



BY REGISTERED MAIL

International Charity Association Network (ICAN)
78 Rolark Drive
Scarborough, Ontario M1R 4G2

BN: 89317 5414 RR0001
File No: 3018297

Attention: Carole French

**SUBJECT: Notice of Intention to Revoke
International Charity Association Network (ICAN)**

Dear Ms. French:

I am writing further to our letter dated May 29, 2007 (copy enclosed), in which you were invited to submit representations to us as to why the Minister of National Revenue should not revoke the registration of International Charity Association Network (ICAN) (the "Charity") in accordance with subsection 168(1) of the *Income Tax Act* (the "ITA").

We reviewed the written response of September 25, 2007 (copy attached) from your authorized representative, Evelyn Schusheim of Cummings, Cooper, Schusheim & Berliner LLP; you will find our comments in Appendix "A" attached.

Conclusion

After careful review of the representations included in the letter of September 25, 2007, it is our conclusion that they do not provide sufficient reasons why the Charity's registered status as a registered charity should not be revoked. Therefore, for each of the reasons mentioned in our letter of May 29, 2007 and in Appendix "A" attached, I wish to advise you that, pursuant to the authority granted to the Minister in subsection 149.1(2) of the ITA, and delegated to me, I propose to revoke the registration of the Charity. By virtue of subsection 168(2) of the ITA, the revocation will be effective on the date of publication in the *Canada Gazette* of the following notice:

Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(c), 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(2), and paragraph 149.1(2)(b) of the Income Tax Act and that the revocation of registration is effective on the date of publication of this notice.

Account Number
89317 5414 RR 0001

Name
International Charity Association Network (ICAN)
Scarborough, Ontario

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In accordance with subsection 168(2) of the ITA, you can suspend this process (i.e. seek an extended period before revocation) by applying to the Federal Court of Appeal or a judge of that court for a stay. The Court will acknowledge your application and provide you with an action number. We require a copy of the Court acknowledgement of your request for a stay to stop the revocation process.

Should you wish to appeal this Notice of Intention to Revoke the Charity's registration in accordance with subsection 168(4) of the ITA, you are advised to file a Notice of Objection within 90 days from the mailing of this letter. This notice is a written statement that sets out the reasons for the objection and all the relevant facts. The Notice of Objection should be sent to:

Tax and Charities Appeals Directorate
Appeals Branch
25 Nicholas Street
Ottawa, ON K1A 0L5

Please note that, notwithstanding the filing of a Notice of Objection, the Charity must seek the above-noted stay to prevent revocation from occurring. Unless the Canada Revenue Agency receives notice that an application for a stay has been filed to the Federal Court of Appeal or judge of that court regarding this revocation, we intend to proceed with the publication of the above notice in the *Canada Gazette* in **30 days** thereby affecting the revocation of the organization's registration.

Consequences of a Revocation

As of the date of revocation of the registration of the Charity, which is the date upon which the above-noted notice is published in the *Canada Gazette*, 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.**

Additionally, by virtue of section 188 of the ITA, the Charity will be required to pay a tax within one year from the date of the Notice of Intention to Revoke the Charity's registration. This revocation tax is calculated on prescribed form T-2046 "*Tax Return Where Registration of a Charity is Revoked*". The return must be filed and the tax must be paid on or before the day that is one year from the date of the Notice of Intention to Revoke a charity's registration. For your reference, I have attached a copy of the relevant provisions of the ITA in Appendix "C" concerning revocation of registration and the tax applicable to revoked charities as well as appeals against revocation. Form T-2046, along with the related Guide RC-4424, "*Completing the Tax Return Where Registration of a Charity is Revoked*", are also attached for your information.

Also, the Charity will no longer qualify as a charity for purposes of subsection 123(1) of the *Excise Tax Act* (the "ETA"), effective on the date of revocation. As a result it may be subject to obligations and entitlements under the ETA that apply to organizations other than charities. The relevant ETA provisions are attached in Appendix "D". If you have any questions about your GST/HST obligations and entitlements, please call GST/HST Rulings at 1-800-959-8287.

Furthermore, I wish to advise you that pursuant to subsection 150(1) of the ITA, a return of income for each taxation year in the case of a corporation (other than a corporation that was a registered charity throughout the year) shall without notice or demand therefore, be filed with the Minister in prescribed form containing prescribed information.

Yours sincerely,

Terry de March
Director General
Charities Directorate

Attachments

- Our letter dated May 29, 2007
- Your letter dated September 25, 2007
- Appendix "A", Comments on Representations of September 25, 2007;
- Appendix "B", Donation Receipt Summaries;
- Appendix "C", Relevant Provisions of the *Income Tax Act*;
- Appendix "D", Relevant Provisions of the *Excise Tax Act*;
- Form T-2046, *Tax Return Where Registration of a Charity is Revoked*; and
- Guide RC-4424, *Completing the Tax Return Where Registration of a Charity is Revoked*.

International Charity Association Network (ICAN)

Charity Audit for the fiscal period
August 17, 2000 to December 31, 2006

COMMENTS ON REPRESENTATIONS OF SEPTEMBER 25, 2007

Charitable Purpose & Activities:

We have reviewed your response of September 25, 2007 and remain of the view that during that period International Charity Association Network (ICAN)(the "Charity") has operated *ultra vires* and has failed to demonstrate that it has pursued exclusively charitable activities in furtherance of its mandate.

Per our letter of May 29, 2007, until 2005, the formal purpose of the organization was solely "to relieve poverty by providing food and other basic supplies to persons of low income, by establishing, operating and maintaining shelters for the homeless, and by providing counselling and other similar programs to relieve poverty". These objects were amended subsequently to include the objects contained in your letter.

We agree that the Charity operates a warehouse where food and other goods are distributed at low cost. However, we have not been provided with information that demonstrates that the Charity restricts access to these services to persons of low income or even member registered charities.

As noted, a major focus of the organization (particularly from a devotion of resources standpoint) has been on the establishment of Community computer centres. According to the information on file, the Charity has seemingly established over 50 of these centres. However, despite your assertions that these centres are used "to provide computer training and job search assistance" we have not been provided information that demonstrates that the Charity in anyway restricts or controls the use of these centres – such as an agreement that might direct or restrict the use of the Computer centres. We have been provided no evidence that suggests any on-going supervision of these centres or follow-up to ensure that these centres continue to be used for these purposes. Noting that the establishment of these centres has involved the transfer of property to organizations that are not qualified donees, these issues are particularly problematic. In short, the organization has failed to demonstrate in documentary fashion to the Canada Revenue Agency (the "CRA") that the establishment of these centres is in furtherance of their charitable mandate.

As the Charity has not devoted all of its resources to its own charitable activities or by way of gifts to qualified donees, it has failed to meet the definitional requirement of paragraph 149.1(1)(a) of the *Income Tax Act* (the "ITA"). Therefore under paragraph 168(1)(b) of the ITA, 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 ITA 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 International Charity Association Network (ICAN).

Collateral Non Charitable Purpose:

As described in our letter of May 29, 2007, it is our view that the Charity is operating for the purpose of promoting and supporting tax shelter arrangements. In your letter you argue that the tax shelters with which the Charity participates are "merely methods of fundraising". With respect, we disagree.

To be registered as a charity, an organization must pursue exclusively charitable purposes and must devote its resources to exclusively charitable activities. While a charity can fundraise in pursuit of these objectives, the fundraising cannot become an end, in and of itself. It remains our view that, rather than fundraising to pursue its charitable activities, the Charity has altered its programs, to the detriment of its original mandate, to enable it to participate in a variety of tax shelter programs.

The audit conducted by the CRA had identified that the Charity, since the Charity's registration, has participated in five registered and unregistered tax shelters by agreeing to accept cash and/or property from participating taxpayers. Between the years of 2002 to 2004, the Charity received in excess of \$142 million of cash and/or property from its participation in registered and unregistered tax shelters while receiving less than 15% of its total income from other sources. In 2005 and 2006, the Charity received in excess of \$797 million in cash and/or property from its participation in tax shelters or 95% of its total income.

Despite being established for the relief of poverty during the years under review, the Charity received and receipted vast amounts of plastic food containers, food, clothing, software licence courseware, and PET scan "gift certificates". Without a use for this property, this resulted in an accumulation of approximately \$76,820,605¹ in inventory in 2004 consisting mainly of courseware. After the fact, the Charity modified its purposes and programs to provide it a means of disbursing this property. The Charity, despite having no involvement with healthcare, agreed to accept donations of PET scan gift certificates and (without seeing these or ensuring the services were provided) issue receipts and record these as expenditures. As such, it is clear, from the perspective of the CRA, that it is the Charity's participation in a particular tax shelter arrangement that drives the Charity's mandate and not its own charitable purposes.

For these reasons, and those set out in our letter of May 29, 2007, we continue to be of the view that the Charity is operating for the purpose of promoting tax shelter arrangements and, additionally, that by pursuing this non-charitable purpose, the Charity has failed to demonstrate that it meets the test for continued registration under 149.1(1) of the ITA as a charitable organization "all the resources of which are devoted to charitable activities". For this reason, it appears to us that there are grounds for revocation of the charitable status of the International Charity Association Network (ICAN) under paragraph 168(1)(b) of the ITA.

¹ Inventory amount as reported on the 2004 T3010 Registered Charity Information Return and financial statement as filed. A second set of financial statements prepared by Salim Z. Somani, CA, CPA records 2004 inventory as \$15,316,742. These financial statements have not been filed with CRA.

Gifts:

A registered charity is entitled, under the ITA, to issue receipts for gifts that it receives. However, before a charity can issue a tax receipt, it is incumbent on the charity to determine whether the transaction qualifies as a “gift” at law. A charity, which issues a receipt for a transaction which does not qualify as a gift at law, can be revoked under paragraph 168(1)(d) of the ITA.

It is the view of the CRA that the vast majority of the transactions involving the Charity do not qualify as gifts as they lack the requisite *animus donandi* – or “intent to give” – that a donor transfer property to a charity and impoverish him or herself as a result. Participants in these arrangements fully intend to recoup the full amount of their “donation” plus an additional 35-65% return. The promotional material promises participants the opportunity to earn a profit as a result of making a “donation”. Participants put up a minimal monetary amount and, through a series of pre-determined transactions, receive property purportedly valued at many times their initial investment. It is pre-arranged, as a part of this scheme, that the Charity will receive the property and issue the receipts. It is clear that the primary motivation of the donors is to profit from the charitable tax incentive and not to donate to charity.

In your letter you assert that from the Charity's perspective, the motivation of the donor is irrelevant “the only question is whether an amount has been received as a gift”. As above, it is our view that it is incumbent on a charity to determine whether a transaction qualifies as a gift at law before issuing a tax receipt. It is our view that the tax credit available with respect to a donation is not usually an advantage or benefit that would affect whether a gift is made. We also note that, in rare and unusual circumstances, a taxpayer might be able to acquire valuable property at a bargain price and, donate this for a larger amount – and the transaction may still be validly viewed as a gift. However, it is our view that arrangements that are mass-promoted promising participants that they will be able to claim tax credits for charitable donations far in excess of the expenditures actually made lack the requisite *animus donandi* for the transactions to be considered gifts.

We would note that the Charity is fully aware of this arrangement and is an active participant in these schemes. The Charity issues the receipts for these arrangements. In the years under review the Charity has issued receipts totalling more than \$135 million. The Charity has produced material jointly with the promoters of these arrangements. The Charity pays fees to the promoters of these arrangements as fundraisers on the Charity's behalf. Through the method these schemes are promoted and its own participation in these arrangements the Charity knew, or ought to have known, the donors motivation in these arrangements.

As such, it remains our view that the Charity issued receipts for transactions that do not qualify as gifts at law. For this reason, it appears to us that there are grounds for revocation of the charitable status of International Charity Association Network (ICAN) under paragraph 168(1)(d) of the ITA.

PET Scan Gift Certificates:

In your letter you argue that the provision of certificates to persons who could not afford the services is within the objects of the Charity. However, your letter simply indicates that this is within the objects without support as to how. We do not view PET scans as the provision of a basic supply, nor is it a program designed to relieve poverty similar to counselling. Further, it is difficult to see the provision of these services as an activity conducted by the Charity in support of the relief of poverty given that it did not receive the certificates, did not exercise any control over the use of the certificates such as reviewing or selecting the beneficiaries, and conducted no follow-up to ensure these services were performed.

Further, it remains our view that the Charity improperly issued receipts for PET Scan gift certificates given that these do not constitute property. At law, a gift involves a transfer of property. In your letter you argue that the certificates are property that can be donated just as other forms of intangible property such as debts or share certificates.

As you are aware, the PET Scan gift certificates were redeemable for cancer diagnosis procedures at a local clinic. Based on the legal definition of a gift, it is the CRA's longstanding position that services cannot be donated as they do not constitute a transfer of property. In our view, this cannot be defeated simply by issuing certificates, redeemable for services, and then donating these to a registered charity. When the certificates were issued by the clinic, this did not constitute a disposition of property by the clinic. In our view, these certificates would simply represent a promise to provide services, rather than a "right" which could be considered property, unless these certificates were obtained for consideration and therefore legally enforceable.

Our concern, with respect to the Charity issuing receipts for these certificates is heightened by the fact that it does not appear that the Charity physically received the certificates, selected or even reviewed the beneficiaries or candidates, or is even certain whether these services were performed. The records provided in the November 23, 2007 correspondence have not alleviated our concerns. The Charity presented a package of Deed of Gift certificates identifying the donor and the number of certificates gifted, listing of donor contributions and a listing of the certificates purportedly used between January 2004 and September 2007. The records provided do not reconcile to the records provided at our meeting of February 14-16, 2007 and it appears the Charity has an inventory of PET Scan certificates that it has failed to report since 2004. The listing does not provide information as to where the scans were performed, how the beneficiaries were selected, who performed the scans or other information that would allow the CRA to determine the precise use of the gift certificates. In fact, rather than submitting a detailed record with source documents, the Charity has simply provided us a word document listing cities, patient ID numbers, dates and other data which is clearly insufficient evidence to demonstrate that the services were in fact performed. Additionally, the Charity has not proven that it physically received the certificates or was actively involved in the selection of candidates and distribution of the certificates.

As such, we remain of the view that the certificates were not property that was transferred to the Charity. Further, given the fact that the Charity has not proven it received the certificates nor has it proven it exercised any control over the use of the certificates such as reviewing or selecting the beneficiaries, we remain unconvinced that the Charity ever beneficially owned these certificates.

In your letter, you note that the PET Scan certificates represented approximately 1% of the Charity's donations received. With respect, we would point out that given that the Charity reports it issued donation receipts in 2004 totalling more than \$30 million of which at least \$1.2 million or 4% of total donations pertains solely to the PET Scan certificates received which, in our view, represents a more than significant amount.

The representations of September 25, 2007 state it may be possible for the Charity to obtain confirmation from the clinic as to the diagnosis yet the Charity provided a listing of the certificates purportedly used between January 2004 and September 2007 on November 23, 2007. As the Charity who was the receiving and receipting arm of the gift certificate donations, it is expected the Charity would have available and maintain accurate records to record the receipt, the distribution, and use of the certificates. It appears, from the timing of the information supplied, that the Charity obtained details on the use of the certificates from a third party and therefore was wholly removed from any assessment regarding use of the certificates.

It remains our view that the Charity issued receipts for certificates that do not constitute property and therefore do not qualify as gifts at law. For this reason, it appears to us that there are grounds for revocation of the charitable status of International Charity Association Network (ICAN) under paragraph 168(1)(d) of the ITA.

Transactions between the Charity and The Millennium Charitable Foundation:

Our audit findings, as summarized in the May 29, 2007, remain as stated. The September 25, 2007 letter indicates "The agreement with Global Learning Group Inc. engaged its services as a fundraiser for ICAN. In that capacity it raised cash donations as well as donations in kind." The letter further states the Charity had no agreement with The Millennium Charitable Foundation ("Millennium") to use its funds in a particular way.

Both the Charity and Millennium are the principal charity participants in the Global Learning Giving Initiative. Per our previous letter, participants in this arrangement make payment to Millennium, which, in our view, is a charge levied to participate in this arrangement. The Charity has clearly agreed to receive cash from Millennium, record these as gifts received from other registered charities when, in fact, these are not true gifts, but funds earmarked to be paid to the promoter. This is clear from the pattern of the transactions on the file.

The Charity signed an agreement with Global Learning Group Inc. whereby it would pay a "base fundraising fee of 17.78% (including GST) of the gross fair market value of cash donations and in-kind donations raised and delivered by GLGI to CCA" and "the base

fundraising fee shall be payable immediately to GLGI, upon GLGI's delivery to CCA of the net cash donations ...". The audit evidence provided clearly links the amount of "gifts" received from Millennium and the amount paid to Global Learning Group Inc. Ninety point five percent (90.5%) of each "gift" received from Millennium was transferred to Global Learning Group Inc. within a day or days of its deposit and no other evidence has been provided to support the amounts paid to Global Learning Group Inc. In fact, the amounts paid to Global Learning Group Inc. do not reconcile amounts payable as per the calculation noted in the Agreement to Terms Letter dated November 19, 2004.

Therefore, it remains our view that the Charity has improperly recorded amounts as gifts received from another registered charity when these transactions clearly are not gifts to the Charity. Furthermore, it is our view that the purpose of recording these transactions as such is to give the appearance that these transactions are "gifts" which allows Millennium to meet its annual disbursement quota – and not be required to spend its money on charitable programs or on *actual* gifts to qualified donees.

Per our previous letter, under subsection 149.1(4.1) the Minister may revoke the registration of any charity where it can reasonably be considered that by accepting a gift from another charity it has acted in concert with that charity, for the purpose of avoiding the application of the disbursement quota. It is our view that International Charity Association Network (ICAN)'s registration should be revoked under paragraph 168(1)(b) of the ITA.

Pending Legislation:

Our findings, as they relate to the tax shelter donations, remain unaltered. The Charity willingly participated in a tax shelter which was designed to avoid the application of proposed subsection 248(35). The Charity relied upon the favourable legal opinion obtained by Global Learning Group Inc. despite the numerous tax alerts issued by CRA regarding tax shelters and without seeking independent legal opinions. In your letter you state: "If CRA has a concern regarding this manner, this should be raised with Global". With respect, the concerns of the Charities Directorate relate to the compliance of the Charity with its obligations under the *Income Tax Act*. As such, this response is wholly insufficient in addressing our concerns as to the application of the proposed legislation. The Charity, as the recipient of the courseware, was required under the ITA to record the deemed fair market value of the gifts on its official donation receipts; a value which is equal to the donors cost.

The Charity also participated in tax shelters whereby proposed subsection 248(35) applies. Gifts received as a result of the Charity's 2003 participation in the Surplus Distribution Group Ltd. and Global Learning Systems were acquired by the donors through gifting arrangements and donated to the Charity after December 5, 2003. Therefore, the Charity contravened proposed subsection 248(35) by issuing receipts for the perceived fair market value of the goods instead of the donor's actual cost of the goods. The Charity provided no representations regarding this area of non-compliance.

In your correspondence you state that the Charity's involvement was limited to being the recipient of the donations. However, it is our view, that this is simply not true based on the facts of this file. The Charity is an active participant in these arrangements. The Charity and the tax shelter promoters have jointly produced materials. The Charity pays the promoters of the tax shelter as fundraisers. The Charity receives payments from Millennium and forwards these to Global Learning Group Inc. The Charity has received courseware from this tax shelter arrangement, altered its programs to accommodate the massive amounts of courseware so received and issued receipts for hundreds of millions of dollars. In our view, it is unrealistic to suggest that the Charity is unaware of the arrangement in which it is participating. Even if this were true, it remains our view that the purpose of the imposition of the trust into the arrangement in which the Charity participates is designed to avoid the application of subsection 248(35) and as such, 248(38) applies and the property so received by the Charity was not eligible for tax receipts reflecting a value greater than zero.

Fair Market Value:

We remain of the view that the fair market value expressed on the receipts does not accurately reflect the actual fair market value, even without reference to the proposed legislation.

In your letter, you note that the Charity was provided a valuation from emc partners for the courseware. However, you also note that the Charity paid for neither the valuation nor the opinion from Wise Blackman confirming the opinion. Global Learning Systems Inc. instead obtained and provided the valuation and opinion, according to the audit. As noted in our previous letter, we are of the view that the Charity has failed to demonstrate due diligence in its participation in this arrangement. The Charity has failed in verifying the authenticity of each donation program it participated in by seeking an independent review, failed to verify the authenticity of the goods involved, failed to seek an independent verification of the value of said goods and failed to consider how participation in each program furthers the objects of the organization. Such due diligence is generally expected where a charity participates in a program where it is issuing receipts for property purportedly worth hundreds of millions of dollars. As per our meeting of February 14, 2007 with the Charity, the executive director indicated the Charity obtained no secondary valuation or legal opinion for any of the registered and unregistered tax shelter arrangements entered into. The executive director instead relied upon the valuations and/or values supplied by the tax shelter promoters when preparing official donation receipts for the goods received. Per the information on file, the Global Learning Group Inc. promoters provided the executive director a spreadsheet containing the participant donors name, address, donation date, amount of license donated and value of the licenses donated.

We refer to the case law cited in our May 29, 2007 correspondence. The appraised value of the Tupperware containers, food, clothing and courseware is based on suggested retail price whereas we are of the opinion the retail market is not the relevant market as the goods were acquired, sold and donated in blocks of goods; therefore the more relevant market is the wholesale market. The fair market value of the Tupperware containers, food, clothing and courseware is the last known arm's length price paid for the goods.

Under paragraphs 168(1)(d), 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 ITA and the Regulations. For this reason, it appears to us that there are grounds for revocation of the charitable status of International Charity Association Network (ICAN).

Official Donation Receipts:

The representation letter contains corrections the Charity will be taking to address the areas of concern raised in our letter such as issuing receipts in sequential order and stamping cancelled or voided receipts as such. We concur with the Charity's undertaking to correct these issues.

The letter also requested a summary of our audit findings for specific areas of non-compliance. A summary listing receipts issued with "Mr or Mrs" instead of the donors first name and/or initial, receipt issued for service and receipts issued for gifts in kind with no appraisal documentation is provided in Appendix "B". The summary has been compiled utilizing the official donation receipts reviewed by the auditor and donor listing of official donation receipts issued as provided by the Charity.

Our audit revealed the Charity issued receipts for gifts in kind without supporting documentation to indicate an appraisal was preformed or how the value recorded on the donation receipt was determined. Your representations indicate the "Black Book" for vehicles and "book value" for photocopies and office furniture was used to determine values however this method of valuation or documentation was not provided during the course of the audit to support the amounts recorded.

During our review of the 2004 official donation receipts provided by the Charity, the duplicate receipts maintained for gifts of courseware received did not include the deed of gift or Schedule A with the valuation.

Under paragraphs 168(1)(d), 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 ITA and the Regulations. For this reason, it appears to us that there are grounds for revocation of the charitable status of International Charity Association Network (ICAN).

Disbursement Quota:

The disbursement quota shortfall, as calculated by CRA, does not ignore the use of the Charity's donated goods in its course of carrying on activities. The shortfall calculation is based on the information as filed by the Charity on its Registered Charity Information Returns and the figures have not been adjusted by audit.

We would note, although this year is not subject to the scope of this audit, that according to the 2005 Information Return, the Charity has claimed \$244 million in charitable program

expenditures which may make up for this shortfall. However, we are concerned as to whether these expenditures (including those made in 2005) can be considered expenditures on the Charity's charitable programs. Per our letter of November 21, 2007 little information has been provided to substantiate these expenditures. As your letter notes, "[t]he calculation ignores the use of donated goods in the course of carrying on charitable activities. For example, where an item is provided to an individual *who uses the item and it cannot be used again*, the expenditure is \$100." (emphasis added) We agree that this is, generally speaking, the policy of the CRA with respect to charities that "expend" tangible property in their charitable programs.

However, in our view the Charity has not provided evidence to satisfy the CRA that these items have been so "expended" in charitable activities carried on by the Charity. As such, it remains our view that the Charity has not met its disbursement quota as per paragraph 149.1(2)(b). Therefore under paragraph 168(1)(b) of the ITA, 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 ITA related to its registration as such. For this reason, it appears to us that there are grounds for revocation of the charitable status of International Charity Association Network (ICAN).

Charity Information Return:

We acknowledge the Charity's willingness to correct the clerical errors identified in our audit and we provide further clarification or discussion on the uncorrected errors.

For fiscal period ending December 31, 2001 the representations note the clerical error and Schedule C were completed by the Charity however Schedule C was not filed with the Charities Directorate. Additionally, a compensated position includes all forms of salaries, wages, honoraria, commissions, fees, etc paid to a recipient regardless if the recipient is deemed to be a casual labourer, part-time or full-time employees.

In fiscal period ending December 31, 2002, the summation of the amounts reported at lines 100, 102 and 109 total \$2,371,187² as opposed to the \$2,271,187 reported by the Charity at line 118. We refer you to our comments above regarding compensated positions and missing schedules.

The T3010A for fiscal periods ending December 31, 2003 and December 31, 2004 indicates the Charity's activities included "establishing, operating and supplying to shelters, charities and non-profits and by providing counselling and other similar programs to relieve poverty". The Charity confirmed at our meeting of February 14, 2007 that the Charity does not establish or operate neither shelters nor does it provide counselling services.

We do not feel the fundraising amounts omitted by the Charity are insignificant. Between 2003 and 2004, the Charity issued at least \$134 million in tax receipts and paid \$6.775 million in fundraising fees related to its participation in tax shelter activities, which the representations indicate are "merely methods of fundraising". The Charity is to report the gross revenues collected by the fundraisers, amounts paid to the fundraisers and the net amount of fundraising revenue retained by the Charity.

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² Line 100 \$2,305,486 + line 102 \$64,701 + line 109 \$1,000=\$2,371,187

We have addressed your representations regarding compensation paid to directors below in "Director/Trustee Remuneration" and our findings concerning the discrepancies noted in the T3010A for fiscal period ending December 31, 2004 are unchanged.

Under paragraph 168(1)(c) of the ITA, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because the charity fails to file an Information Return as and when required under the ITA or a regulation. For this reason, it appears to us that there are grounds for revocation of the charitable status of International Charity Association Network (ICAN).

Late Filing of T3010A Information Return:

Contrary to the representations made, the Charity must file the Registered Charity Information and Public Information Form (form T3010A) without notice or demand within six months from the end of each fiscal period. It is the responsibility of the Charity to obtain the appropriate returns and schedules.

Under paragraph 168(1)(c) of the ITA, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because the charity fails to file an Information Return as and when required under the ITA or a regulation. For this reason, it appears to us that there are grounds for revocation of the charitable status of International Charity Association Network.

Remuneration and Benefits

The audit revealed that the Charity does not prepare annual T4 Summaries and T4 Statements of Remuneration paid for the amounts paid to casual labourers and a T4 slip issued to a director employed by the Charity failed to report gross salary received.

The September 25, 2007 representations maintain that the amounts paid to each casual labourer was "*so small that issuing a T4A slip to each one would have been overly burdensome*" however the Charity has prepared T4 slips for amounts less than the amounts the casual labours received. The representations provided in your November 23, 2007 and September 25, 2007 letters do not provide justification for not complying with the ITA. The ITA requires annual T4 Summaries and T4 Statements of Remuneration Paid by prepared by the employer if the remuneration paid was more than \$500.

The representations further indicate that the amount paid to Carole French was a management fee received in the capacity of an independent contractor rather than an employee. Based on the evidence available to us, Ms. French was remunerated in an employment capacity in each year up to and including 2006 except for 2004 and 2005. Additionally, if we accepted the fact the amount paid was a management fee, the Charity failed to issue a T4A slip reporting the self-employment income earned by Ms. French.

Director/Trustee Remuneration:

The Charity has issued payments to its directors and recorded the payments as management fees in 2003 and director expenses in 2004 in its accounting records. The Charity has failed to provide supporting documentation such as expense vouchers confirming the payments issued were a reimbursement of expenses. The Charity also contradicts itself regarding the loan provided to Mr. Massey, as the Charity's records would indicate the loan was repaid in 2004 yet the Charity indicates, on November 23, 2007, that the loan was repaid in 2007. As such, we are of the opinion that the Charity conveyed a benefit to its directors.

Further, the Charity's response to our request to provide details supporting the loan made by Carole French to the Charity remain unsubstantiated. The Charity has not provided evidence that funds were received by the Charity and that the funds originated with Ms. French or that Ms. French paid expenses on behalf of the Charity.

The Charity has failed to meet the definitional requirement paragraph 149.1(1) of the *Income Tax Act* whereby no part of the charity's income is payable or otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof. Therefore under paragraph 168(1)(b) of the ITA, the Minister, may by registered mail give notice to the organization that he proposes to revoke its registration because it ceases to comply with the requirements of the ITA 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 International Charity Association Network (ICAN).

Books and Records:

The audit revealed the Charity did not maintain accurate books and records to support the revenue and expenditures reported on the T3010 and the financial statements. Various source documents were not provided despite the numerous requests made by the auditor to obtain.

The Charity did provide several donor listings recording the value of tax receipts issued in 2004 however we were unable to reconcile the total donation income recorded to T3010 line 4500 Total tax-receipted gifts or to the income reported on the financial statements. The Charity confirmed, in its November 23, 2007 letter, that the CCA GLS Donor list totalling \$31,093,345 figure is accurate however no further representations or explanations were provided in relation to the discrepancies identified in each of the other 2004 donor listings provided nor did the Charity outline the actions it will be taking to revise its records and Returns.

Our findings remain that the Charity provided us with inaccurate and incomplete records including donor listings recording cash and gift in kind donations received.

Under paragraph 168(1)(e) of the ITA, 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 ITA dealing with books and records. For this reason, it appears to us that there are grounds for revocation of the charitable status of International Charity Association Network (ICAN).



CANADA REVENUE
AGENCY

AGENCE DU REVENU
DU CANADA

REGISTERED MAIL

International Charity Association Network (ICAN)
78 Rolark Drive
Scarborough, Ontario M1R 4G2

Attention: Carole French

BN: 89317 5414 RR0001
File #: 3018297

May 29, 2007

Dear Ms. Carole French:

RE: Audit of International Charity Association Network (ICAN)

This letter is further to the audit of the books and records of International Charity Association Network (ICAN) (the "Charity") by the Canada Revenue Agency (the "CRA"). The audit related to the operations of the registered charity for the period from August 17, 2000 to December 31, 2004.

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

AREAS OF NON-COMPLIANCE:		
	Issue	Reference
1.	Charitable Activities	168(1)(b)
2.	Gifts	118.1
3.	Official Donation Receipts	Regulation 3501, 168(1)(d)
4.	Disbursement Quota	149.1(2)(b)
5.	Charity Information Return (T3010)	168(1)(c), 149.1(2)
6.	Late Filing of T3010	168(1)(c), 149.1(2)
7.	Remuneration and Benefits Reporting	Regulation 200(1), 6(1)(a)
8.	Books and Records	230(2)

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 ITA and Common Law applicable to registered charities. If these provisions are not complied with, the Minister of National Revenue may revoke the Charity's registration in the manner prescribed in section 168 of the ITA.

We would note that the CRA has made numerous attempts to obtain further information from the organization including, but not limited to, the sending of a letter by registered mail on February 22, 2007. To date, we have received no response to these requests.

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

Identified Areas of Non-Compliance:

1. Charitable Purpose and Activities:

The Charity is registered as a charitable organization. In order to satisfy the definition of a "charitable organization" pursuant to subsection 149.1(1) of the ITA, "charitable organization" means an organization.... "All the resources of which are devoted to charitable activities".

To qualify for registration as a charity under the ITA, 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 ITA 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.

Operating Ultra Vires

As above, registered charities are required to pursue activities in furtherance of the purposes for which they are established. There is some concern that the Charity is operating outside of its corporate mandate.

The Charity was registered "to relieve poverty by providing food and other basic supplies to persons of low income, by establishing, operating and maintaining shelters for the homeless, and by providing counselling and other similar programs to relieve

poverty" on August 18, 2000. The Charity revised its objects on June 27, 2005, to include:

- to relieve poverty in developing nations by providing food and other basic supplies to persons in need and to provide necessities of life to victims of disasters;
- to establish, maintain and operate an employment training centre for needy, unemployed and low skilled workers;
- to provide assistance to needy persons in drafting resumes, search for employment and prepare for job interviews;
- and to develop employment training and education programs for needy persons".

It appears from the file that, of the activities conducted by the Charity, very few would fall within its charitable mandate.

For example, a considerable amount of the Charity's time and resources appears to be establishment and possible operation of Internet sites. While the purposes described above could potentially be pursued through the establishment of Internet sites, it not clear that these sites are in any way restricted to persons who are needy and/or in need of such services. Rather, it appears from the evidence on file that these sites are provided to supply free and open access to the Internet to the public at large. While laudable, this is outside of the objectives of the Charity.

Additionally, the Charity appears to operate a warehouse where food and/or other property are distributed to member charities and possibly the public. Again, this is an activity that is outside of the purposes of the Charity.

Collateral Non-Charitable Purpose

It is our considered view, based on our audit, that not only does the Charity not pursue its charitable purposes, but it is also our view that the Charity operates for an unstated, yet collateral, non-charitable purpose.

As above, the Charity was registered effective August 17, 2000, and notified of this fact by letter dated November 2, 2001. The organization represented, at the time of registration, that it intended to distribute food, consumer goods and clothes through its member groups for the purposes of assisting people in need. It further represented that, it "require[d] federal status in order to obtain additional donations from corporations and individuals." In its first year following registration, for the fiscal period ending December 31, 2001, the Charity somewhat immediately received in excess of \$440,000 in gifts for which it issued official donation receipts.

Since that time, we note that the Charity has participated in the following tax shelters/donation arrangements in the noted fiscal periods by agreeing to accept cash

and/or property from taxpayers who were also participants in the tax shelter/donation arrangement:

- DGD Donation Program 2003 (TS68619) – 2003
- Surplus Distribution Group Ltd – 2002, 2003
- Global Learning Systems (TS68064) – 2002, 2003
- Global Learning Gifting Initiative (TS70003) – 2004, 2005, 2006
- National Cancer Survivors Registry Giving Program (TS70219)– 2004

A brief description of each tax shelter/donation arrangement is provided in Appendix "A".

Through these tax shelter arrangements, the Charity receives a variety of forms of property, and in return, issues a substantial amount of receipts for this property. This includes extraordinarily large volumes of plastic food containers, software licence courseware, and PET scan "gift certificates" purportedly for use in the Charity's programs. We note with concern, however, that the Charity's involvement in these arrangements is best described as a "we will accept and receipt anything and everything" philosophy. This, for example, has resulted in an accumulation of approximately \$81,495,730 in inventory, consisting largely of courseware.

In fact, again notwithstanding the fact that the Charity is established to relieve poverty, the Charity has subsequently begun establishing Internet sites. This would seemingly be in relation to the Charity's attempt to find some form of use for the millions of dollars in courseware it has accepted and issued tax receipts for. In our view, much of the direction and activity of the Charity appears to be driven not by a view to its charitable purposes, but rather to facilitate the forms of property being offered by the tax shelter arrangements.¹

Further, the Charity makes little, if any, attempt to verify values of the donations represented by the promoters. In each of the donation arrangements identified, the Charity has relied upon the professional opinions provided by the promoters of each donation arrangement.

In further support of this, we note the following facts. As per our meeting of February 14, 2007, Mr. Sydney Sennet stated the Charity did not engage in separate legal or appraisal opinions. For the Global Learning Systems program, Mr. Sennet indicated Global Learning Systems arranged for the appraisal and legal opinions and the Charity incurred no expense for the professional opinions provided. Carole French, Executive Director, stated she is provided a spreadsheet with the values of the packages and prepares the official donation receipts accordingly without consulting any

¹ In fact, in the case of the Global Learning Systems and Global Learning Gifting Initiatives programs, it seems likely, based on the applicable timeframes, that the Charity modified its registered objects to include establishing, maintaining and operating employment-training centres and to develop employment training and education programs.

other sources. As per correspondence dated November 26, 2006, Carole French writes "The Fund Raiser provided the charity with the legal opinions from reputable law firms attesting to the validity of the rights and title to the courseware." And "The Fundraisers provided the charity with an appraisal from a highly respected Appraiser which established independently a value of the respective charity. The charity did not pay the appraiser." For the Surplus Distribution Ltd tax scheme, John Groscki, provides the Charity with a listing of donors and indicates to "allocate donation receipts as follows". Receipts were prepared by Ms. French and forwarded to Mr. Groscki for distribution to the individual donors.

As well, the facts of one tax shelter arrangement participated in by the Charity, in our view, clearly demonstrates the intent of the Charity to lend its support and tax receipting privileges to non-charitable purposes. In this arrangement, the Charity has clearly agreed to receive cash from the Millennium Charitable Foundation ("Millennium") and property from the Global Learning Group Inc. The cash "gifts" received from Millennium are, in fact not gifts, but are earmarked to be paid to the promoter as fundraising fees. The property "donated" by the participants in this tax shelter is, in substance, the property originally paid for by these fees. In support of this, we refer to the letter of understanding between Global Learning Group Inc. and the Charity whereby there is a clear link between the amount of cash received from Millennium and the amount paid as fundraising fees. The fundraising fees paid represent 90.5% of the total cash gifts received from "donors" and Millennium. In effect, it is our view that the Charity has lent its support to an arrangement designed to mask the true nature of transactions in an attempt to circumvent the provisions of the *Income Tax Act*.

As above, it is our view that the Charity has altered its activities to accommodate the needs of the tax shelters, to the detriment of its actual formal purposes. It appears that the Charity has failed to demonstrate any due diligence undertaken to verify the authenticity of each donation program, the goods involved, the value of said goods or how participation in each program furthers the objects of the organization. In many cases, the Charity has no interaction whatsoever with the donors, as this is handled entirely by the tax shelter promoters. All of these facts point to a pattern of active willingness to participate in schemes designed to produce inappropriate tax benefits.

Given the manner in which the Charity structures and conducts its activities to accommodate these tax shelters, and the proportional levels of involvement in these arrangements, it is our view that a collateral purpose, if not primary purpose of the organization is, in fact, to support and promote tax shelter arrangements. In this regard, it appears that the Charity enthusiastically lends its physical, financial and human resources (not to mention tax receipting privileges) to support these tax shelter arrangements, with little regard for the mandate and best interests of the Charity itself. Operating for the purpose of promoting tax shelters is not a charitable purpose at law. It is further our view, therefore, that 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 organization "all the resources of which are devoted to charitable activities".

2. Gifts:

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.

No Animus Donandi

Under the common law, a gift is a voluntary transfer of property without consideration. 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. These transactions are more fully described in Appendix "A". The common theme, found throughout all of these transactions, is that through a series of transactions and a minimal monetary investment, "donors" profit through the tax credits so obtained. It is clear that the primary motivation of the donors is an intent to profit, and, as such, these transactions fail to qualify as gifts at law.

In support of this position, we note that:

- The promotion materials primarily focus on the 35-65% return on investment as a result of donor participation.
- 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.
- "Donors" buy goods from the promoter or receive highly valued property distributions from a trust and transfer ownership of the property almost immediately to the Charity. Often this occurs without the donor using or seeing the property.
- Minimal information is provided to the prospective "donors" as to how the "donations" will benefit the charity, or to the activities of the charity they are supporting.

These points, in our opinion, evidence that these transactions are primarily motivated by a donor to enrich him/herself rather than an intent to make a gift to charity. As such, it is our position that there is no intention to make a "gift" within the meaning assigned at 118.1 of the ITA.

Property - Several of the transactions for which the Charity issued official donation receipts for do not qualify as gifts as they did not involve the transfer of property to the Charity. It is our view that the PET Scans Gift Certificates are not "property" which can form the subject of a gift. These certificates are not purchased and, as such, do not constitute legal "rights" which can be enforced. At best, these certificates constitute a promise by the issuer to provide certain services in future – again, as opposed to an actual transfer of property to the Charity. Further, it is not even clear that the Charity at any point ever received or beneficially owned these gift certificates. These certificates appear to have been received, not by the Charity, but were purportedly issued to certain select physicians who had a list of persons who needed PET scans. Whether these scans were ever actually performed remains unverified.

Transactions between the Charity and Millennium – The Charity has reported amounts paid as gifts received from other registered charities. Per the details above, it is clear that these amounts are not, in fact, gifts. It is clear that the payment from Millennium is actually a charge levied by the tax shelter promoter to participate in the arrangements described in Appendix "A" and not a gift received from another registered charity, as reported on the T3010 form.

In support of this, we refer to the letter of understanding between Global Learning Group Inc and the Charity whereby there is a clear link between the amount of cash received from Millennium and the amount paid to the promoter as fundraising fees. The fundraising fees paid represent 90.5% of the total cash amounts received from "donors" and the other participating charity. While the Charity and Millennium received the cash amounts, substantially all the funds were forwarded to the promoter.

It is our view that one of the tacit purposes of these transactions was to disguise the actual relationship between the cash payments to Millennium by "donors" and the amounts forwarded to the tax shelter promoters as fees. These monies were routed through the Charity as "gifts" from another registered charity essentially in an attempt to conceal the true source and nature of the transaction. In this regard, it is our view that the Charity has deliberately made false statements with respect to its return - grounds for revocation of its status under the ITA.

Additionally, it is clear that another purpose of these transactions is to artificially allow Millennium to meet its disbursement quota. As above, it is our view that the monies transferred to the Charity are, in actuality, fees earmarked for payment to the tax shelter promoters. Such fees are not and would not be considered expenditures towards charitable activities for the purpose of the disbursement quota. As such, it is clear, from the perspective of the CRA that one of the main purposes of these transactions was also to enable Millennium to unduly delay the expenditure of amounts on actual charitable activities by simply characterizing these as gifts to the Charity.

Under the ITA, the Minister may revoke the registration of any charity where it can reasonably be considered that by accepting a gift from another charity it has acted

in concert with that charity, for the purpose of avoiding the application of the disbursement quota. It is our view that the Charity has acted in concert with Millennium, by receiving amounts and improperly characterizing earmarked fees as gifts, to avoid the proper application of the disbursement quota.

Fair Market Value

Under the ITA, a registered charity may issue a receipt for a donation of property other than cash, but it must ensure that the accurate fair-market value ("FMV") is determined and recorded on the receipt. It is our view that the Charity has contravened this requirement by not properly determining the FMV of donated property and has issued receipts other than for the actual value of the property gifted.

Due Diligence: We note with concern, with respect to this particular issue, that it appears that the Charity's directors have demonstrated a lack of due diligence with respect to receipting practices. In fact, and as above, we feel that the duty of the directors to operate in the best interests of the Charity has been sidetracked by its collusion with the tax shelter arrangements.

In support of this we note that the Charity has failed to demonstrate due diligence in verifying the authenticity of each donation program, the goods involved, the value of said goods or how participation in each program furthers the objects of the organization. The Charity relied almost entirely upon the opinions and valuation reports provided by the promoters without undertaking any reasonable efforts to corroborate or contradict the opinions provided by persons directly associated with the tax shelter promoters.

As above, this has resulted in the "stock-piling" of millions of dollars of unused assets, and in some cases, the Charity issuing receipts for property it sometimes did not even see or receive. As will be described below, it is the opinion of the CRA that this complete lack of due diligence has resulted in the Charity issuing receipts for far in excess of the actual FMV of the items donated.

Software licences: On September 5, 2002, InfoSource Inc ("ISI"), producer of the GLS training software, entered into an exclusive Canadian licensing agreement with Canadian International Technology Trading Inc ("CITTI"), licensee of the courseware. On June 20, 2003, the license agreement was amended to grant CITTI exclusive rights to their "Canadian Charitable Donation Program" in Canada only. Michael Werner, CEO of ISI indicated that ISI did not focus the sales of software to the charitable sector, that CITTI was the only charity ISI sold to and that the licensing agreement was an atypical agreement. He also indicated that typically ISI initiates customer relationships and targets sales between \$10,000 and \$15,000 per customer. In the case of CITTI, the arrangement was initiated by CITTI, involved a large fixed fee license to produce unlimited copies of software that could only be marketed to a very specific market segment, i.e. the Canadian charitable market segment only.

A valuation reported was provided to the Charity, from the promoters, from emc partners report concluding the fair market value of the software licenses was equal to 100 percent of the individual interest in each unit or bundle of computer programs as of September 9, 2002. We are of the opinion the fair market value determined by emc partners is not reflective of the fair market value given the facts presented to us and as discussed below. A third party valuator has been consulted to assess the fair market value of the software licences.

Pending legislation:

As you may be aware on December 5, 2003, the Department of Finance publicly announced new rules with respect to charitable donations and FMV. These rules provide that where a taxpayer makes a gift of property that they acquired through a gifting arrangement that is a tax shelter or where the taxpayer acquired the property in the preceding three years, and gifts that property to a registered charity, the FMV of the gift is deemed to be the lesser of the actual FMV of the property and the cost of the property to the taxpayer. This legislation while still pending legislation is applicable in respect of gifts made after December 5, 2003.

It is our view, as expressed above, that the cash expenditure required of all participants in the tax shelter arrangements is a payment made to acquire the property. As such, the FMV of the subsequent gift of that property is deemed, by virtue of proposed subsection 248(35), to be no more than the amount of the initial cash payment. Consequently the amount that the Charity was required under the *Income Tax Act* to record on its official donation receipts as the deemed FMV of the gift is significantly lower than what was actually recorded by the Charity.

It appears, in addition, that the Charity participated in an arrangement designed to avoid the application of proposed subsection 248(35). Specifically, it appears that following the introduction of these sections the tax shelter and the Charity began using a trust to distribute property to participants, again, to avoid the application of 248(35). We would note that proposed subsection 248(38) states that where it can be reasonably concluded that the particular gift relates to a transaction or series of transactions one of the main purposes of which is to avoid the application of subsection 248(35) the eligible amount of a the property so gifted is nil. As such, it is our view that even if the property received by the Charity is a "gift", which, as described above, given the motivation of the donors, is unlikely, the property so received by the Charity was not eligible for tax receipts reflecting a value greater than zero.

The Case Law: - Fair market value generally means the highest price, expressed in dollars, that a property would bring in an open and unrestricted market, between a willing buyer and a willing seller who are both knowledgeable, informed, and prudent, and who are acting independently of each other. The well-accepted definition of fair market value is found in the decision of Cattanach J. in *Henderson Estate & Bank of New York v M.N.R. D.T.C 5471 at 5476:*

The statute does not define the expression "fair market value", but the expression has been defined in many different ways depending generally on the subject matter, which the person seeking to define it had in mind. I do not think it necessary to attempt an exact definition of the expression as used in the statute other than to say that the words must be construed in accordance with the common understanding of them. That common understanding I take to mean the highest price an asset might reasonably be expected to bring if sold by the owner in the normal method applicable to the asset in question in the ordinary course of business in a market not exposed to any undue stresses and composed of willing buyers and sellers dealing at arm's length and under no compulsion to buy or sell. I would add that the foregoing understanding as I have expressed it in a general way includes what I conceive to be the essential element, which is an open and unrestricted market in which the price is hammered out between willing and informed buyers and sellers on the anvil of supply and demand. These definitions are equally applicable to "fair market value" and "market value" and it is doubtful if the use of the word "fair" adds anything to the words "market value".

As outlined by Rothstein, J.A. in *AG (Canada) v Tolley et al 2005 FCA 386*, in applying the Henderson definition of fair market value, the first step is to accurately define the asset whose fair market value is to be ascertained. Rothstein, J.A. discusses the relevance of donating a group of items versus an individual item and states that because the items were only acquired and donated in groups, the relevant asset was the group of items, and not the individual items in the group.

It is our position that the conclusion(s) made by Rothstein, J.A. also applies to the donation of Tupperware containers, food, clothing, courseware and PET Scan Gift Certificates. Based on the quantities donated, the relevant asset is considered to be the group of goods donated, not the individual items within each group. Rothstein, J.A. continues by stating it is wrong to assume that the fair market value of a group of items is necessarily the aggregate of the price that could be obtained for the individual items in the group.

The second step in applying the Henderson definition is to identify the market in which the merchandise was traded. Rothstein, J. A. identifies this group of items might not be sold in the same market as individual items, and highlights this distinction through a comparison of the wholesale versus retail markets.

In *Klotz v The Queen 2004 TCC 147*, Bowman, A.C.J. stated "*It is an interesting question that I need to consider here whether the price paid for something is truly indicative of FMV [sic-fair market value] where the predominant component in the price paid is the tax advantage that the purchaser expects to receive from acquiring the object.*"

Based on our findings, the fair market value on the donation receipts issued is not indicative of the fair market value of the goods donated. The appraised value is based on suggested retail price. We are of the opinion the retail market is not the relevant market as the goods were acquired, sold and donated in blocks of goods; therefore the more relevant market is the wholesale market. The fair market value of the Tupperware containers, food, clothing, courseware and PET Scan Gift Certificates is the last known arm's length price paid for the goods.

Official Donation Receipts:

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 ITA 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 ITA and IT-110R3 as follows:

- Official donation receipts issued were not issued in sequential order (Regulation 3501(1)(c)).

A sequential ordering of the receipts and receipt summaries provided by receipt numbers identified gaps. A sequential ordering of the receipt and receipt summaries provided by receipt issue date indicated receipts with a higher serial number were issued before receipts bearing lower serial numbers.

- Receipts were issued bearing duplicated receipt numbers (Regulation 3501(1)(c)).

The sequential ordering of receipts identified multiple instances of duplicated receipt numbers.

- Official donation receipts were issued without the first name and initial of individual donors (Regulation 3501(1)(g)).

Official receipts were issued with "Mr or Mrs" instead of the donors first name and/or initial.

- Official donation receipts were issued to acknowledge the gift of services (Regulation 3501(1)(h)(ii)).
- Receipts were issued to recognize donations of property without indication of the name and address of the appraiser (Regulation 3501(1)(e.1)(iii)).

Receipts issued to acknowledge gifts of vehicles, carpets, photocopiers, and so forth were issued without appraisals or supplier receipts confirming the value of the goods.

Receipts issued to acknowledge gifts of courseware were issued without the deed of gift attached. Additionally, appraisal reports were not attached or provided to substantiate the value reported on the receipt.

If the fair market value of the donated good is more than \$1,000, the Charities Directorate strongly recommends the property be appraised by someone who is not associated with either the donor or the charity receiving the gift (i.e., a third party). The person who determines the fair market value of the property must be competent and qualified to evaluate the particular property being transferred by way of a gift.

- Receipts issued to acknowledge goods received as a result of the Charity's participation in various tax shelters were not independently appraised by the Charity. Official donation receipts were issued based on the figures provided by the appraisers hired by the promoters of the tax shelters thereby nullifying the fact that appraiser was independent and qualified to evaluate the particular property.
- Blank receipts contain the phrase "F.M.V. described as donation amount determined April 21, 2003 as per appraisal by emc partners".

It is presumed this phrasing facilitates the preparation of the donation receipts prepared to acknowledge gifts received for courseware however the phrasing also appears on receipts issued to acknowledge other gifts-in-kind. Our review noted receipts were issued with this phrase although the goods were not acquired by the donors until some time after this date and were not appraised by emc partners.

Regulation 3501(4) of the ITA stipulates that an official receipt issued to replace an official receipt previously issued shall clearly show that it replaces the original receipt and, in addition to its own serial number, shall show the serial number of the receipt originally issued. Regulation 3501(5) requires that a spoiled official receipt form shall be marked "cancelled" and such form, together with the duplicate thereof, shall be retained by the registered organization or the other recipient of a gift as part of its records. The Charity retains copies of receipts, which were issued with incorrect information however the receipts are not marked "voided", or "cancelled".

Disbursement Quota:

In order to maintain its status as a charitable organization within the meaning of paragraph 149.1(2)(b) of the ITA, 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. A charity is allowed by virtue of 149.1(20) of the ITA 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.

In considering the application of expenditures used to meet the disbursement quota a charity must ensure that it is expensed directly on charitable activities and/or programs. This would include such payments as salaries to persons performing duties directly related to a charitable program, but would not include amounts paid for purely administrative expenses such as fund-raising costs, legal or accounting fees and the like.

Based on our calculations, the Charity has not met its disbursement quota for the fiscal period ending December 31, 2004 as failed to expend 80% of the prior years receipted income. We have calculated the Charity's cumulative disbursement quota shortfall, solely based on the T3010 information, as:

Fiscal Period	DQ Excess	DQ Shortfall	Cumulative DQ Excess (Shortfall)
2001	\$ 495,621		\$ 495,621
2002	\$ 1,908,087		\$ 2,403,708
2003	\$ 27,914,586		\$ 30,318,294
2004		\$(51,618,366)	\$ (21,300,071)

The figures above do not reflect our concerns that the amounts reported by the Charity as charitable distributions, i.e. use of courseware, Tupperware and such, are in excess of the property's fair market value. Detailed calculations of the disbursement quota excess and shortfall for 2003 and 2004 are contained in Appendix "B".

Charity Information Return (T3010):

Pursuant to subsection 149.1(14) of the ITA, every registered charity must, within six months from the end of the charity's fiscal period (taxation year), without notice or demand, file a Registered Charity Information Return with the applicable schedules.

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

The Charity improperly completed the Information Return for the fiscal periods ending December 31, 2000 to December 31, 2004 in that many items reported were incorrectly identified or omitted. Specifically the following items:

FPE December 31, 2001

- Line 1 - Reports fiscal period ended 2000-12-31 whereas the fiscal period ended should have been 2001-12-31 as the 2001-12-31 financial statements were submitted with the T3010 filed and note the Charity did not commence activities in 2000;
- Line 300 – Charity reports zero compensated positions whereas the Charity employed various casual labourers; and
- Schedule C: Disbursement Quota – The schedule was not completed by the Charity.

FPE December 31, 2002

- Line 300 – Charity reports zero compensated positions whereas the Charity employed various casual labourers;
- Line 118 – Total income reported by the Charity does not reconcile to the amount reported. A \$100,000 discrepancy exists between the amount reported at line 118 and the total income amounts reported;
- Schedule A: Checklist – The Charity failed to indicate "yes" or "no" to question 2, 5, 11 and 20. The Charity issued official donation receipts for gifts in kind received therefore all questions posed at number 5 should have been answered; and
- Schedule C: Disbursement Quota – The schedule was not completed by the Charity.

FPE December 31, 2003

- C2 – The Charity states its ongoing programs included "establishing, operating and supplying to shelters, charities and non-profits and by providing counselling and other similar programs to relieve poverty". The Charity does not establish or operate shelters, charities or non-profits and does not provide counselling services;
- Line 3900 – The Charity does not indicate whether it compensates any of its directors/trustees during the fiscal period. The Charity compensated its directors/trustees during the fiscal period;
- Line 3950 – The Charity states "No" to transferring any part of its income or assets to individuals or organizations not at arm's length to the charity. The Charity paid its directors for occupying the position of director/trustee as documentation was not provided to substantiate the amounts were paid for reimbursement of expenses incurred on behalf of the Charity;
- Line 5450 – The gross revenues collected by the fundraisers should have been entered on this line;
- Line 5460 – The amounts paid to / retained by the fundraiser should have been entered on this line; and
- Line 5470 – The net fundraising revenue should have been included.

FPE December 31, 2004

- C2 – The Charity states its ongoing programs included "establishing, operating and supplying to shelters, charities and non-profits and by providing counselling and other similar programs to relieve poverty". The Charity does not establish or operate shelters, charities or non-profits and does not provide counselling services;
- Line 4500 – Total tax-receipted revenues of \$30,222,298 reported whereas Charity provided donation receipt summaries and duplicate copies of official donation receipts totalling \$40,605,345;
- Line 5010 – Not all management and administration expenses were reported on this line. The sum of lines 5000 to 5040 must equal total expenditures reported at line 4950;
- Line 5100 – Total expenditures reported at line 5100 does not reconcile to total expenditures reported at line 4950. A \$500,000 discrepancy exists between the two totals;
- Line 5450 – The gross revenues collected by the fundraisers should have been entered on this line;
- Line 5460 – The amounts paid to / retained by the fundraiser should have been entered on this line;
- Line 5470 – The net fundraising revenue should have been included; and
- Line 5600 – The total amount of non-cash gifts should have been included. The Charity did not report the total value of the courseware received.

Late Filing of T3010A Information Return:

Subsection 149.1(14) of the ITA requires every registered charity to file a Registered Charity Information and Public Information Return (form T3010A), **without notice or demand within six months from the end of each fiscal period**. This return must be in prescribed form and contain prescribed information.

The Charity was late in filing its T3010 returns over the following four consecutive fiscal years:

<u>Fiscal year end</u>	<u>Due Date</u>	<u>Date received</u>
31-12-2005	30-06-2006	18-09-2006
31-12-2004	30-06-2005	08-07-2005
31-12-2003	30-06-2004	19-07-2004
31-12-2002	30-06-2003	15-09-2003

Remuneration and Benefits Reporting:

Where salaries or wages are paid, the ITA requires annual T4 Summaries and T4 Statements of Remuneration Paid be prepared by the employer [Regulation 200(1)]. In addition to the salaries and wages actually paid, the T4 Summaries and T4 Statements of Remuneration Paid must also include the value of all taxable benefits.

conferred on employees in the year [paragraph 6(1)(a)]. T4 Summaries of remuneration paid must always be based on the calendar year.

No T4 / T4A slips were issued for remuneration paid to casual labourers employed by the Charity. In 2004, casual labours received in excess of \$10,000. A T4 slip issued to a director employed by the Charity did not report the gross remuneration received in 2004. The director received gross payments of \$41,754.40 whereas a T4 slip was issued reported gross remuneration of \$10.00.

Director/Trustee Remuneration:

Section 149.1(1) of the ITA, stipulates that no part of a charity's income "...is payable to, or otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor." In general, a registered charity cannot pay its directors/trustees simply for occupying their positions. As per the Charity's Letters Patent item C, "The Directors shall serve as such without remuneration and no director shall directly or indirectly receive any profit from his/her position as such, provided that the directors may be paid reasonable expenses incurred by them in the performance of their duties."

Under the *Income Tax Act*, a registered charity that confers on a director / trustee an undue benefit is liable to a penalty equal to 105% of the amount of the benefit. This penalty increases to 110% and the suspension of tax-receipting privileges for a repeat infraction within 5 years.

The Charity issued payments to directors/trustees of the Charity in 2003 and 2004. Hector Massey received amounts of \$2,000 in 2003 for "Director Expenses 2002" and \$800 in 2004 and was provided a loan of \$5,000 in 2004. Hal Riseman received \$1,000 in 2003 for "Dir Expenses".

The Charity also maintains an account entitled "2290-Director's Advances-Other". This account appears to record the various withdrawals of cash by the executive director, Carole French, against an amount owing to the executive director. Documentation has not been provided to verify the loan provided by the executive director to the Charity nor the terms of repayment. In the absence of this documentation, we are of the opinion that the executive director is utilizing the funds of the Charity for personal benefit.

Books & Records:

Pursuant to paragraph 230(2)(a) of the ITA, every registered charity shall keep records and books of account at an address in Canada recorded with the Minister or designated by the Minister containing information in such form as will enable the Minister to determine whether there are any grounds for revocation of its registration under this ITA.

The director was unable to provide adequate books and records. In the course of the audit, the following deficiencies were noted:

Unreported Income:

The total donations have been understated by \$1,559,059 for the 2004 fiscal period. Based on a review of the List of GLGI Donors 2004, \$20.00 GLS Donors List, CCA Donors 2004 and official donation receipts provided for 2004, we calculated total donations receipted of \$39,320,503 including \$7,539,146 received from other registered charities. The Charity reported total gifts of \$37,761,444. The discrepancy is attributable to the differences in total donation receipts issued to acknowledge gifts of courseware, the exclusion of the PET Scan Gift Certificate gift-in-kind and cash donations as well as discrepancies noted between donation receipts provided and donations listed on the CCA Donors 2004 summary. The List of GLGI Donors 2004 reports total gift-in-kind donations of \$31,093,345 whereas the financial statements report total gift-in-kind donations of \$29,580,192.

Other Deficiencies:

- The Charity was not able to provide an accurate listing of donors or of the tax receipts issued as noted above.
- An independent appraiser did not appraise the donation of goods.
- T4/T4A summaries were not prepared and filed.
- The T3010 was filled out incorrectly.
- Various source documents and bank statements could not be located.

Conclusion:

If you do not agree with the concerns outlined above, we invite you to submit your written representations **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 ITA. Should you choose not to respond, the Director General of the Charities Directorate may proceed with the issuance of a Notice of Intention to Revoke the registration of the Charity in the manner described in subsection 168(1) of the ITA.

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

If you require further information, clarification, or assistance, I may be reached at (613) 957-2212 or by facsimile at (613) 946-7646.

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Yours sincerely,

Holly Brant
Audit Advisor
Compliance Section
Charities Directorate
Canada Revenue Agency
320 Queen St. 7th Floor
Ottawa, Ontario K1A 0L5

Cc: Sydney Sennet

Enclosures