



CANADA REVENUE
AGENCY

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Prescient Foundation
Suite 1555 – 1500 West Georgia Street
Vancouver, BC
V6M 2Z6

REGISTERED MAIL

Attention: Blake Bromley

BN: 855802708 RR0001
File #: 3026623

January 21, 2009

Subject: Audit of Prescient Foundation

Dear Mr. Bromley:

This letter is further to the audit of the books and records of Prescient Foundation ("Prescient") conducted by the Canada Revenue Agency (the CRA). The audit related to the operations of Prescient for the period from December 1, 2004 to November 30, 2007.

Although none of the directors made themselves available to attend the initial interview on May 6, 2008 or the exit interview on May 8, 2008, the auditor met with Leslie Brandmayr to advise that the CRA has 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.	Failure to Devote All of Its Resources to its Charitable Purposes – Gifts to Non-Qualified Donees	149.1(1) 168(1)(b)
2.	Failure to maintain adequate books and records	168(1)(e) 230(2)
3.	Failure to file a T3010A Information Return as required by the Act.	149.1(14) 168(1)(c)

Vancouver Island Tax Services
1415 Vancouver Street
Victoria BC

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

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

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

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The purpose of this letter is to describe the areas of non-compliance identified by the CRA during the course of the audit as they relate to the legislative and common law requirements applicable to registered charities, and to provide Prescient with the opportunity to address our concerns. In order for a registered charity to retain its registration, legislative and common law compliance is mandatory, absent which the Minister of National Revenue (the Minister) may revoke the charity's registration in the manner described in section 168 of the Act.

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

Identified Areas of Non-Compliance:

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

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

"In conclusion, on the basis of the Canadian jurisprudence, the requirements for registration under s. 248(1) come down to two:

(1) the purposes of the organization must be charitable, and must define the scope of the activities engaged in by the organization; and

(2) all of the organization's resources must be devoted to these activities."

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

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

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

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A charity must be able to show through documented evidence and proper books and records that it undertook charitable activities in furtherance of its charitable purposes and not simply made a transfer of resources to a non-qualified donee. A charity is not at liberty to transfer funds or resources to other individuals or entities unless the recipient is an employee of the charity, an agent of the charity under contract, or a qualified donee. To this end, the charity must be able to demonstrate to the CRA's satisfaction that it maintains control over, and is fully accountable for, the use of resources provided to the intermediary, at all times.

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

Based on our findings, and as illustrated below, Prescient has not shown through its programs and arrangements for the undertaking of activities, it devotes all of its resources to its own charitable activities. In fact, Prescient (A) was involved in a series of transactions unrelated to its charitable purpose and (B) made contributions to a number of individuals/organizations not considered to be qualified donees.

(A) Non-Charitable Transactions

Prescient was involved in a series of transactions unrelated to its charitable purpose as follows:

Fiscal Year 2005

570129 BC Ltd /Vision Poultry Ltd ("570129")

(amalgamated under the name of 570129 BC Ltd on March 1, 2005

- February 25, 2005 – specified gift from Theanon Charitable Foundation ("Theanon") \$570,000.
- March 1, 2005 – specified gift from Theanon \$4,500.
- March 1, 2005 – Purchase of 30% of the shares in the capital of 570129 for \$574,500.
Balance of shares purchased by Essential Grace Foundation ("Essential") – 35% and The Gateway Benevolent Society ("Gateway") – 35%. Total purchase price was \$3,370,000 less outstanding loan.
- March 1, 2005 – Assets were gifted by 570129 to Theanon on the same date.
- June 24, 2005 – Specified gift from Theanon of \$54,000. Handwritten notes on trust account printout indicate the amount was paid to Prescient as a fee for participating in the 570129 transaction.
- November 30, 2005 – Year end adjustment to write down share value by \$574,500 to 0. The loss was recorded as an offset to revenue on the T3010A Charity Information Return.

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Fiscal Year 2006Donation from Aequanimitas Inc. ("Aequanimitas") \$150,000

- December 28, 2005 - \$150,000 10-year gift to Prescient from Aequanimitas.
- February 27, 2006 - Registration of private foundation, Open Purse Foundation. ("Open Purse").
Richard Osler is one of the founding directors of Open Purse and 50% shareholder of Aequanimitas.
- July 5, 2006 - \$150,000 10-year gift transferred to Open Purse.

Donations from Legal Trust Accounts \$500,000

- December 21, 2005 - Prescient deposits the proceeds from the following trust accounts: 1) Kaufmann Laramiee \$198,975.14 and 2) Osler, Hosken & Harcourt LLP \$301,024.86, a total of \$500,000. A notation on the deposit slip indicates the deposits are related to the Lou Adler Foundation ("Adler").
- December 22, 2005 - Prescient transfers \$500,000 to Data Foundation ("Data") as directed by Adler. The subject line on Prescient cheque #3 payable to Data indicates \$500,000 from Adler was to be transferred to Data.

Loan Receivable Theanon Charitable Foundation ("Theanon") \$120,000

- June 26, 2006 - Loan to Theanon \$120,000
- June 29, 2006 - Loan repaid by Theanon \$120,000

All of the above examples represent circular transactions with no obvious charitable purpose. It appears that Prescient acts as a conduit in that it allows other individuals and organizations to accommodate their needs by flowing funds through the charity.

See following comments related to additional books and records requested during and subsequent to the audit review but never received.

(B) Gifts to Non-Qualified Donees

Prescient was registered as a public foundation effective April 16, 2004. As stated in its governing documents, the objects of the Corporation are

- a) "To 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 and "qualified donees", and
- b) to conduct any and all activities and exercise any and all such powers as are necessary for the achievement and furtherance of the objects of the Corporation."

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It appears from the review of books and records that, of the activities conducted by Prescient, very few would fall within its charitable mandate. In fact, the evidence on the file demonstrates that the preponderance of the effort and resources of Prescient were devoted to participating in a series of complex circular transactions unrelated to its charitable purpose.

A review of the invoices in the books and records indicate that certain expense amounts were incurred by other individuals and/or organizations and paid by Prescient. These expenditures are considered gifts to non-qualified donees because they are unrelated to the charitable purpose of Prescient. For example

Fiscal Year 2005

- 1) Benefic Group \$10,748.15
 - Trust account indicates amount relates to 570129 transaction
 - No invoice or documentation provided
- 2) Blake Bromley Consulting Inc. \$21,400
 - No invoice or documentation provided
- 3) Abacus Holding Corporation Corporation \$15,227.70
 - Legal fees relate to 570129 transaction (as per trust account)
 - Paid by Prescient

Fiscal Year 2007

- 1) B.C. Securities Commission \$50
 - Fee for Insider Report filed late during the March 5-11, 2007 period paid by Prescient on behalf of insider company, Almoner Foundation and issuer

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- 2) Due to Almoner Foundation \$781.78
 - Prescient repaid Abundance Institute on behalf of Almoner Foundation for GST owing as per notes on cheque stub #10.

Conclusion

The audit found that Prescient failed to demonstrate that it used all of its resources (funds, personnel and/or property) for its own charitable purpose or to gift to qualified donees. In fact, it made disbursements to a number of individuals and/or organizations that do not represent qualified donees and allowed other individuals and organizations to flow funds through Prescient to accommodate their own needs.

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Due Diligence of Directors

We note with concern, with respect to the activities of Prescient and the safeguarding of assets, that the directors have demonstrated a lack of due diligence in this regard. In fact, it is our position that the duty of the directors to operate in the best interests of Prescient has been sidetracked by its involvement in complex circular business transactions that have put the assets of the charity at risk.

For example

- Prescient accepted 200,000 common shares of a private corporation, Zybotix Systems Inc., from Craig Rademaker. An official donation receipt was issued to the donor for \$50,000.

Under the Act, a charity may issue a donation of property other than cash, but it must ensure that the accurate fair-market value ("FMV") is determined and recorded on the receipt.

It is our view that Prescient exercised a lack of due diligence determining the FMV of donated property and may have issued receipts other than for the actual value of the property issued.

- The purchase of 570129 shares in 2005 was not a prudent investment because it resulted in a loss in the value of shares of \$574,500 reducing the value to 0. Apparently the depletion of value of the shares was as a result of the gifting of assets to Theanon.

We were advised by one of the directors, Blake Bromley that, at the time of the purchase of these shares, Prescient anticipated that 570129 would gift its assets to Theanon. This is evidenced by the fact that the gift of the assets of 570129 to Theanon took place on March 1, 2005, the same date as the shares were purchased.

The directors would have known that an agreement to gift the assets was in place at the time the shares were purchased because the charity receiving the gift, Theanon, and the charity purchasing the shares, Prescient, have at least one director in common.

- The directors allowed Prescient to be used as part of a series of transactions unrelated to its charitable purpose. For example,
 1. Prescient received and receipted an amount of \$150,000 from Aequanimitas Inc. with direction to transfer the amount to Open Purse Foundation, a private foundation. Aequanimitas and Open Purse have a common shareholder/director. The amount could have been gifted directly to the private foundation by Aequanimitas.

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2. Prescient accepted \$500,000 from the trust accounts of two law firms on behalf of Adler with direction to transfer the funds to Data. Blake Bromley is a director of both Prescient and Data. The amount could have been transferred directly from Adler to Data.
 3. Prescient loaned \$120,000 to Theanon, a related charity on June 26, 2009. Three days later the full amount was repaid.
- One of the directors, Blake Bromley, advised that with respect to the 570129 transaction
 1. there are no minutes of directors or other meetings regarding the share purchase;
 2. there are no minutes of directors or other meetings where the gifting of these assets to Theanon was discussed;
 3. the financial benefit to Prescient in participating in this transaction was minimal;
 4. he made the decision on behalf of Prescient to purchase the shares.

The duties of the directors of a charity include decision making, investing charitable property, performing corporate governance and the active management and protection of charitable assets. The fiduciary duties of the directors go beyond furthering the charitable objects of the charity and the interests of the charity should be put ahead of the interests of the directors and their related corporations.

Conclusion

It is our position that the directors failed to demonstrate due diligence by

- using Prescient to transact a series of complex transactions for the benefit of other organizations and individuals,
- allowing its receipting practices to be used for the benefit of other individuals and organizations,
- authorizing expenditures unrelated to Prescient to be paid by Prescient, and
- simply accepting the decisions of one of the directors with regard to a number of transactions without written documented evidence of full director acceptance and understanding.

2) Failure to Maintain Adequate Books and Records

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

- (a) the records and books of account referred to in this section in respect of which a period is prescribed, together with every account and voucher necessary to verify the information contained therein, for such period as is prescribed; and

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(b) all other records and books of account referred to in this section, together with every account and voucher necessary to verify the information contained therein, until the expiration of six years from the end of the last taxation year to which the records and books of account relate.”

- The policy of the CRA relating to the maintenance of books and records, and books of account, is based on several judicial determinations, which have held that:
- it is the responsibility of the registered charity to prove that its charitable status should not be revoked² ;
- a registered charity must maintain, and make available to the CRA at the time of an audit, meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required documentation and records subsequent thereto³; and
- the failure to maintain proper books, records and records of account in accordance with the requirements of the Act is itself sufficient reason to revoke an organization's charitable status⁴.

It is our view that Prescient failed to provide access to all of its records at the time of the audit review or subsequent to the audit review. For example,

1. No board minutes or planning documents outlining the complex asset/share purchase arrangement being transacted with 570129 were available for review in the books and records of Prescient. It is not reasonable that Prescient's directors were able to fully understand the business transactions presented by the representatives without being provided with detailed written documentation.
2. No correspondence or written documentation providing details of why trust account amounts from law firms Kaufman Laramée (\$198,975.14) and Osler Hosken & Harcourt LLP (\$301,024.86) transferred to Prescient on behalf of Adler were directed to Data. Information was requested by the auditor during the audit review and in writing on July 30, 2008 - Query #6. No response has been received.
3. No correspondence or written documentation providing details of why the \$150,000 from Aequanimitas was gifted to Prescient with direction to forward the same amount to Open Purse. Information was requested by the auditor during the audit review and in our letter of July 30, 2008. No response has been received.

² *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*, 2002 FCA 72 (FCA)

³ *Supra*, footnote 3; *The Lord's Evangelical Church of Deliverance and Prayer of Toronto v. Canada*, (2004) FCA 397

⁴ *College Rabbiniqne de Montreal Oir Hachaim D'Tash v. Canada (Minister of the Customs and Revenue Agency)*, (2004) FCA 101; *ITA* section 168(1)

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4. Prescient did not properly determine the fair market value of the common shares of Zybotix Systems Inc donated by Craig Rademaker to ensure that the official donation receipt issued reflects the actual value of the property. The auditor was advised that the value was based on the book value provided by the company.
5. Copies of all of the official donation receipts issued by Prescient were not provided during or subsequent to the audit review. For example, copies of receipts #003 and #004 issued in 2006 and 2007 respectively were not received.

Of the records provided, we identified specific areas of concern as summarized below:

- The supporting records provided to substantiate Prescient's activities indicated that Prescient failed to devote all of its resources to its own charitable purpose.
- Payments for legal and consulting fees were not supported with adequate documentation to verify that they were incurred by Prescient.

Conclusion

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

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

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

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

Prescient has improperly completed T3010A returns for the December 1, 2004 – November 30, 2007 fiscal periods, as there were numerous errors and omissions as outlined below:

FPE 30/11/2005:

- C2 "Describe how the charity carried out its charitable purposes during the fiscal period." No description was provided.
- D6 "Except for compensation, did the charity, directly or indirectly transfer any part of its income or assets to individuals or organizations, not at arm's length to the charity?" Line 3950 was erroneously marked no. Refer to B) Gifts to Non-Qualified Donees for numerous examples of amounts transferred to individuals and organizations not at arm's length to the charity.

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- E3 Line 4650 Other Revenue – loss of share value should have been \$574,500 as per adjusting entries/general ledger, not \$547,500 as shown.

FPE 30/11/2006:

- D4 "Did the charity carry on programs, directly or indirectly, outside Canada?" Line 2100 was answered yes.
F1 "What were the total expenditures on programs outside of Canada?" Line 5400 is Nil.
No evidence of programs conducted outside of Canada was found during the audit.
- Qualified Donees Worksheet – Business number and location for Data Foundation not listed.

FPE 30/11/2007:

- D6 "Except for compensation, did the charity, directly or indirectly transfer any part of its income or assets to individuals or organizations, not at arm's length to the charity?" Line 3950 was erroneously marked no. Refer to B) Gifts to Non-Qualified Donees for numerous examples of amounts transferred to individuals and organizations not at arm's length to the charity.
- D4 "Did the charity carry on programs, directly or indirectly, outside Canada?" Line 2100 was answered yes.
F1 "What were the total expenditures on programs outside of Canada?" Line 5400 is Nil.
No evidence of programs outside of Canada was found during the audit.
- Qualified Donees Worksheet – Business numbers for qualified donees not listed.

The Charity's Options:

a) No Response

If you choose not to respond, please advise us in writing of your intent. In that case, the Director General of the Charities Directorate may give notice of its intention to revoke the registration of Prescient by issuing a Notice of Intention in the manner described in subsection 168(1) of the Act.

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b) Response

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

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

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

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

Yours sincerely,



Jeanne Effler, CGA
Audit Division
Telephone (250) 363-0276
Facsimile (250) 363-3862

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