foundation’s failure to issue donation receipts in accordance with the Act and/or its Regulations (re: the loanback provision).

<sup>41</sup> Meaning, the end of the fiscal period in question, which in this case is December 31, 2017.

<sup>42</sup> The term “property” includes investment assets, such as the Class “A” [REDACTED] shares that the Foundation purchased.

<sup>43</sup> We define fair market value as “the highest price, expressed in dollars, that property would bring in an open and unrestricted market, between a willing buyer and a willing seller who are both knowledgeable, informed, and prudent, and who are acting independently of each other.” For more information, please refer to the following

calculation of a charity's DQ does not consider any liabilities that were undertaken to purchase the property in question.

The fair market value of the Foundation's assets was determined to be \$943,421 (2017), \$1,556,830 (2016), and \$0 (2014 and 2015) as per our letter dated September 29, 2022. No representations were provided in regard to the inclusion on the promissory note receivable in the value of the total assets.

If the average value of a registered charity's property not used directly in charitable activities or administration during the 24 months before the beginning of the fiscal period exceeds \$25,000, the charity's disbursement quota is 3.5% of the average value of that property. Therefore, the DQ was calculated 3.5% of the average of \$1,556,830 (2016) and \$0 (2015) or \$27,244.53 for the fiscal period ending 2017 and 3.5% of the average of \$0.00 (2015) and \$0.00 (2014) or Nil for the fiscal period ending 2016.

When a Foundation has a shortfall, it may cover the shortfall with previous excesses in the past five years or by an excess in the following year. However, when reviewing the T3010 filing history, it was shown that no such excesses were available as the Foundation's expenditures for the period were insufficient to meet the disbursement quota.<sup>44</sup>

We maintain our position that the Foundation failed to meet its disbursement quota. Accordingly, it remains our position that there are grounds for the Minister to revoke the charitable status of the Foundation under subsection 149.1(3) of the Act in the manner described under paragraph 168(1)(b) of the Act.

#### **4. Failed to maintain adequate books and records**

As outlined in our AFL, it is our position that the Foundation failed to maintain adequate books and records or to make records available to the CRA during our audit. The Foundation had a general lack of support for decisions made, income reported, asset and liability values and their transaction dates.

The Foundation's representations

The Foundation asserted that the books and records were complete and accurate as there were few major transactions, and two qualified professionals prepared and reviewed the records. Specifically, in its letter of January 15, 2023<sup>45</sup> the Foundation stated the following:

“During the charity audit period from January 1, 2016 to December 31, 2016 there were only 6 major transactions<sup>46</sup> and for the period from January 1, 2018

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webpage: <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/issuing-receipts/determining-fair-market-value-gifts-kind-non-cash-gifts.html>

<sup>44</sup> <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/annual-spending-requirement-disbursement-quota/disbursement-quota-shortfalls-excesses.html>

<sup>45</sup> Please see Exhibit “K” of the Representations dated January 15, 2023.

<sup>46</sup> Per the Organization's General Ledger there was 7 major transactions in 2016 and 2 in 2017

to December 31, 2021 there was only one major transaction<sup>47</sup>, the payment of 2 Distribution Quota payments of \$13,203<sup>48</sup>.

prepared the Journal Entries, and appropriate schedules, based on generally accepted accounting principles. All transactions were based on the Foundation's bank accounts.

I (Robert Tennant) reviewed all the Foundation's final financial documentation and was satisfied that they were correct. I believe that a Judge would consider that 2 Chartered Accountants preparing and reviewing 6 transactions over 2 years would get it right."

## CRA's Response

The Foundation's representations have not mitigated our concerns that the Foundation failed to maintain adequate books and records.

While the Foundation asserted that the books and records were complete, we maintain our position that the following essential books and records have not been provided to the CRA:

1. Minutes of Director's meetings;
2. Documentation to support FMV of the Foundation's investments;
3. Records supporting transaction dates used;
4. Records to support increase in investment values recorded;
5. Records to support interest revenue reported; and
6. Documentation demonstrating that there was a valid reason to write down the investments in the manner we described in our September 29, 2022 letter.

The inadequacy of the Foundation's books and records has resulted in the CRA's inability to verify that the Foundation has met all of its requirements, per subsection 230(2) of the Act, for maintaining charitable status. Specifically, the CRA was unable to verify the Foundation's revenue and expenditures, the charitable nature of its activities and the accuracy of its annual T3010 information returns.

Furthermore, the representation dated January 15, 2023, contained many exhibits that included letters, minutes, and documents from another ongoing audit. Providing another organization's valuations, board meetings, and representations to the CRA does not satisfy the requirements of subsection 230(2) of the Act, that the Foundation maintains its own books and records.

We maintain our position that the Foundation failed to maintain adequate books and records in accordance with subsection 230(2) of the Act. For this reason, there are grounds for the revocation of the Foundation's charitable status under paragraph 168(1)(e) of the Act.

<sup>47</sup> These dates are outside the audit period.

<sup>48</sup> Per representations dated received January 15, 2023, Exhibit K, Disbursement payments occurred in 2017, 2019, and 2020 in the amounts (\$5,600, \$8,793, \$4,410) for a total of \$18,803.

## **5. Failed to accurately file an information return as and when required by the Act and/or its Regulations**

As outlined in our AFL, it is our position that the Foundation failed to accurately file an information return as and when required by the Act and/or its Regulations. Several examples of instances in which the information the Foundation reported on its T3010s was inaccurate were provided.

### **The Foundation's representations:**

The Foundation failed to provide any representations to address the inaccuracies in its T3010s. However, in its letter dated January 15, 2023<sup>49</sup> director Robert Tennant stated that the errors were “a very minor matter”, and that the Foundation was current in its filings.

The Foundation's February 8, 2023 letter<sup>50</sup> states that on January 7, 2023 the Foundation filed six Registered Charity Amendment Requests (Form T1240) amending the T3010 returns for the periods starting January 1, 2016 to December 31, 2021, alluding that the assets were improperly recorded in all six periods.

### **CRA's Response**

The Representations have not mitigated our concerns with respect to the accuracy of the information reported on its information returns. The Foundation failed to address any of the concerns raised in our AFL. Further, it failed to provide any information to support how it intends to address the concerns in future years. Rather, it downplayed this non-compliance by considering it to be “minor”.

While the Foundation submitted amended annual information returns, filing amended information returns does not automatically address the concerns raised in our AFL. Moreover, the Foundation's filing of amended returns confirms that it did not originally file its T3010s as and when required by the Act.

As such, we maintain our position that the Foundation failed to accurately file an information return as and when required by subsection 149.1(14) of the Act. For this reason, there are grounds for the revocation of the Foundation's charitable status under paragraph 168(1)(c) of the Act.

### **Conclusion**

For the reasons outlined above and as mentioned in our AFL, it is the CRA's position that the Foundation should have its registration as a charity revoked pursuant to subsections 168(1) and 149.1(4) of the Act.

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<sup>49</sup> Please see page 9 of the Representations dated received January 15, 2023.

<sup>50</sup> Please see page 4 of the Representations dated February 8, 2023.

**Relevant provisions of the Act**

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**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

**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.