



CANADA REVENUE
AGENCY

AGENCE DU REVENU
DU CANADA

REGISTERED MAIL

Funds for Canada Foundation
300-345 Kingston Road
Pickering ON L1V 1A1

BN: 821600475 RR0001

Attention: Mr. Ken Ford, President

File #:3031605

August 10, 2009

Subject: Revocation of Registration
Funds for Canada Foundation

Dear Mr. Ford:

The purpose of this letter is to inform you that a notice revoking the registration of Funds for Canada Foundation (the Organization) was published in the *Canada Gazette* on August 8, 2009. Effective on that date, the Organization ceased to be a registered charity.

Consequences of Revocation:

- a) The Organization is no longer exempt from Part I Tax as a registered charity and **is no longer permitted to issue official donation receipts**. This means that gifts made to the Organization are no longer allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the *Income Tax Act* (the Act), respectively.

- b) By virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the Notice of Intention to Revoke. This revocation tax is calculated on prescribed form T-2046 *Tax Return Where Registration of a Charity is Revoked* (the Return). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the Notice of Intention to Revoke. A copy of the Return is enclosed. The related Guide RC-4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, is available on our website at www.cra-arc.gc.ca/E/pub/tg/rc4424.

Section 188(2) of the Act stipulates that a person (other than a qualified donee) who receives an amount from the Organization is jointly and severally liable with the Organization for the tax payable under section 188 of the Act by the Organization.

- c) The Organization no longer qualifies as a charity for purposes of subsection 123(1) of the *Excise Tax Act* (ETA). As a result, the Organization may be subject to obligations and entitlements under the ETA that apply to organizations other than charities. If you have any questions about your GST/HST obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

In accordance with *Income Tax Regulation* 5800, the Organization is required to retain its books and records, including duplicate official donation receipts, for a minimum of two years after the Organization's effective date of revocation.

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

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,



Danie Huppé-Cranford
Director
Compliance Division
Charities Directorate
Telephone: 613-957-8682
Toll free: 1-800-267-2384

Enclosures

- Copy of the Return (form T-2046)
- Canada Gazette publication

Cc: Sam Albanese



REGISTERED MAIL

Funds for Canada Foundation
300-345 Kingston Road
Pickering ON L1V 1A1

JUN 29 2009

BN: 82160 0475 RR0001
File #: 3031605

Attention: Mr. Ken Ford, President

**Subject: Notice of Intention to Revoke
Funds for Canada Foundation**

Dear Mr. Ford:

I am writing further to our previous letter (RE: Audit of the Funds for Canada Foundation) (copy enclosed), in which you were invited to submit representations as to why the Minister of National Revenue (the Minister) should not revoke the registration of Funds for Canada Foundation (the Charity) in accordance with subsection 168(1) of the *Income Tax Act* (the Act).

We have now reviewed and considered your written response dated February 16, 2008. However, notwithstanding your reply, our concerns with respect to the Charity's non-compliance with the requirements of the Act for registration as a charity have not been alleviated. Our position is fully described in Appendix "A" attached.

Conclusion:

Based on the Canada Revenue Agency's (CRA) audit of Funds for Canada Foundation (the Charity), it is our view that the Charity operates for the primary or collateral purpose of furthering the Donations for Canada tax shelter by agreeing, for a fee, to act as a receipting agent in the tax shelter arrangement.

Our audit has revealed that from December 2, 2005 to December 31, 2006, the Charity issued nearly \$176.5 million in receipts for cash received through the tax shelter arrangement. The Charity, in turn, paid over \$14.2 million to the tax shelter promoter as fundraising fees and directed \$160.8 million to an off-shore investment vehicle.

Our audit findings indicate that 79.05% of the funds directed to the off-shore investment vehicle were eventually returned to the original lender of the funds. The Charity retained a meagre 1% of the total tax-receipted amounts for use in its own programs.

It is our position that the Charity has operated for the non-charitable purpose of promoting a tax shelter arrangement and for the private benefit of the tax shelter promoters. The Charity has issued receipts for transactions that do not qualify as gifts;

issued receipts otherwise than in accordance with the *Income Tax Act* and its Regulations; has failed to maintain sufficient books and records to support its activities; and has failed to meet its annual disbursement quota. For all of these reasons, and for each of these reasons alone, it is the position of the CRA that the Charity's registration should be revoked.

It is the CRA's position that for each of these reasons alone, and for the Charity's other breaches of the *Income Tax Act* detailed in our previous letter sent in January, 2009, there are serious contraventions of the *Income Tax Act* and warrant the immediate revocation of the Charity's registered status.

Consequently, for each of the reasons mentioned in our letter, received by the Charity on January 23, 2009, I wish to advise you that, pursuant to the authority granted to the Minister in 149.1(3)(b) and 168(1) of the Act, which has been delegated to me, I propose to revoke the registration of the Charity. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(d) and 168(1)(e) of the Income Tax Act, that I propose to revoke the registration of the organization listed below under subsection 149.1(3) and paragraph 149.1(3)(b) of the Income Tax Act and that the revocation of registration is effective on the date of publication of this notice.

Business Number	Name
82160 0475 RR 0001	Funds for Canada Foundation Pickering ON

Should you wish to object to this notice of intention to revoke the Charity's registration in accordance with subsection 168(4) of the Act, a written Notice of Objection, which includes the reasons for objection and all relevant facts, must be filed within **90 days** from the day this letter was mailed. The Notice of Objection should be sent to:

Tax and Charities Appeals Directorate
Appeals Branch
Canada Revenue Agency
250 Albert Street
Ottawa ON K1A 0L5

A copy of the revocation notice, described above, will be published in the *Canada Gazette* after the expiration of 30 days from the date this letter was mailed. The Charity's registration will be revoked on the date of publication, unless the CRA receives an order, **within the next 30 days**, from the Federal Court of Appeal issued under paragraph 168(2)(b) of the Act extending that period.

Please note that the Charity must obtain a stay to suspend the revocation process, notwithstanding the fact that it may have filed a Notice of Objection.

Consequences of Revocation

As of the effective date of revocation:

- a) the Charity 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 Charity would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the Act, respectively;
- b) by virtue of section 188 of the Act, the Charity will be required to pay a tax within one year from the date of the Notice of Intention to Revoke. This revocation tax is calculated on prescribed form T-2046 "*Tax Return Where Registration of a Charity is Revoked*" (the Return). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the Notice of Intention to Revoke. A copy of the relevant provisions of the Act concerning revocation of registration, the tax applicable to revoked charities, and appeals against revocation, can be found in Appendix "E", attached. Form T-2046, and the related Guide RC-4424, "*Completing the Tax Return Where Registration of a Charity is Revoked*", are available on our website at www.cra-arc.gc.ca/charities;
- c) the Charity will no longer qualify as a charity for purposes of subsection 123(1) of the *Excise Tax Act* (ETA). As a result, the Charity may be subject to obligations and entitlements under the ETA that apply to organizations other than charities. If you have any questions about your GST/HST obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

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

Yours sincerely,



Terry de March
Director General
Charities Directorate

Attachments:

- CRA letter received by the Charity on January 23, 2009 (RE: Audit of the Funds for Canada Foundation);
- Your representations of February 16, 2008 [sic];
- Appendix "A", Comments on representations
- Appendix "B", Bank reconciliation working paper
- Appendix "C", General Ledger Analysis
- Appendix "D", Relevant provisions of the Act

c.c.: Sam Albanese,



REGISTERED MAIL

Funds for Canada Foundation
1089 Kingston Road, Unit #8
Toronto, Ontario M1N 4E4

BN: 821600475RR0001
File No: 3031605

Attention: Mr. David Raby

Dear Mr. David Raby:

RE: Audit of the Funds for Canada Foundation

This letter is further to the audit of the books and records of the Funds for Canada Foundation (the "Charity") by the Canada Revenue Agency (the "CRA"). The audit related to the operations of the registered charity for the period from December 2, 2005 to December 31, 2006.

The results of this audit indicate that the Charity appears to be in non-compliance of certain provisions of the *Income Tax Act* (the "Act") or its Regulations. The CRA has identified specific areas of non-compliance with the provisions of the Act or its Regulations in the following areas:

AREAS OF NON-COMPLIANCE:		
	Issue	Reference
1.	Failure to Devote Resources to Charitable Activities	149.1(4), 168(1)(b)
2.	Failure to Accept Valid Gifts and Issuing Receipts Not in Accordance with the Act	118.1, 149.1(3), 168(1)(d)
3.	Disbursement Quota	149.1(3)(b), 168(1)(b)
4.	Inadequate books and records	230(2)(a), 230(2)(c), 168(1)(e), 188.2(2)(a)
5.	Failure to File an Information Return as Required by the ITA	149.1(2), 168(1)(c)

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

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

Identified Areas of Non-Compliance:

1. Failure to Devote Resources to Charitable Activities:

The Charity is registered as a public foundation. In order to satisfy the definition of a "charitable foundation" pursuant to subsection 149.1(1) of the Act, "charitable foundation" means a corporation or trust, "... operated exclusively for charitable purposes".

To qualify for registration as a charity under the Act, an organization must be established for charitable purposes that oblige it to devote all its resources to its own charitable activities. This is a two-part test. First, the purposes it pursues must be wholly charitable and second, the activities that a charity undertakes on a day-to-day basis must support its charitable purposes in a manner consistent with charitable law. Charitable purposes are not defined in the Act and it is therefore necessary to refer, in this respect, to the principles of the common law governing charity. An organization that has one or more non-charitable purposes or devotes resources to activities undertaken in support of non-charitable purposes cannot be registered as a charity.

a) Non-Charitable Purpose

It is our view, based on our audit, the Charity is pursuing a non-charitable purpose. In our view, the Charity is primarily or collaterally operating for the purpose of supporting, promoting and participating in a tax shelter arrangement.

The Charity was registered effective December 2, 2005. The Charity's purpose at the time of registration was "To receive and maintain a fund or funds and to apply all or a part of the principal and income therefrom, from time to time, to charitable organizations that are also registered charities under the Income Tax Act (Canada)."

According to the Charity's minutes dated June 28, 2006, Gleeson Management Associates Inc. was asked to establish the Charity in 2005. Representatives of the Charity during the audit confirmed that this was at the request of the Parklane Financial Group ("Parklane"). Also according to the minutes, Parklane had been running the Donations for Canada program and it desired to expand the program to "benefit mainstream Canadian charities". The Charity was therefore established for this purpose.

During the audit, no contracts with Parklane and Trafalgar Trading ("TTL") Limited were presented. However, on an annual basis Royalty agreements were signed between the Charity and TTL. The first such agreement was signed January 2, 2006, one month following registration.

The audit revealed that, during the periods under review, the Charity actively promoted the Donations Canada tax shelter (TS70623) and continued to participate in the tax shelter in 2007 and 2008. As we understand from the materials obtained during the course of the audit, the 2006 Donations Canada tax shelter, in which the Charity participated, was marketed as follows:

- For each \$10,000 pledged "donation", a participant would be required to personally contribute \$2,500 in out of pocket cash. The participant would subsequently apply for and become the beneficiary of a financial trust (the "Master Trust"). The Master Trust would issue a sub-trust unit valued at \$7,500, which was subsequently donated to the Charity.
- As a result, the participant "donates" \$2,500 in cash plus the sub-trust unit valued at \$7,500 to the Charity and receives two official donation receipts totalling \$10,000.
- The Charity requests the cash redemption of the sub-trust units from the Master Trust and receives a cash redemption value of \$7,500 per sub-trust unit.
- For the \$10,000 "donation" received, the Charity executes a series of directions to direct \$9,900 to TTL and to direct \$800 of the \$9,900 to Parklane, the promoter of the donation arrangement. As a result, for a \$10,000 "donation", the Charity receives \$100 in unencumbered cash for use in its charitable activities and records "investments" of \$9,100.
- Of the funds directed to and remaining with TTL, the funds are to be invested into The Trafalgar Global Index Futures Program which is reported to be a Royalty Agreement. Per the terms of the Royalty Agreement, the Charity is entitled to receive 60% of any monthly profit distributions based on the year and type of Royalty Agreement over a period of 20 years. Furthermore, TTL had right to a monthly trading fee equal to .2% of the balance which would be waived in months that performance was negative however, at the end of the term of the agreement any previously unpaid monthly trading fees plus a fee equivalent to 24 months worth of trading fees shall be deducted from the profits.
- Each of the preceding transactions occurs within a 24-hour period.

According to the minutes of December 13, 2006, during the period under review Mr. Gleeson, as director of development, participated in 21 seminars and presentations in conjunction with Parklane.

According to the Charity's 2006 Registered Charity Information Return, it issued official donation receipts totalling \$183,489,810 CDN, substantially all of which were "gifts" received from donors participating in the Donations Canada tax shelter and the Charity correspondingly records \$135,862,372 USD in investments.¹ The Charity did not appear to have any income during the years under review other than from its participation in the tax shelter arrangement.

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¹ See discussion below regarding audit findings relating to investments.

Despite seemingly having no formal contract with respect to the use of donated funds, the Charity typically retained only 1% of all donations.² As above, the Charity did however sign a royalty agreement with TTL concerning its "investments". While the "purchase price" described in 2006 is somewhat unclear, the language subsequently used in the 2007 royalty agreement describes the arrangement as follows:

"Purchase Price" means pursuant to section 2 hereof, the periodic amounts received by Trafalgar Trading from the Association pursuant to the Program, after deducting: (i) one percent (1%) of aggregate donations referred to in section 2.1 retained by the Association; and (ii) fundraising fees of eight percent (8%) of aggregate donations referred to in section 2.1 to be sent to Trafalgar Trading for distribution to ParkLane."

From this it is clear that the Charity has agreed to receive and issue receipts for amounts received through the program but it is entitled to retain a mere 1% - the remainder being required to be transferred to TTL or paid to Parklane as fundraising fees. As a result, based on the 2006 return, the Charity issued official donation receipts totalling \$183,489,810,³ while it only retained a meagre \$1,755,795.⁴

As a result, we note with concern, that despite recording that it received \$183,489,810 in tax-receipted income during 2006, the Charity spent \$12,337,635 or 6.7% of total tax-receipted income on fundraising and distributed a mere \$1,374,897 or 0.75% of total tax-receipted income to qualified donees.⁵

Rather than pursue more traditional investment vehicles, the Charity has entered into Royalty Agreements with TTL on an annual basis. These agreements require the Charity to surrender control over its funds, as described above approximately 91% of the aggregate donations received, in return for a percentage of the profits if any on a month to month basis. In 2006 this resulted in a return of \$693,453 in investment income on investments of the recorded \$135,862,372 USD.

We also reviewed the Charity's recorded investments and investment earnings to date. The Charity records investments totalling \$231,454,005 USD and investment income of \$951,086, a .41% return on investment. The investment has also declined \$1,333,484 USD per the Charity's records. Using these figures recorded by the Charity, we project the Charity will receive a total of \$6,319,936 USD in investment or royalty payments over a 20-year period all factors remaining consistent, yet the investment capital will erode to \$218,108,248 USD - a net loss of \$13,345,757 USD.⁶ By comparison, GIC average rates from 2004 to 2007 were: 1 yr: 2.39%, 3yr: 2.74% and 5yr: 3.05% which would have produced revenue of \$8,856,467 at the 1 yr avg. rate or \$7,905,381 more than current investment. We also note

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² We note the Charity also signed an agreement with TTL on December 28, 2006 whereby it would forgo the 1% usually retained from a \$5 million donation closing.

³ \$174,593,424 in 2006 per the T-3010A and \$109,048,793 in 2007 per their books and records.

⁴ This amount increases to \$283,641,817 and \$2,846,282 respectively if 2007 is included.

⁵ The amounts for 2007 are \$8,852,837 or 8.16% for fundraising while distributing a mere \$1,679,824 or 1.55% to qualified donees.

⁶ As described below, our conclusion is that the overall erosion to the Charity's funds is actually higher due to the fact that, at a maximum, \$1,365 per \$10,000 "donation" is potentially invested.

that utilizing a GIC would not require the Charity to surrender control of its funds for a 20 year period, nor would it be generally required to split a percentage of the returns. In our view these "investments" are clearly designed for the benefit of TTL and would not be considered "reasonably prudent or sagacious".

In our view, it appears that the primary purpose of the Charity is simply not to maintain a fund for the purposes of applying the principal to charitable organizations. In fact, the Charity appears to be established primarily for the promotion and benefit of the Parklane Donations Canada Program. The Charity was clearly established for this purpose and has structured its affairs to solicit donations, issue tax receipts and structure its operations for the benefit of the program promoters, at the expense of the Charity's interests.

The vast majority of the funds received by the Foundation are applied for the benefit of the promoters, to the detriment of the Charity's interests, with a proportionally insignificant amount being devoted to charitable activities. As above, the Charity itself is entitled to retain a meagre 1% of all donations received. Parklane itself is entitled to 8% of all donations (800% more than the Charity) as fundraising fees. The remaining 91% must be transferred, according to the royalty agreements, to TTL to purchase, seemingly, profits from the same amounts donated to the Charity. The royalty agreements do not appear to provide for the return of the principal amount, at any point, for the benefit of the Charity. Based on the rates of return, the investments will provide the Charity *less overall*, over the 20 year period, than the Charity has issued donation receipts for.

In our view, the Charity's primary purpose is not simply to maintain a fund from which gifts are to raise funds to gift to qualified donees, but to promote and operate for the private benefit of the Donations Canada tax shelter. As outlined in the balance of this letter, it is our conclusion this arrangement is an abusive one where the majority of the transactions are artificial and very little of the reported amounts receipted actually flow to the qualified donees. The preponderance of funds received by the Charity are paid to the promoters of the arrangement or to related companies with a comparatively insignificant amount being devoted to charitable activity. It is our opinion the collateral, if not primary, purpose of the Charity is to promote an tax planning arrangement, which is not a charitable purpose at law.

It is our view, by pursuing this non-charitable purpose, the Charity has failed to demonstrate that it meets the test for continued registration under 149.1(1) as a charitable foundation "constituted and operated exclusively for charitable purposes". For this reason, it appears to us that there may be grounds for revocation of the charitable status of the Funds for Canada Foundation.

b) Personal Benefit:

It is our view that the Charity operates, or has been allowed to operate for the inappropriate private gain of Mr. Gleeson and Ms. Gleeson. While, under the Act a charity is permitted to compensate individuals for reasonable services rendered, operating for the private benefit of the directors or members of a charity, or allowing the charity's resources to be so devoted is not.

Above, Mr. Gleeson is one of the original Directors of the Charity, and, at the time of application self-described as Trustee for the Charity. Mr. Gleeson is now the "Director of Development" for the Charity. Ms. Mary-Lou Gleeson, spouse of Mr. Gleeson, is currently Executive Director of the Charity and has full signing authority for the Charity. In our view, both Mr. and Ms. Gleeson stand in a position to influence the decisions of the charity and stand in a fiduciary relation to the charity.

GMA Inc., a corporation wholly owned and operated by Mr. and Ms. Gleeson, was hired to act as administrative agent and fundraiser for the Charity, performing all administrative activities on behalf of the Charity, reviewing applications for funding, as well as referring donors to participate in the Donations Canada tax shelter.⁷ In 2006, \$96,493 was paid for management fees to Gleeson Management Associates Inc. ("GMA Inc."). Of this amount \$59,937 was paid to Ms. Gleeson as Executive Director of the Charity.

However, in addition to the above compensation, we note the Charity also, per direction in the Board of Directors minutes of December 13, 2006, the Charity has paid GMA Inc. \$8,524⁸ for rent and utilities in 2006. We are confused as to why the Charity is required to pay utilities and rent on behalf of GMA, situated in the Gleeson private residence, particularly given that a review of the Board of Directors minutes dated June 28, 2006 indicate the Charity had no permanent location and were therefore occupying a temporary office of the Scarboro Foreign Missions for which it was not paying rent and/or utilities.

However, our main concern with respect to the Charity's status being used for the private benefit of the parties involved stems from the granting activities of the Charity. Based upon our review, it appears that, rather than just selecting eligible recipients of grants, as is the ordinary conduct of a Foundation, it appears that GMA Inc. approaches potential qualified donees and, in return for soliciting grants, receives a percentage of the grants made to qualified donees. Our review has demonstrated that GMA enters into letters of understanding with several of the recipient qualified donees who paid commissions based upon the grants received of 10% in years 1-2 of the contract, 7.5% in years 3-4, 5% in years 5-6 and 3% for the remaining 4 years of the contract for all cash amounts received.

We note with concern that Mr. Gleeson, through GMA, is paid by the Charity to screen applications from registered charities and qualified donees for grant funding. In this regard, Mr. Gleeson and GMA stand in a direct conflict of interest being paid, on the one hand, by the Charity to review applications for funding and, on the other hand, being paid by the recipient charities to seek grants from the Charity. In our view, Mr. Gleeson and GMA placed themselves in a position to profit from the grant-making activities of the Charity. In fact, it would appear, that as Director of Development, Mr. Gleeson directly approved the applications GMA was in a position to influence, and did influence, the grant-making activities of the Charity towards organizations where it stood to receive a financial benefit. We note with concern that our review has concluded that the initial 6 recipients of funds, who we note 5 of which are also the top recipients of funds during 2006, entered into arrangements with Mr. Gleeson.

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⁷ As discussed during the initial interview with representatives of the Charity.

⁸ Rent calculated to be \$500 per month and utilities are 75% of total utilities incurred by GMA Inc.

It is our view, in this regard, that the Charity has been allowed to operate for the private benefit of its members – specifically Mr. and Ms. Gleeson, through GMA inc.. By operating for the private gain of its members, the Charity has failed to demonstrate that it meets the test for continued registration under 149.1(1) as a charitable foundation "operated exclusively for charitable purposes" or that "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". For this reason, it appears to us that there are grounds for revocation of the charitable status of The Funds for Canada Foundation under paragraph 168(1)(b) of the Act.

2. Failure to Accept Valid Gifts in Accordance with the Act:

It is our position that the Charity has contravened the *Income Tax Act* by accepting and issuing receipts for transactions that do not qualify as gifts. We offer the following explanations to support our position.

a) No Animus Donandi

Under the common law, a gift is a voluntary transfer of property without consideration or expectation of return. However, an additional essential element of a gift is *animus donandi* - that the donor must be motivated by an intention to give. It must be clear that the donor intends to enrich the donee, by giving away property, and to generally grow poorer as a result of making the gift.

It is our view that the vast majority of the transactions involving the Charity fail to meet this latter element. The common theme, found throughout all of these transactions, is that through a series of artificial transactions and a minimal monetary investment, "donors" profit through the tax credits so obtained.

In support of this position, we note that:

- The participant contributes 25% of his donation in cash and as a beneficiary of the trust he applied to, receives at no cost to the donor, sub-trust units valued at 75% of his donation. Each donation is directed to be gifted to the Charity and official donation receipts are issued for each "gift".
- Based on our review, all donors applying to become beneficiaries of the trust are accepted as beneficiaries provided each donor has committed to contributing at least \$2,500 to the Charity.
- The promotional materials promise the donor will receive a tax credit at the highest marginal tax rate for the aggregate value of the gift and provides charts calculating the donors return on cash investment of at least 70% and as high as 94% depending on province of donor residence and time of year "gift" is made; and
- Transactions are pre-arranged and handled entirely by promoters or other pre-arranged third parties. Participants in these arrangements are merely expected to put forward a minimal investment to receive generous tax receipts in return.

It is our view, based upon our audit review and evidence, these transactions are entirely artificial designed to give the illusion of a gift being made where one was not. These transactions consisted almost entirely of paper transactions that were designed to, in a circular fashion, return the trust unit funds back to the trust company.

In our view, particularly given the artificial nature of the transactions, that primary purpose of these transactions is to leverage the charitable gift provisions allowing participants to "profit" by filing their taxes. In our view that motivation of the participants is not to donate to charity, but rather to enrich him/herself in a scheme facilitated by the Charity. In our opinion, the participants were not making gifts but making a payment with intent to profit. In our view, these transactions, given the combination of the tax credits and other benefits received, lack the requisite *animus donandi* to be considered gifts.

As such, it is our position that there is no intention to make a "gift" within the meaning assigned at 118.1 of the Act and these transactions did not qualify for tax receipting purposes. For this reason, it appears to us that there are grounds for revocation of the charitable status of The Funds for Canada Foundation under paragraph 168(1)(d) of the Act.

b) Benefit received:

Additionally, we are of the view that the transactions, specifically the individual participant's out-of-pocket cash outlay, does not qualify as a gift because the donors expected to receive a benefit from making a gift. It is clear, both from the promotional material and from the audit evidence, that individuals who made a gift to the Charity became eligible to receive a distribution from a trust of "sub-trust units". The audit evidence has revealed that these individuals did, in fact, receive these distributions from the trust as a result of making the gift. As such, we are of the view that receipts should not have been issued for these transactions as they were not made without expectation of return.¹⁰

As such, the Charity was not entitled to issue receipts for the amounts contributed (in this case with reference to the individual participant's out-of-pocket cash outlay) and in this regard it is our view that the Charity has issued a receipt for a gift or donation otherwise than in accordance with this ITA, which is cause for revocation by virtue of paragraph 168(1)(d).

c) Property donated:

We are further of the view that property purportedly donated to the Charity through the tax shelter arrangement does not appear to be property in fact beneficially donated or received by the Charity.

The participants themselves contribute a mere 25% of the property purportedly received by the Charity through the tax shelter arrangement. The remainder of the property "donated"

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¹⁰ See below for our explanation of the application of the proposed legislation regarding "advantage" with respect to this arrangement.

consists of sub-trust units from a Canadian Trust¹¹ who was directed to deliver the cash value of the units to the Charity directly. Once received, the Charity issues receipts to the donor representing the full amount of cash received in the Charity's account.

However, as above, the Charity is entitled to retain a mere 1% of the funds received. The remaining 99% is transferred to TTL in fulfillment of its royalty agreement. In 2006, the Charity records donations of \$183,489,810 and corresponding long-term investments of \$168,490,371.¹²

However, to the contrary, it appears that the tax-receipted funds purported to be paid to TTL for variable and contingent royalty payments based on trading of international futures contracts did not occur. Our audit has concluded that of the funds (99%) transferred the majority of the funds (79.05%) were transferred back to the same trust distributing sub-trust units to beneficiaries as software licensing fees. Of the remaining funds, a full 8% was paid to Parklane for fundraising. This, of course, would provide a mere 11.95% remaining for "investing". The Charity receives distributions from its Royalty Agreements, but it appears that this would, in the main, be from the same remaining cash contributions not from the purported full value of investments held.

In our view, the Charity has issued receipts for property which is not entitled to but rather, through an artificial series of transactions, money from a trust flows through the Charity's accounts, is transferred to TTL and is subsequently returned to the source. As such, it is our position that these investments seemingly exist little more than as notations on paper. It is only the donor's approximately 25% out-of-pocket outlay which is available to be used for charitable programs or investments. Unfortunately, it is from these funds that fundraising costs are paid, further eroding the amounts available for charitable programs.

In our view, the Charity participated in a scheme designed to create the illusion of property being donated and issued receipts for property, which was not beneficially transferred to it. The Charity was either aware, or ought to have been aware, of the fact that its role in the arrangement was to issue receipts for property which flowed through its accounts but to which it had no present or even future ownership of. The funds that are represented as donated, owned and invested by the Charity were returned to the Master Trust under the guise of software fees whereby the Master Trust never, in essence, relinquished any funds for the sub-trust units as the Trust and others involved in the arrangement were fully aware the funds would follow in a circular fashion back into their accounts.

As such, the Charity was not entitled to issue receipts for the amounts contributed (in this case with reference to the trust units) and in this regard it is our view that the Charity has issued a receipt for a gift or donation otherwise than in accordance with this ITA, which is cause for revocation by virtue of paragraph 168(1)(d).

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¹¹ While the royalty agreement states a Canadian Trust was used, the audit revealed that it was, in fact, a Bermuda based Trust.

¹² In 2007, the charity records donations of \$108,534,637 and LT investments of \$95,591,632.

c) Pending legislation:

On December 5, 2003, the Department of Finance introduced new legislation with respect to charitable donations and advantages. These rules allow a taxpayer to make a gift to a charity and receive some advantage in return, however the value on the receipt must reflect the eligible amount of the gift made (i.e., the value of the receipt must reflect the gift less any advantage received by the donor). This new legislation also outlines rules particular to artificial transactions. This legislation, while still pending, is applicable in respect of gifts made after December 5, 2003.

As above, it is our view that the cash contribution entitled participants in the tax shelter arrangement to a distribution of the sub-trust units from a trust. As the purported value of the sub-trust units exceeded the donor's cash outlay, under the new rules, the Charity was not entitled to issue a receipt for these payments. Further, even was the distribution from the trust found not to be in consideration for the payment, the proposed legislation has broad application and also includes advantages that are "in any other way related to the gift".¹³ As such, it is our view that the Charity, under the proposed legislation should not have issued tax receipts for the individual participant's out-of-pocket cash outlay.

In this regard, it is our view that the Charity has issued a receipt for a gift or donation otherwise than in accordance with this ITA, which is cause for revocation by virtue of paragraph 168(1)(d).

3. Issuing Receipts Not in Accordance with the Act:

The law provides various requirements with respect to the issuing of official donation receipts by registered charities. These requirements are contained in Regulations 3500 and 3501 of the Act and are described in some detail in Interpretation Bulletin IT-110R3 *Gifts and Official Donation Receipts*.

The audit reveals that the donation receipts issued by the Charity do not comply with the requirements of Regulation 3501 of the Act and IT-110R3 as follows:

- The address recorded on the receipts does not correspond with any address recorded with CRA (Regulation 3501(1)(a));
- The Charity has reported total tax-receipted gifts on its T3010 than could not be traced to source documents such as bank statements therefore we are unable to ascertain the completeness and accuracy of the receipts issued (Regulation 3501(1)(c)); and
- Some receipts were unsigned or did not have the official signature (Regulation 3501(1)(i)).

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¹³ Ss. 248(32)

Under paragraphs 168(1)(d) of the Act, the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and the Regulations. It is our position the Charity issued receipts for transactions that do not qualify as gifts at law. For this reason alone there are grounds for revocation of the charitable status of The Funds for Canada Foundation under paragraph 168(1)(d) of the Act.

4. Disbursement Quota:

In order to maintain its status as a charitable foundation within the meaning of paragraph 149.1(3)(b) of the Act, a registered charity must, in any taxation year, expend amounts that are equal to at least 80% of the aggregate amounts for which it issued donation receipts in its immediately preceding taxation year, or in the case of enduring property, 3.5% of the average value of property not used for charitable activities. A charity is allowed by virtue of 149.1(20) of the Act to offset any shortfalls in its disbursement quota by applying any excesses in its disbursement quota from its immediately preceding taxation year and 5 or less of its immediately subsequent taxation years.

Based on our calculations, the Charity is currently in a shortfall position and is extremely unlikely to meet its disbursement quota for the fiscal period ending December 31, 2007 for the following reasons:

In 2006, the Charity issued \$183,489,810 in official donation receipts. The Charity represents that these amounts were received subject to "Ten Year Direction". We disagree with this statement for the following reasons:

1. The Charity did not treat the gifts property subject to a direction that it be held for a minimum of 10 years. Specifically, the Charity expended over \$12 million of this amount towards fundraising. The Charity spent a further \$1,374,635 on gifts to qualified donees. The Act allows registered charities to exclude from the disbursement quota amounts received subject to a direction that the property be held for a period of not less than 10 years, but to be eligible for this exclusion the charity must treat the property accordingly. This does not allow the charity to encroach on these amounts on administration or fundraising or even, in this case, as gifts to qualified donees. As such, we do not agree that the charity has received funds as 10 year gifts.

Further, even were we to only narrowly conclude that the amounts expended by the Charity on fundraising, administration and gifts to qualified donees (\$13,846,452) are not eligible for treatment as ten year gifts the Foundation would nonetheless have been required to expend \$9,700,000 on its charitable programs or as gifts to qualified donees – still a significant shortfall.

2. Where a registered charity receives property subject to a ten year direction, it must retain that property or property substituted for the gift for a minimum of 10 years. The CRA's position is that the property substituted for the gift should be property of roughly equivalent value. As above, it is our view that the Charity has purportedly purchased a "royalty agreement" entitling it to a mere portion of the returns and not the return of the original property. In this regard, it would appear that the charity has, in fact, disposed of its property for an "investment" of significantly lower value. This is aggravated by the fact that our audit has concluded that the funds reported as "long-term investments" have been substantially all returned to the Master Trust such that they exist merely on paper.

As such, we do not accept that the Charity has received all of its funds subject to ten year direction. In 2007 the Charity spent a mere \$1,679,824 on its charitable programs and gifts to qualified donees placing it in a clear shortfall position - in excess of \$140 million.¹⁴ The Foundation again in 2007 issued receipts for \$108,534,637 yet failed to respect the ten year directions. Again looking narrowly at the \$9 million spent on administration, fundraising and other the Foundation will be required to spend approximately \$15 million on its charitable programs in 2008. In fact it is the CRA's position it must spend 80% of the total amounts receipted.

The Charity's disbursement quota shortfall is further aggravated by the fact that a charity must spend approximately 3.5% of any property not used in charitable programs or administration towards meeting its disbursement quota. Using the somewhat dubious amounts reported in its 2006 return as an example, with \$168,490,371 in long-term investments a charity would be required to spend an additional \$5,880,000 towards its disbursement quota on an annual basis. Using the amounts reported in 2007, with \$265,043,051 in long-term investments a charity would be required to spend an additional \$9,276,506 towards its disbursement quota on an annual basis.

We therefore fail to see how the Charity can correct the current disbursement quota shortfall it is currently in. As above, the Charity's deficit with respect to its disbursement quota obligations is significant, whether viewed as the whole amount or the narrower amounts directly expended on fundraising, administration and "other". In our view it is unlikely the Charity can or will remedy this situation for the following reasons:

1. The charity has no access to the funds purportedly "invested". In fact, our audit has revealed that substantially all of the funds sent to TTL have been returned to the Master Trust.
2. As per above, the Charity receipts for all "gifts" received yet retains only 1% of almost all "gifts" received for its own operating expenses, including making gifts to qualified donees.

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¹⁴ Again, even narrowly viewing solely the amounts expended as not eligible for treatment as 10 year gifts, the Charity finds itself in a shortfall position of approximately \$8 million.

3. The average rate of return on "investments" held with TTL is a mere 0.41% which is far less than the 3.5% required to meet its annual disbursement quota;
4. The Charity's disbursement quota shortfall is increasing exponentially on an annual basis.

We have calculated the Charity's cumulative disbursement quota shortfall as:

Fiscal Period	DQ Excess	DQ Shortfall	Cumulative DQ (Excess) Shortfall
2005	\$ -	\$ -	\$ -
2006	\$ 1,348,897	\$ -	(\$ 1,348,897)
2007	\$ -	\$ 145,112,024	\$ 143,763,127

Per paragraph 168(1)(b) of the Act, the Minister, may by registered mail give notice to the charity that he proposes to revoke its registration because it ceases to comply with the requirements of the Act related to its registration as such. For this reason, it appears to us that there are grounds for revocation of the charitable status of The Funds for Canada Foundation.

6. Inadequate books and records:

Subsection 230(2) of the Act requires every registered charity and registered Canadian amateur athletic association shall keep records and books of account at an address in Canada recorded with the Minister or designated by the Minister containing

- (a) information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under this Act;
- (b) a duplicate of each receipt containing prescribed information for a donation received by it; and
- (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.

The audit revealed that the books and records of the Charity were inadequate for the following reasons:

- No bank reconciliation is prepared;
 - CRA has found an understatement of \$58,107 in the ending bank balance per the books.
- Charity was unable to provide detailed HSBC account statements for May through October, 2006;
 - \$13,000,00 in deposits missing detail on the statements provided.
- Per the charity documentation, donation receipts for \$178,500 were issued on February 28, 2006. Yet this amount included the \$32,500 from the prior year and the funds were not received until April 21, 2006;

The charity has indicated that it has permission to accumulate funds on line 5500 of their T3010A (\$168,490,371 in 2006 and \$109,232,447 in 2007), yet there is no record of permission being requested or granted by the Minister under Subsection 149.1(8) of the Act;

- The charity answered no to question C11 of the 2006 T-3010A information return regarding gifts to qualified donees, yet the audit findings clearly show that transfers to qualified donees is the only activity the organization undertook to meet its disbursement quota;
- On the 2006 information return, the charity did not indicate any privately-held securities (line 3090) as non-cash gifts received to question C12, yet the audit concluded that receipts were made for both publicly traded securities as well as issuing \$132,239,060 in receipts for shares of a sub-trust unit;
- On the 2006 information return, the charity indicated in section D of the T-3010A return that no full time employee or director/trustee or like officials (question D5) were compensated and only one part-time employee was compensated \$59,937, yet the audit revealed that three individual, namely, Mr. Gleeson as Director/trustee or like official (\$ 38,305), Ms. Gleeson (\$ 59,937) as executive director (full-time) and Mr. Evans (\$6,438) were all compensated;
- The audit concluded the donors made gifts of enduring property per the pledge forms, the charity however did not respect the desire of the donor as follows:
 - Used \$12,471,555 in 2006 and \$8,970,303 in 2007 for non-charitable expenses such as fundraising, management fees and occupancy costs;
 - Gains on enduring property are treated as substitute property and therefore also could not be used for disbursement quota purposes without forgoing the nature of the property;
 - The charity has failed to record the enduring property on line 5640 in section F;
 - The charity failed to account for disbursement quota purposes the average value of property at lines 5900 and 5910 in section F.
- On the 2006 information return, the charity failed to reconcile total expenditures on line 4950 with the detailed line items 5000-5040.
- The Charity indicates the physical address of the charity in 2007 to be a different location than where the charity operated during the audit period;
- The charity failed to maintain and/or provide CRA with copies of receipts #6000001 to #6000477 for cash donations and receipts #6000238 to #6000636 for gifts in kind donations;
- The audit revealed a total deposit of \$179,420,459 while the charity issued receipt per the GL and master listing of \$183,489,310 for a discrepancy of \$4,068,851 in overreceipting;
- There is a withdrawal of \$35,289 on November 24th, 2006 from the CTC account. This amount was not transferred to the HSBC account like all the other transfers. The GL does not account for the purpose of these funds;
- On 2007 information return, the charity has indicated \$1,679,824 as charitable program expenditures yet carries on no charitable activity and was never registered to carry on its own charitable programs.

The audit has concluded that the books and records of the charity are non-compliant with section 230(2) of the Act for the reasons stated above. For failure to maintain proper books and records the Charities Directorate is considering whether the organization's registration should be immediately suspended. Furthermore, given the serious non-compliance issues, the minister is considering whether the organization should be revoked.

Other concerns:

The Charity's Options:

a) No Response

You may choose not to respond. In that case, the Director General of the Charities Directorate may issue a Notice of Intention to Revoke the registration of the Charity in the manner described in subsection 168(1) of the Act.

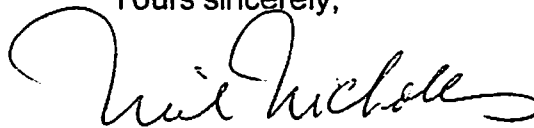
b) Response

Should you choose to respond, please provide your written representations and any additional information regarding the findings outlined above **within 30 days** from the date of this letter. After considering the representations submitted by the Charity, the Director General of the Charities Directorate will decide on the appropriate course of action, which may include the issuance of a Notice of Intention to Revoke the registration of the Charity 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 require further information, clarification, or assistance, I may be reached at (613) 957-2174 or by facsimile at (613) 946-7646.

Yours sincerely,



Neil Nicholls
Charities Auditor
Compliance Section

Funds for Canada Foundation

Comments on Representations of February 16, 2008¹

Failure to Devote Resources to Charitable Activities:

Based on the Canada Revenue Agency's (CRA) audit of Funds for Canada Foundation (the Charity), the Charity primarily operates for the purpose of furthering the Donations Canada Financial Trust (Donations Canada) tax shelter by agreeing, for a fee, to act as a receipting agent in the tax shelter. *Per* our previous letter, it is the CRA's position the Charity is operating as a conduit for the tax shelter. In operating as such, the Charity has entered into agreements with persons associated with the tax shelter program to facilitate the Charity's acceptance, and subsequent receipting, of cash and sub-trust unit gifts made by participating donors. The Charity then agrees to transfer 99% of aggregate "gifts" received to an off-shore entity whereby 91% is purportedly invested and 8% is paid as fundraising fees to the tax shelter promoter. For its role in the tax shelter, the Charity retains 1% of total tax-receipted "gifts" receipted.²

Your representations of February 16, 2009 state that the Charity "was established in 2006 to raise much-needed funds [sic] to support a wide variety of Canadian charities." We concur this was the Charity's stated purpose at registration; however, *per* our previous letter, it is our position the Charity's collateral purpose is to promote and participate in the Donations Canada tax shelter. From a financial perspective, the Charity's primary activity is the receipt and investment of aggregate "gifts" received from participants in the tax shelter. During 2006, the Charity reports receiving \$183.5 million from participants and transferring \$180.8 million to Trafalgar Trading Limited. The Charity reported \$168.4 million³ as an investment in The Trafalgar Global Index Futures Program and \$12.4 million as fundraising fees to ParkLane Financial Group (ParkLane), the promoter of the tax shelter. During this same period, the Charity reports gifting nearly \$1.375 million, or 0.75% of total tax-receipted gifts, to other Canadian registered charities. In this regard, the CRA has difficulty acknowledging and accepting the Charity's representations when less than 1% of tax-receipted gifts are actually distributed to Canadian charities. The CRA's position on this issue has been upheld in *National Society for Abused Women and Children V. Public Guardian and Trustee* (2002 OSC 57062) whereby, at paragraph 26, Justice Loukidelis states:

"[26] Every charitable donor expects a charity to have some administrative costs. But in circumstances like this where the actual amount used for charitable purposes was a fraction of 1%, it is clearly unconscionable."

¹ Charity's response dated February 16, 2008 however CRA presumes the Charity meant to date their response February 16, 2009 (response received February 23, 2009). The 2009 date is to be used throughout the letter.

² The Charity signed an agreement with Trafalgar Trading Limited on December 28, 2006 whereby the Charity would forego its traditional 1% retained on donations from a \$5 million closing. This resulted in \$50,000 of foregone actual cash revenues for the Charity.

³ Our audit concluded that the Charity received \$176,839,577 from tax shelter participants and that \$175,071,181 was transferred to Trafalgar Trading Limited. Of this \$175 million, the Charity paid \$14,231,408 to ParkLane for fundraising. Our findings indicate the Charity has overstated its investment holdings by \$7,650,597.77 (\$168,490,371 - \$160,839,773).

Your representations further state that funds raised are invested to benefit the registered charities the Charity supports. *Per* our previous letter, we detailed our concerns regarding the Charity's investments as reported. Firstly, our audit findings indicate funds transferred to Trafalgar Trading Limited for investment purposes were eventually returned to the original lender of the funds. Our audit findings indicate the "invested" funds were transferred to the same trust distributing the sub-trust units to the tax shelter participants and/or transferred to the Master Trust who purportedly provided the financing for the sub-trust units. In this regard, the investments reported by the Charity exist only as notations on paper and the Charity's actions form part of an artificial series of transactions designed to create the illusion that funds were invested off-shore. Secondly, were the funds actually invested, the investment activity reported to date reveals a steady decline in the investment principal and a poor return on investment. Your records reveal that investment principal has declined USD \$1.3 million in the first two years of investment and investment income of over USD \$950,000, a return on investment of 0.41%, was earned.⁴ Based on this trend, the Charity's investment principal will be entirely eroded within 20-years. In this regard, CRA does not view the Charity's investment of funds received as prudent investments made to benefit the registered charities supported by it.

Additionally, the Charity's representations state that it supports a wide-variety of Canadian charities, which is not entirely truthful. We concur the Charity does report making gifts to Canadian registered charities; however our audit findings reveal a majority of the Charity's beneficiaries have been identified as such *after* signing agreements to raise funds to support the Donations Canada tax shelter. The beneficiaries were required to procure aggregate donations of at least \$1.4 million (\$350,000 in cash + \$1.05 million in sub-trust units) through the Donations Canada program. Once a beneficiary secured aggregate donations of \$1.4 million to be made to the Charity, the beneficiary was able to receive "an amount equal to 0.75% of the total donation amount raised"; the Charity retained 0.25% of the total donations raised "to cover [the Charity's] administration costs." The beneficiary would also be entitled to receive the profit payments the Charity receives from the Royalty Agreement held between the Charity and Trafalgar Trading Limited. The Charity would "deduct a 5%⁵ administration fee from all profits payable...if, as and when such payments are received by [the Charity]." Royalty (profit) payments are based on the trading of international futures contracts. The beneficiary would also be entitled to receive, at the end of 20 years, any profits resulting from the trading of the international futures contracts less administrative costs payable to the Charity. Based on the terms of the letter of understanding and our audit findings, it is our position the Charity is not merely gifting funds to Canadian registered charities. It is our position the Charity is compensating the registered charities, via the actual cash donations they have raised, for fundraising work performed on the Charity's behalf, and for the ultimate benefit of the tax shelter. In this regard, we do not accept the Charity's submission that it raises funds to support Canadian charities when, in fact, these are the very same charities it has engaged to fundraise on its behalf to further support the Donations Canada tax shelter and merely doles out the actual cash raised by these charities in periodic profit payments.

⁴ Per the Trafalgar Global Index Futures Program statements in US currency

⁵ The administration fee may be adjusted by the Charity at its discretion.

It is also clear from an operational perspective that the Charity is primarily operating for the purpose of promoting and participating in the Donations Canada tax shelter. *Per* our previous letter and undisputed by the Charity, is that Mr. Matt Gleeson was asked by the ParkLane Financial Group to establish the Charity. As per your board of director minutes, ParkLane had been operating the Donations Canada program and wished to expand the program "to benefit mainstream Canadian charities". Mr. Gleeson, previously acting as the tax shelter's trustee of the Master Trust, is also responsible for identifying potential beneficiary charities and participating in promotional sessions hosted and attended by ParkLane. While the Charity contends Mr. Gleeson's participation in the promotional seminars were to impart information about the activities of the Charity's beneficiaries, we fail to distinguish Mr. Gleeson's participation in these seminars from the promotion of the tax shelter. The fact that the Charity claims it does "not promote the sale of tax shelters" is contradicted by the fact that the Charity retained the fundraising services of ParkLane. We do not doubt that the members of the Charity *themselves* did not promote the tax shelter scheme. However, we note that the Charity reported and incurred fundraising fees payable to ParkLane and ParkLane is responsible for the promotion and solicitation of the participants who make gifts to the Charity. In fact, it appears that the Charity is, by contracting ParkLane for fundraising, clearly involved in the promotion of this program.

It remains our position that the overall conduct of the Charity demonstrates a preponderance of resources devoted to and for the purpose of promoting and supporting the Donations Canada tax shelter, and by operating as such, is operating to benefit the tax shelter promoters. Beyond issuing receipts and transferring funds as directed by promoters, and distributing funds to the beneficiary charities, the Charity has virtually no other activities. The representations submitted do not alter these findings.

As such, it remains our view that the Charity was involved in the promotion of the tax shelter, a non-charitable purpose, and has failed to comply with the requirements of the Act pertaining to registered charities. Under paragraph 168(1)(b) of the Act, the Minister may by, registered mail, give notice to the organization that the Minister proposes to revoke its registration because it ceases to comply with the requirements of the Act related to its registration as such. It is our position that Funds for Canada Foundation has not operated for exclusively charitable purposes. For this reason alone there are grounds to revoke the charitable status of Funds for Canada Foundation under paragraph 168(1)(b) of the Act.

Personal Benefit

It is our position the Charity operates, or has been allowed to operate for the private gain of Mr. and Mrs. Gleeson. While, under the Act, a charity is permitted to compensate individuals for reasonable services rendered, operating for the private benefit of the directors or members of a charity, or allowing the charity's resources to be so devoted, is not.

In your representations you allege that there is no private benefit received by the Gleeson's directly or indirectly through the Charity. The basis of the Charity's position stems from the following facts: GMA Inc.⁶ was retained by the board to manage and administer the activities; Mr. Gleeson resigned from the board in 2005; Mrs. Gleeson does not have full

⁶ GMA Inc. is a corporation solely owned by Mr. and Mrs. Gleeson.

signing authority; Mr. Gleeson is not involved in the grant making activities and finally the Gleesons are not members of the Charity. We concur that GMA Inc. was retained to manage and provide administrative services to the Charity; however we do not believe Mr. Gleeson has resigned from the board of directors, is not involved in grant making activities or otherwise influences the operations of the Charity. Our information suggests that Mr. Gleeson remained as trustee of the Charity up to June 28, 2006, the inaugural board of director meeting, and made binding decisions on behalf of the Charity up to this date.

Per our previous letter, and confirmed by your representations, Mr. Gleeson pre-screens prospective charities on the Charity's behalf. Also *per* our previous letter, we have found that GMA Inc. has approached and/or been retained by the very same prospective charities Mr. Gleeson identified on the Charity's behalf⁷. To our knowledge, of the 17 beneficiaries Mr. Gleeson pre-screened before his resignation from the board, many of the beneficiaries are also clients of GMA Inc. Whereas the Charity claims that "GMA Inc. does not refer donors or others to participate in the [Donations Canada] tax shelter program", we have evidence that GMA Inc. approached at least one organization with proposals to participate in the Donations Canada program. The Gleeson's have placed themselves in a position to financially gain from the very same prospective charities Mr. Gleeson has pre-screened by then engaging these charities in fundraising contracts with GMA Inc. For these reasons, it is our deduction that the Gleeson's directly or indirectly benefit from the Charity.

Our position regarding the rent and utility payments to GMA Inc. are unchanged. The Charity has not provided sufficient evidence to show that the amounts paid to GMA Inc. were reasonable in the circumstances and supported by a contract.

It is our position that by operating for the private gain of its trustee, the Charity has failed to demonstrate that it meets the test for continued registration under 149.1(1) as a charitable foundation "operated exclusively for charitable purposes" or as a charitable organization that "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". For this reason, there are grounds for revocation of the charitable status of Funds for Canada Foundation under paragraph 168(1)(b) of the Act.

Failure to Accept Valid Gifts in Accordance with the Act:

Our position remains as outlined in our previous letter - that the cash contributions received by the Charity from participant donors are not valid gifts under section 118.1 of the Act. This is due to the fact that the primary motivation of the participant donor was not to enrich the Charity, but through a series of artificial transactions and a minimal monetary investment, to enrich themselves from the aggregate tax credits so obtained.

Your representations refer to donors "who participated in a similar program offered in the years 2003/2004" whereby donors are challenging similar issues raised by the CRA against the Charity, in the Tax Court of Canada. The representations further state "it would be oppressive for the CRA to refer its arguments as represented here as if they were

⁷ Per our previous letter, GMA Inc.'s letters of understanding with beneficiary charities receive 10% of gross profit payments received in years 1 & 2; 7.5% in years 3 & 4; 5% in years 5 & 6 and 3% in years 7 to 10.

unchallenged statements of law and apply them, by way of a pre-judged position, to the prejudice of the [Charity].”

We acknowledge the case referred to deals with the issue of donations made by an individual through the 2003/2004 ParkLane Charitable Donations program; however, while the issues are similar, and indeed overlap somewhat, we note that the CRA’s Charities Directorate is responsible for auditing registered charities and determining their compliance with the Act. Where non-compliance with the Act and its Regulations is discovered, the Charities Directorate is mandated to take compliance action against the registered charities, which is separate and distinct from the reassessment of any donors. Furthermore, the issues raised during an audit of a registered charity will include more than the narrow issue of whether the tax receipt and the corresponding tax credits are valid in the hands of the donor.

Based on our analysis of the totality of information and documentation gathered during our audit of the Charity, the primary issue raised in our audit is that the Charity actively participates in a tax shelter donation arrangement, whereby represented transactions did not, in fact, occur as represented. We note that the areas of non-compliance identified in our audit of the Charity is not a matter of interpretation of the law, but is one clearly evidenced by the participation of the Charity in a scheme which is, at a minimum, abusive to the Canadian tax system.

It remains our position that the vast majority of the transactions involving the Charity fail to qualify as gifts because they lack the requisite *animus donandi* - or “intent to give” - that a donor transfers property to a charity and impoverishes him or herself as a result. Participants in the Donations Canada tax shelter fully intend to recoup the full amount of their actual cash contribution, plus an additional 67-94%, through the artificial manipulation of the charitable gifting provisions.

The representations assert that from the Charity’s perspective, it simply issues receipts for funds it receives from the tax shelter participants. The fact that the Charity claims it “is neither the architect nor the promoter of the [Donations Canada] program” does not diminish the Charity’s substantial role or involvement in this tax shelter arrangement. The facts establish that:

- Mr. Gleeson was requested by ParkLane to establish the Charity given his history with ParkLane as trustee for the Master Trust in 2005;
- that the Charity, within one month of its registration, retained the professional fundraising services of ParkLane to solicit donations solely for the Donations Canada tax shelter;
- that the Charity sought out and signed agreements with other Canadian registered charities to solicit donations for the Donations Canada tax shelter; and
- that the Charity’s sole activity, since registration, has been the promotion and participation of this tax shelter.

These facts clearly do not support the Charity’s claims that it was not an architect or promoter of the tax shelter and evidence that the Charity knew, or ought to have known, it was not simply issuing receipts for “100% of the value of the funds donated” and that its donors were not motivated to enrich the Charity.

We would also draw your attention to the comments of Justice Bowie in *Webb v. The Queen* (2004) UDTc 148:

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

"[17] The circumstances that I have referred to lead me to conclude that there was nothing donative at all about Mr. Webb's payment to ABLE. His intention was to receive a tax credit for a charitable donation, as well as a substantial refund of the amount he had given, such that when the two were aggregated they would exceed the \$30,000 for which he wrote the cheque."

"[18] I was referred in argument to the recent decision of Madam Justice Campbell in *Doubinin v. The Queen* and her statement in the first sentence of paragraph 18 where she said:

He is not part of a tax evasion scheme, and although he may have been motivated by potential tax benefits, I do not believe that this can be equated to consideration for a gift because tax benefits are not considered a benefit. ..."

"I do not read Madam Justice Campbell as purporting there to extend what was said by Mr. Justice Linden in *Friedberg* to suggest that a scheme entered into whereby a person would be put in a position to claim tax credits for charitable donations in excess of the donations actually made, by the issuing of false receipts or by the kickback of part of the donation, to be a normal transaction and something that would not be considered a benefit within the context of the definition of what constitutes a gift."

As above, and *per* our previous letter, the tax shelter arrangement the Charity participated in promises donors a positive return on investments (i.e. the initial and actual cash outlay) by making donations to the Charity. The participants are promised the opportunity to achieve this positive return on investment by receiving sub-trust units valued at three times the participants' cash contribution, for no consideration, from a Canadian trust. The Charity knew, or ought to have known, that it was issuing official donation receipts in excess of the participants' actual cash outlay and for property to which the CRA questions were actually received by the Charity.

The representations failed to address our concerns that the investments recorded by the Charity seemingly exist only as notations on paper given that at least 79.05% of the funds transferred to Trafalgar Trading Ltd. were transferred back to the same trust distributing the sub-trust units as software licensing fees. We acknowledge that Charity's bank accounts show monies flowing through it and it is these same monies that the Charity states its "ability to issue personal income tax receipts for 100% of the value of the funds donated." However, our audit has revealed, and *per* our previous letter, these funds are required to be transferred off-shore to conceal the ultimate use of the funds - to repay the trust. The Charity's role in the tax shelter arrangement is clearly designed to facilitate this use of funds and it has taken no

prudent actions to verify the authenticity of the transactions or its purported investments. As such, we remain of the position that the Charity has issued official donation receipts for property that was not beneficially donated to it or received by it.

Your representations of February 16, 2009 fail to address our position that the sub-trust units received by participants constitute an advantage to be deducted from the participants' actual cash contribution. In our view, the distribution from the trust is clearly an advantage in "consideration"⁸, "gratitude"⁹ or "in any other way related to the gift or monetary contribution"¹⁰ and therefore required to be deducted from the participants' actual cash contribution *per* the proposed legislation.

As such, it remains our view that the Charity issued receipts for transactions that do not qualify as gifts at law. For this reason, our position is the Charity has issued receipts other than in accordance with the Act and these are grounds for the revocation of Funds for Canada Foundation under paragraph 168(1)(d) of the Act.

Disbursement Quota

Per our previous letter, we calculated the Charity experienced a disbursement quota shortfall of over \$143.7 million at the end of fiscal period ending 2007. The shortfall was a result of the Charity's failure to adhere to the tax shelter participant's directions that all gifts made as a result of their participation in the Donations Canada tax shelter be held for a period of not less than 10-years. The representations state "The [Charity] expended tax-receipted funds to cover the reasonable costs of fundraising, management and administration fees and office expenses. Donor pledge forms did not preclude the use of receipted funds to cover such costs." We would draw your attention to the second paragraph of the pledge forms of donors which states:

"The cash gift, when paid to the Charity, or property substituted for it by one or more substitutions, shall be retained by the Charity (or by a "transferee" as provided for in paragraph (c) of the definition of "enduring property" in subsection 149.1(1) of the *Income Tax Act (Canada)*) for not less than 10 years from the date that the gift was received by the Charity, subject to the exception provided for in that paragraph (c)." (emphasis added)

The Act allows registered charities to exclude from the disbursement quota calculation amounts received subject to directions that the property be held for a period of not less than 10-years. To be eligible for this exclusion, the charity must treat the property accordingly. This provision in the Act does not permit charities to encroach these donations for such expenditures as administration, fundraising or gifting to qualified donees. Our audit has not revealed the Charity sought, nor obtained, written permission from the participants to use the gifts of enduring property for fundraising and administrative expenses.

⁸ Ss. 248(32)(a)(i)

⁹ Ss. 248(32)(a)(ii)

¹⁰ Ss. 248(32)(a)(iii)

Specifically, the Charity failed to abide by the participant's directions by expending over \$21¹¹ million on fundraising and only slightly over \$3 million on gifts to qualified donees/charitable expenditures. While we question the validity of the payments made to the qualified donees above, we have allowed the amounts reported as expenditures incurred for charitable purposes in our calculations.

Also *per* our letter, our secondary position remains that the Charity experienced a disbursement quota shortfall exceeding \$8 million at the end of fiscal period ending 2007¹². This reduction in the disbursement quota would only be possible if the Charity was able to provide evidence that it obtained permission from the participant's to encroach upon their gifts of enduring property. As such, the Charity would have been required to include the total amount encroached as tax-receipted income in its disbursement quota calculation and claim only those expenditures spent on charitable activities.

The Charity's representations of February 16, 2009 confirm that its disbursement quota shortfall is unsolvable and suggests that the profits earned by the Charity from its off-shore investments are "significant in light of the poor performance of the stock market during this period of economic recession." The fact that the Charity earned a cumulative return on its investments of less than 1% does not resolve nor does it address the seriousness or implications of the Charity's disbursement quota shortfall. It is our position that the Charity's representations and lack of establishing a plan to overcome its disbursement quota shortfall further demonstrates the Charity's unwillingness to comply with the Act in order to maintain its registration.

Accordingly, it remains our position that the Charity has not met its disbursement quota as per paragraph 149.1(3)(b) of the Act. Therefore under paragraph 168(1)(b), the Minister may, by registered mail, give notice to the Charity that the Minister proposes to revoke its registration because it ceases to comply with the requirements of the Act related to its registration as such. For this reason, there are grounds for revocation of the charitable status of Funds for Canada Foundation under paragraph 168(1)(b) of the Act.

Books and Records

The audit revealed the Charity does not maintain adequate records to support the information reported on its Registered Charity Information Return (T3010A) and financial statements. As a result, the Charity has also failed to file an accurate T3010A as numerous sections were incomplete or inaccurate.

¹¹ Total fundraising expenses as reported on the 2005 & 2007 Registered Charity Information Returns filed equal \$21,095,775 whereas audit has discovered \$23,187,614 was incurred for fundraising expenses.

¹² Calculated as \$13,846,452 in total encroached 2006 donations multiplied by 80% less \$1,374,635 spent on charitable programs in 2006 and \$1,679,824 spent on charitable programs in 2007

Records:

While your representations contend that CRA did not specifically request the Charity to provide copies of their bank reconciliations¹³ during the course of the audit, you have provided a copy of your December 31, 2006 reconciliation of the Charity's main bank account. We have reviewed this reconciliation and conclude that the issue raised in our previous letter, the understatement of \$58,107 in the ending bank balance per the books, remains unresolved. The ending bank balance per your reconciliation provided differs from the ending bank balance recorded in your general ledger: \$302,449 versus \$204,569 respectively. Attached at Appendix "B" is a reconstruction of the bank reconciliation as compared to the Charity's general ledger.

During the course of the audit, Mr. Evans commented that the Charity did not have the detailed original copies of its HSBC account for the months of May to October. The CRA was able to determine the Charity deposited \$13 million into this account yet we were unable to vouch specific donation closings or transfers to this account for this period.

Regarding Closing DC-B, we do not dispute the fact that the Charity accepted and recorded an account receivable of \$32,500 in 2005 nor do we dispute that the receivable was settled on April 16, 2006. Our findings reveal that this donation amount was recorded twice on the official donation receipts provided - once on receipts numbered 2005001 to 2005008 then again on receipts numbered 6000006 to 6000013 - reported as donation income in 2005 and 2006.

We accept the Charity's submission that its official donation receipt log including duplicated receipts totalling \$4,068,851 and that the Charity destroyed these receipts. We also accept the Charity's confirmation it received and receipted for \$179,420,459 in aggregate gifts received from tax shelter participants in 2006.

Your representations state the withdrawal of \$35,288.50 from the HSBC account is a correction of a withdrawal error. Our analysis of the general ledger and bank statements reveal the amount to be the Charity's 1% commission earned on aggregate donations received on November 6, 2006. We further note that the Charity reduced its total tax-receipted income by this amount and the bank statement indicates the funds were transferred to another account. We refer you to our reconstruction of the transactions in Appendix "C".

In each of the foregoing, the Charity has demonstrated a lack of due diligence in preparing its own records. By admission, the Charity admits that certain errors were made; errors substantial in nature and not discovered by the Charity until identified by the CRA auditors. The Charity has also failed to communicate how it rectified or would be rectifying its records, T3010 and financial statements.

Finally, your representations fail to address the issue of failure to maintain duplicate copies of donation receipts. *Per* our previous letter, the Charity failed to maintain receipts

¹³ Refer to Appendix "A" of our letter dated March 6, 2008 which lists the documents the Charity is to provide or make available for the audit. Point 1 of Appendix "A" requests the Charity to provide "books and records including bank statements and reconciliations"

numbered 6000001 to 6000477 and 6000238 to 6000636 which is a violation of subsection 230(2)(b).

T3010A Errors and Omissions:

We accept the Charity's representations that it erred when completing question C11 and when reporting gifts to qualified donees at line 5000 rather than line 5050 of the T3010A. Regarding the other T3010A errors and omissions, it remains our position the Charity should have indicated it received privately-held securities at question C12 as the participants' gifts of sub-trust units do not meet the definition of publicly traded securities¹⁴; section D of the T3010A fails to contain details on Charity's employees and remuneration paid to those employees; line 4500 should report total tax-receipted income of \$179,420,459; line 4950 should reconcile to the summation of lines 5000 to 5040; section F4 should have recorded the value of the enduring property receipted by the Charity; and section F5 should have reported the enduring property spent in the period. The Charity concurs that it "received and receipted gifts of securities" yet fails to concur it erred at question C12.

The representations also state that various requests have been made by the Charity to the CRA seeking permission to accumulate funds under subsection 149.1(8) of the Act. To accumulate property, a registered charity must apply in writing to us for permission. The letter must specify the amount of funds the registered charity wishes to accumulate, how long the registered charity will need to accumulate the funds, and why the registered charity wishes to accumulate these funds. We will confirm permission to accumulate property in writing. Our review of your file indicates no such request has been submitted.

The Charity has written the CRA requesting confirmation of its charitable designation and confirmation it can receive gifts of enduring property. Any charity can receive gifts of enduring property provided that it obtains and maintains the donor's written trust or direction that the gift be held for a period of 10-years or more; however, when 10-year gifts are spent, they must be included in the disbursement quota calculation. Refer to our discussion above. Maintaining and fulfilling the donor's directions does not categorically deem these donations to be property accumulated for a specific purpose and therefore excluded from the Charity's disbursement quota calculation. As *per* above, despite the Charity's claims that it received 10-year gifts, the Charity failed to adhere to the tax shelter participant's directions that all gifts be held for a period of not less than 10-years.

Accordingly, the Minister may, by registered mail, give notice to the Charity that the Minister proposes to revoke its registration because it fails to comply with or contravenes section 230 of the Act dealing with books and records under paragraph 168(1)(e) of the Act. It is our position the Charity has contravened section 230 of the Act for failing to maintain complete records to verify the information contained within its Registered Charity Information Returns and financial statements. For this reason, there are grounds for revocation of the charitable status of Funds for Canada Foundation under 168(1)(e) of the Act.

¹⁴ Neither the Master Trust nor the sub-trust distributing the units to participants are traded on a public stock exchange and only participants who have applied to become a beneficiary of the trust, and who made a cash contribution to the Charity, are eligible to receive the sub-trust units. Privately held securities are those that are not traded on a public stock exchange or those that can be bought by the public.

Appropriateness of Revocation:

Finally, we note your response states that “deregistration of the [Charity’s] Registered Charity Status would constitute a material breach of the terms of the Royalty Agreements between the Foundation and Trafalgar Trading Ltd.” As per our review of the agreements entered into, the revocation of the Charity’s registered charity status would not constitute a “material breach of a material term”¹⁵ of the agreements. The agreements do not contain any reference to the Charity’s allegation that CRA’s revocation of their registered charity status would jeopardize or terminate any future profit payments. Additionally, given that the Charity believes it invested in prudent off-shore investments and is entitled to profit payments, it is CRA’s position these profit payments will continue and will be paid to the Charity in its capacity as a corporation. The Charity, operating as a corporate entity, would then be able to continue to fulfil the terms of the agreements entered into with other registered charities. The Charity’s submission that future profit payments “could” be terminated is not sufficient to convince the CRA that, despite serious contraventions of the *Income Tax Act*, its registered charity status should be kept intact. As above, the Charity has not operated for a charitable purpose but has merely operated as a conduit for the Donations Canada tax shelter by issuing receipts in excess of \$289¹⁶ million for transactions that do not qualify as gifts; has failed to demonstrate the prudent investment of over \$265 million in investments to fund its own charitable activities and has breached numerous other requirements of the Act. It is the CRA’s position that these are serious contraventions of the Act and warrant revocation of the Charity’s registered status.

¹⁵ The Trafalgar Global Index Futures Program - 2006 Series A Royalty Agreement, 2007 Series A Trading Agreement and 2008 Series A Trading Agreement

¹⁶ Charity reported total tax-receipted gifts of \$292,024,447 per Registered Charity Information Returns filed. Per our letter, Charity overstated total tax-receipted gifts in 2006 by \$4,068,851 due to a discrepancy in total deposits and total tax receipts issued.

Bank Reconciliation

Appendix "B"

HSBC

Ending Balance per Bank Statement \$736,154.52

Less:

O/S Checks

Check #	Amount	Total
122	\$4,009.25	
123	\$28,845.00	
125	\$3,120.00	
126	\$390.00	
127	\$1,983.76	
128	\$12,128.88	
129	\$4,931.25	
130	\$520.00	
131	\$29,029.50	
132	\$14,036.25	
133	\$936.00	
134	\$41,257.29	
135	\$624.00	
136	\$3,704.25	
137	\$378.75	
138	\$13,174.15	
139	\$5,886.15	
140	\$231.50	
141	\$8,524.13	
142	\$5,300.00	
143	\$6,240.68	
144	\$858.60	
145	\$686.88	
146	\$10,000.00	
147	\$20,000.00	
148	\$20,000.00	
149	\$20,000.00	
150	\$40,000.00	
151	\$40,000.00	
152	\$40,000.00	
153	\$50,000.00	
154	\$50,000.00	
155	\$98.90	
156	\$10,578.00	
157	\$8,190.00	
158	\$28,404.00	
CASH	\$144.97	\$524,212.14

Add:

Unrecorded deposit		
CTC transfer on Dec. 08, 2006	\$50,755.00	\$50,755.00
		<u>\$262,697.38</u>

Balance per books

\$204,589.66

Variance \$58,107.72

Canada Trust (Aylsworth Account)

Ending Balance per Bank Statement

-9.37

Less: O/S ChecksCheck #
Add: Unrecorded deposits

Balance per books Variance -9.41
\$0.04 NM

Bank of Bermuda
Ending Balance per Bank Statement 43.71

Less: O/S ChecksCheck #
Add: Unrecorded deposits

Balance per books Variance 42.95
\$0.76 NM

Appendix "C"

General Ledger Analysis

Date	JE #	Account #	Acct Name	Debit	Credit
09/11/2006	j267				\$ 35,296.50
				\$ 1,285,000.00	
					\$ 1,272,150.00
				\$ 35,305.00	
					\$ 1,285,000.00
					\$ 8.50
				\$ 1,272,150.00	
09/11/2006	j373			\$ 35,296.50	
					\$ 35,296.50
28/11/2006	j375			\$ 35,288.50	
					\$ 35,288.50
28/11/2009	j366				\$ 35,307.26
				35307.26	
28/11/2009	j368			18.76	
					18.76

10550 BoB Account

	\$ 35,296.50
\$ 35,296.50	
	\$ 35,307.26
\$ 18.76	
	\$ 35,288.50

10600 HSBC

\$ 1,285,000.00	
	\$ 1,272,150.00
\$ 35,305.00	
\$ 48,155.00	

41100 Donations

	\$ 1,285,000.00
	\$ 35,296.50
\$ 35,288.50	\$ 1,272,150.00
	\$ 2,557,158.00

50400 Program C

	\$ 35,288.50
\$ 35,307.26	
	\$ 18.76
\$ -	

56900 Bank Charges

	\$ 8.50
	\$ 8.50

11100 Investments

\$ 1,272,150.00	
\$ 1,272,150.00	