



January 18, 2022

Sheila Britton  
Director  
Eden Glen Foundation  
1250-1500 Georgia W St  
Vancouver, BC V6G 2Z6

BN: 819877184RR0001  
File #: 3055000

Dear Sheila Britton:

**Subject: Audit of Eden Glen Foundation**

This letter results from the audit of the Eden Glen Foundation (the Foundation) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Foundation for the period from December 1, 2015 to November 30, 2018<sup>1</sup>. Please note the audit period was extended to include the November 30, 2018 fiscal period.

**Background**

The Foundation was incorporated under the B.C. Society Act on December 17, 2014 and was registered on January 28, 2015 as a private foundation.

The Foundation was registered with the following purposes:

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

The Foundation's only activity is making gifts to qualified donees.

It is our position that the Foundation's primary purposes, as presently worded, could be viewed as charitable. However the question of whether an organization is constituted exclusively for charitable purposes cannot be determined solely by reference to its stated purposes, but must take into account the activities in which the organization currently engages.

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<sup>1</sup> The audit encompassed an enquiry into all aspects of the Foundation's operations. Activities and/or transactions conducted outside of the audit period may have also been considered to assess ongoing and current compliance.

The balance of this letter describes the identified areas of non-compliance regarding the Foundation's activities, and the sanctions proposed as a result.

### **Current Audit**

The CRA has identified specific areas of non-compliance with the provisions of the Income Tax Act (the Act) and its Regulations in the following areas:

<b>AREAS OF NON-COMPLIANCE</b>		
	<b>Issue</b>	<b>Reference</b>
1.	Failed to devote resources to charitable activities carried on by the Foundation itself: <ul style="list-style-type: none"><li>I. Gifted to non-qualified donees</li><li>II. Delivered non-incidental private benefits</li><li>III. Conferred an undue benefit on a person</li></ul>	149.1(1), 149.1(4)(b.1)(ii), 168(1)(b), 188.1(4), 188.1(5)
2.	Failed to meet the disbursement quota: <ul style="list-style-type: none"><li>• Misused gifts received from registered charities that are at non-arm's length</li></ul>	149.1(4)(b); 149.1(4.1)(d), 168(1)(b), 188.1(12)
3	Had an ineligible individual that is a director, trustee, or officer of the charity, or controls or manages the charity	149.1(1), 149.1(4.1)(e), 188.2(2)(d)

As a registered charity, the Foundation must comply with the law. If it fails to comply with the law, it may either be subject to sanctions under sections 188.1<sup>2</sup> and/or 188.2<sup>3</sup> of the Act, and/or have its registered charity status revoked in the manner described in section 168 of the Act.

This letter describes the areas of non-compliance identified by the CRA relating to the legislative and common law requirements that apply to registered charities, and offers the Foundation an opportunity to provide representations to our findings.

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

### **General legal principles**

In order to maintain charitable registration under the Act, Canadian law requires that an organization demonstrate that it is constituted and operated exclusively for charitable purposes (or objects) and that it devotes its resources to charitable activities carried on by

<sup>2</sup> Financial sanctions are assessed under Section 188.1 of the Act.

<sup>3</sup> Suspensions of a registered charity's authority to issue official donation receipts, and qualified donee status, are assessed under section 188.2 of the Act.

the organization itself in furtherance thereof.<sup>4</sup> To be exclusively charitable, a purpose must fall within one or more of the following four categories (also known as “heads”) of charity<sup>5</sup> and deliver a public benefit:

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

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

The public benefit requirement involves a two-part test:

- The first part of the test requires the delivery of a **benefit** that is recognizable and capable of being proved, and socially useful. To be recognizable and capable of being proved, a benefit must generally be tangible or objectively measurable.
  - Benefits may be measurable or intangible. Benefits that are not tangible or objectively measurable should be shown to be valuable or approved by the common understanding of enlightened opinion for the time being.<sup>6</sup> In most cases, the benefit should be a necessary and reasonably direct result of how the purpose will be achieved.<sup>7</sup>

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<sup>4</sup> See subsection 149.1(1) of the Act, which requires that a charitable organization devote all of its resources to “charitable activities carried on by the organization itself” and *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10, 1999 CanLII 704 (SCC) at paras 156-159. A registered charity may also devote resources to activities that, while not charitable in and of themselves, are necessary to accomplish their charitable purposes (such as expenditures on fundraising and administration). However, any resources so devoted must be within acceptable legal parameters and the associated activities must not become ends in and of themselves.

<sup>5</sup> The Act does not define charity or what is charitable. The exception is subsection 149.1(1) which defines charitable purposes as including “the disbursement of funds to qualified donees.” The CRA must therefore rely on the common law definition, which sets out four broad categories of charity. The four broad charitable purpose categories, also known as the four heads of charity, were outlined by Lord Macnaghten in *Commissioners for Special Purposes of the Income Tax v Pemsel*, [1891] AC 531 (PC). The classification approach was explicitly approved of by the Supreme Court of Canada in *Guaranty Trust Co of Canada v Minister of National Revenue*, [1967] SCR 133, and confirmed in *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10, 1999 CanLII 704 (SCC).

<sup>6</sup> For more information about public benefit, see CRA Policy statement CPS-024, *Guidelines for registering a charity: Meeting the public benefit test*. See also generally *British Columbia (Assessor of Area #09 - Vancouver) v Arts Umbrella*, 2008 BCCA 103; and *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10, 1999 CanLII 704 (SCC).

<sup>7</sup> For more information about public benefit, see CRA Policy statement CPS-024, *Guidelines for registering a charity: Meeting the public benefit test*, and CRA Guidance CG-019, *How to draft purposes for charitable registration*. See also; *Commissioners for Special Purposes of the Income Tax v Pemsel*, [1891] AC 531 (PC) at 583.

An assumed prospect or possibility of gain that is vague, indescribable or uncertain, or incapable of proof, cannot be said to provide a charitable benefit.<sup>8</sup>

- The second part of the test requires the benefit be directed to the **public** or a sufficient section of the public. This means a registered charity cannot:
  - have an eligible beneficiary group that is negligible in size, or restricted based on criteria that are not justified based on the charitable purpose(s);  
or
  - provide an unacceptable private benefit. Typically, a private benefit is a benefit provided to a person or organization that is not a charitable beneficiary, or to a charitable beneficiary that exceeds the bounds of charity. A private benefit will usually be acceptable if it is incidental, meaning it is necessary, reasonable, and not disproportionate to the resulting public benefit.<sup>9</sup>

The CRA must be satisfied that an organization's activities directly further charitable purposes in a manner permitted under the Act. In making a determination, we are obliged to take into account all relevant information. Accordingly, the current audit encompassed an enquiry into all aspects of the Organization's operations. The fact that some of the areas of non-compliance identified in this letter may, or may not, have been evaluated in preceding audits does not preclude the need for compliance with existing legal requirements. Furthermore, the CRA may take a position that differs from that reached previously based on reconsideration of the pertinent facts and law.<sup>10</sup>

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

#### **1. Failed to devote resources to charitable activities carried on by the Foundation itself**

It is a requirement that a registered charity devote all of its resources to its own charitable activities. In this regard, the Act allows a registered charity to use its resources (funds, personnel, and property) inside or outside Canada in only two ways:

- for its own charitable activities – undertaken by the charity itself under its continued supervision, direction and control;<sup>11</sup> and
- for gifting to qualified donees as defined in the Act.

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<sup>8</sup> Co-operative College of Canada v. Saskatchewan (Human Rights Commission), 1975 CanLII 808 (SKCA) at para 19; Vancouver Society of Immigrant and Visible Minority Women v MNR, [1999] 1 SCR 10, 1999 CanLII 704 (SCC) at para 202; for more information about charitable purposes see CRA Guidance CG-019, How to draft purposes for charitable registration at para 19.

<sup>9</sup> For more information about public benefit, see CRA Policy statement CPS-024, Guidelines for registering a charity: Meeting the public benefit test.

<sup>10</sup> Canadian Magen David Adom for Israel v MNR, 2002 FCA 323 at para 69.

<sup>11</sup> Canadian Committee for the Tel Aviv Foundation v. Canada, 2002 FCA 72 (CanLII) at para 31.

Our audit found that the Foundation failed to demonstrate that it devoted its resources to its own charitable activities in the following three ways. It:

- I. Gifted to non-qualified donees;
- II. Delivered non-incident private benefits; and
- III. Conferred undue benefits on a person.

## Legislation and jurisprudence

### I. Gifted to non-qualified donees

As indicated above, a registered charity is permitted to use its resources for making gifts to qualified donees. A **qualified donee** means a donee defined in subsection 149.1(1) of the Act, as follows:

- a registered charity (including a registered national arts service organization);
- a registered Canadian amateur athletic association;
- a registered housing corporation resident in Canada constituted exclusively to provide low-cost housing for the aged;
- a registered Canadian municipality;
- a registered municipal or public body performing a function of government in Canada;
- a registered university outside Canada, the student body of which ordinarily includes students from Canada;
- a registered foreign charity to which Her Majesty in right of Canada has made a gift;
- Her Majesty in right of Canada or a province, or a territory; and
- the United Nations and its agencies.

### II. Delivered non-incident private benefits

In order to satisfy the definition of a **charitable organization** pursuant to subsection 149.1(1) of the Act, charitable organization is, amongst other criteria, defined as, "an organization [...] no part of the income of which is payable to, or otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settler thereof."

A registered charity must be established and operated for the purpose of delivering a charitable benefit to the public or a sufficient segment thereof. The public benefit requirement prevents a charity from conferring an unacceptable private benefit in the course of pursuing charitable purposes.

At common law, a private benefit<sup>12</sup> means a benefit provided to a person or organization that is not a charitable beneficiary, or a charitable beneficiary where a benefit goes beyond what is considered to be charitable.

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<sup>12</sup> Personal benefit is also sometimes used instead of **benefit** in the common law private benefit context; See CRA Guidance product CG-019, How to draft purposes for charitable registration.

Private benefits can be conferred on a charity's staff, directors, trustees, members, and/or volunteers while they are carrying out activities that support the charity, or to third parties who provide the charity with goods or services. Where it can be fairly considered that the eligibility of a recipient relates solely to the relationship of the recipient to the organization, any resulting benefit will not be acceptable.

Providing a private benefit is unacceptable unless it is **incidental** to accomplishing a charitable purpose. A private benefit will usually be incidental where it is necessary, reasonable, and proportionate to the resulting public benefit.<sup>13</sup>

(i) **Necessary** – Necessary means legitimately and justifiably resulting from:

- (a) an action taken to achieve a charitable purpose; or
  - (b) a necessary step, a consequence, or a by-product of an action taken to achieve a charitable purpose; or
  - (c) the operation of a related business as defined in subsection 149.1(1) of the Act.
- and

(ii) **Reasonable** – Reasonable means related to the charitable need and no more than is needed to achieve the purpose, and fairly and rationally assessed and distributed.

and

(iii) **Proportionate** – Proportionate means the private benefit cannot be a substantial part of a purpose or activity, or be a non-charitable end in itself. The private benefit must be secondary and the public benefit must be predominant and more significant.

The public benefit cannot be too speculative, indirect or remote, as compared to a more direct private benefit, particularly when a direct benefit is to private persons, entities, or businesses.

Examples of unacceptable (not incidental) private benefit might include:

- paying excessive salaries/remuneration
- paying for expenses, or providing benefits that are not justified or needed to perform required duties
- providing excessive per diems
- unjustified/unncecessary or excessive payments for services, facilities, supplies, or equipment
- promoting the work, talent, services, or businesses of certain persons or entities, without justification.

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<sup>13</sup> For more information, see CRA Policy statement CPS-024, Guidelines for registering a charity: Meeting the public benefit test.

### III. Conferred an undue benefit on a person

As stated above, pursuant to subsection 149.1(1) of the Act, as a charitable organization, no part of the Foundation's income can be payable to, or otherwise made available for, the personal benefit of any proprietor, member, shareholder, trustee or settler thereof. Any portion of a charitable organization's income that is received by such a person would be an unacceptable private benefit.

Typically, private benefits that are unacceptable under the common law will also be undue under subsection 188.1(5) of the Act<sup>14</sup>. An **undue benefit** means a benefit provided by a registered charity, a registered Canadian amateur athletic association (RCAAA), or a third party at the direction, or with the consent, of a charity or RCAAA that would otherwise have had a right to that amount. An undue benefit includes a disbursement by way of a gift or the amount of any part of the income, rights, property or resources of the charity or RCAAA that is paid, payable, assigned or otherwise made available for the personal benefit of any person who:

- (a) is a proprietor, member, shareholder, trustee or settlor of the charity or RCAAA;
- (b) has contributed or otherwise paid into the charity or RCAAA more than 50% of the capital of the charity or RCAAA; or
- (c) does not deal at arm's length with a person in (a) or (b), or with the charity or RCAAA.

Undue benefit does not include

- (a) a gift to a qualified donee;
- (b) reasonable consideration or remuneration for property acquired or services received by the charity or RCAAA; or
- (c) a gift made, or a benefit provided, in the course of a charitable act<sup>15</sup> in the ordinary course of the charitable activities carried on by the charity or RCAAA, unless it can be reasonably considered that the beneficiary was eligible for the benefit solely due to the relationship of the beneficiary to the charity or RCAAA.

Subsection 188.1(4) of the Act provides for the levying of a penalty to registered charities under specific circumstances. Under the Act, a registered charity cannot confer on a person an undue benefit (for example, a transfer of property or other resources of the charity to a person who does not deal with the charity at arm's length or who is the beneficiary of a transfer because of a special relationship with a donor or charity.)

Under subsection 188.1(4) of the Act, a registered charity that confers on a person an undue benefit is liable to a penalty equal to 105% of the amount of the benefit.

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<sup>14</sup> Undue benefits sanctions are assessed under subsection 188.1(4) of the Act.

<sup>15</sup> While charitable act is not defined in the Act, it is considered to refer to an activity that itself provides a charitable benefit to an eligible beneficiary.

This penalty increases to 110% and the suspension of tax-receiving privileges for a repeat infraction within 5 years.

## **Audit Findings**

### **I. Gifted to non-qualified donees**

Our audit revealed that on January 12, 2016, the Foundation received a gift of land from Foundation for Public Good (Public Good), a registered charity. The gift consisted of two parcels of land—Lot 12 and Lot 58, at [REDACTED] in Squamish, BC—and according to documents provided to us during the audit, the properties had a combined fair market value (FMV) of \$17,110,000. Lot 12 had a FMV of \$5,750,000, while Lot 58 had a FMV of \$11,360,000.

The Foundation sold Lot 58 on November 1, 2016 for \$10,500,000. It is our opinion that this amount appears reasonable in comparison to the property's FMV on January 12, 2016, when the Foundation received the land as a gift. The proceeds from the sale were subsequently gifted to another registered charity, Chimp: Charitable Impact Foundation (CHIMP), in what appears to be a non-arm's length transaction. This matter is discussed in further detail below.

On April 3, 2018, the Foundation sold the beneficial ownership interest in Lot 12 to 1012986 B.C. Ltd. (the Corporation), a private for-profit corporation for \$2,000,000 in accordance with the terms of a bare trust agreement. The lot was paid for with a promissory note which remained outstanding as of the end of the fiscal period ending November 30, 2019. At no point during the audit has the Foundation identified a public benefit that resulted from the disposition of Lot 12.

Additionally, according to the terms of the bare trust agreement, the Foundation maintains ownership of the legal title of the property as the Nominee, however, legal title without beneficial ownership, holds no value<sup>16</sup>. This means that all of value of Lot 12 can be attributed to the value of the beneficial ownership interest in Lot 12.

CRA conducted a real-estate appraisal of Lot 12, and according to the appraisal report's findings, the appraised value of this property at the time of the transaction (that is, April 3, 2018) was \$6,475,000. As such, at the time of the disposition the difference between the FMV of Lot 12 and the sale price was \$4,475,000<sup>17</sup>. In essence, the Foundation gave the Corporation \$4,475,000 when it agreed to sell Lot 12 to the Corporation for less than its FMV.

The private benefit provided to the Corporation was not necessary to fulfill a charitable purpose or proportionate to the public benefit that may have directly resulted from the disposition.

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<sup>16</sup> 2008 TCC 220 507582 B.C. Ltd. and John Frank Krmpotic (Appellants) v. Her Majesty the Queen (Respondent).

<sup>17</sup> \$6,475,000 - \$2,000,000.



## II. Delivered non-incidental private benefits

As discussed above, the Foundation gifted \$4,475,000 to the Corporation<sup>18</sup> when it sold the Corporation Lot 12 for significantly less than the property's FMV. It is our position that the \$4,475,000 is also a private benefit that was provided to the Corporation. We must now discuss why we have concluded that this private benefit was unacceptable. Note that in order for a private benefit to be acceptable, it must be necessary, reasonable and proportionate.

The benefit was not necessary, because the Foundation has not demonstrated that it resulted from an action that it took to achieve a charitable purpose: nor has it provided any indication to support that providing the Corporation with the private benefit was a necessary step, consequence, or by-product of an action that it took to achieve a charitable purpose. Furthermore, as a private foundation, the Foundation is not permitted to conduct any business activity<sup>19</sup>, related or otherwise, and so the private benefit was not related to the operations of a related business that the Foundation was conducting.

We cannot conclude that the benefit was reasonable under the circumstances either. The Foundation has not shown that the benefit was related in any way to improving its ability to address a charitable need. Accordingly, we have concluded that no charitable need was addressed through the provision of the private benefit to the Corporation.

Regarding the proportionality of the private benefit, it is our view that it was not proportional. As a result of the transaction involving Lot 12, the Foundation received a \$2,000,000 promissory note for an asset that was worth \$6,475,000. This means that the private benefit that the Foundation provided to the Corporation with this transaction alone was 223.75%<sup>20</sup> of the maximum potential public benefit the Foundation could provide as a result of the transaction. As the private benefit received by the Corporation is more significant than the potential public benefit that the Foundation provided as a result of the transaction between the two entities, we have concluded that the private benefit was not proportionate.

As the private benefit was neither necessary, reasonable, nor proportionate, we have concluded that the private benefit was unacceptable.

### **Penalty proposed**

## III. Conferred an undue benefit on a person

As outlined above, it is our view that the Foundation provided an unacceptable private benefit to the Corporation when it sold Lot 12 to the Corporation for significantly less than the property's FMV.

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<sup>18</sup> A non-qualified donee.

<sup>19</sup> See paragraph 149.1(4)(a) of the Act.

<sup>20</sup>  $\$4,475,000/\$2,000,000 = 223.75\%$

It is our view that the gift to the Corporation<sup>21</sup> was not reasonable consideration for property acquired by (or services rendered to) the Foundation<sup>22</sup>, was not made in the course of a charitable act<sup>23</sup>, and was not a gift to a qualified donee<sup>24</sup>.

As such, the gift can be considered as an undue benefit per the definition of "undue benefits" that is provided in subsection 188.1(5) of the Act. As an undue benefit penalty has not been assessed against the Foundation in the previous five (5) years, the penalty is 105% of the undue benefit that was conferred<sup>25</sup>. Please see the table below for details regarding the calculation of the penalty.

<b>Eden Glen Foundation</b>				
<b>Fiscal Period Ending</b>	<b>Type of Sanction</b>	<b>Sanction %</b>	<b>Sanctioned Amount</b>	<b>Sanction</b>
Nov. 30, 2018	Undue Benefit	105%	\$ 4,475,000	\$ 4,698,750

#### **In summary**

Based on the above audit findings, we are considering revoking and/or penalizing the Foundation for not devoting its resources to charitable activities carried on by the Foundation itself.

Accordingly, it is our view that by gifting to a non-qualified donee the Foundation has provided an unacceptable private benefit. As a result, the Foundation has failed to meet the requirements of subsection 149.1(1) of the Act that it devote its resources to charitable activities carried on by the Foundation itself. Additionally, under subparagraph 149.1(4)(b.1)(ii) of the Act the Minister may revoke the registration of a private foundation where the foundation has gifted funds to non-qualified donees. As such, there are grounds for the Minister to revoke the charitable status of the Foundation in the manner described under paragraph 168(1)(b) of the Act.

#### **Penalty proposed**

Furthermore, it is our view that the above mentioned unacceptable private benefit is also considered to be an undue benefit as defined in subsection 188.1(5) of the Act. As such, there may also be grounds for the Minister to sanction the Foundation under subsection 188.1(4) of the Act.

<sup>21</sup> That is, the \$4,475,000 private benefit.

<sup>22</sup> Paragraph 188.1(5)(a) of the Act.

<sup>23</sup> Paragraph 188.1(5)(b) of the Act.

<sup>24</sup> Paragraph 188.1(5)(c) of the Act.

<sup>25</sup> Paragraph 188.1(4)(a) of the Act.

## 2. Failed to meet the disbursement quota

The disbursement quota (DQ) is the minimum amount a registered charity is required to spend each year on its own charitable activities, or on gifts to qualified donees (for example, other registered charities). The DQ calculation is based on the value of property (for example, cash in bank accounts, inventory, stocks, bonds, mutual funds, GICs, land, and buildings) that a charity does not use for carrying out its own charitable activities or by way of gifts to qualified donees, or for its administrative expenses such as fundraising costs.

The DQ for a private foundation is calculated as follows:

If the average value of a registered charity's property **not** used directly in charitable activities or by way of gifts to qualified donees, or for its administrative expenses during the 24 months before the beginning of the fiscal year exceeds \$25,000, the charity's disbursement quota is: 3.5% of the average value of that property.<sup>26</sup>

If a private foundation fails to meet its disbursement quota, it can be revoked under paragraph 149.1(4)(b) of the Act.

### Misused gifts received from registered charities that are at non-arm's length

Under paragraph 149.1(4.1)(d) of the Act, the Minister may revoke the registration of a registered charity in the manner described in section 168 of the Act if:

it has in a taxation year received a gift of property (other than a designated gift) from another registered charity with which it does not deal at arm's length and it has expended, before the end of the next taxation year, in addition to its disbursement quota for each of those taxation years, an amount that is less than the fair market value of the property, on charitable activities carried on by it or by way of gifts made to qualified donees with which it deals at arm's length;

This means that if a registered charity receives a gift from another registered charity with which it does not act at arm's length, it must expend, in addition to its disbursement quota, the FMV of the gift before the end of the following taxation year. An additional requirement is that the gifts cannot be to registered charities with which it does not act at arm's length.

If a registered charity does not fulfill these requirements, its charitable status may be revoked under paragraph 149.1(4.1)(d) of the Act, or be financially penalized under subsection 188.1(12) of the Act.

Subsection 188.1(12) states that:

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<sup>26</sup> For more information, see CRA website: Disbursement quota calculation.

If a registered charity has in a taxation year received a gift of property (other than a designated gift) from another registered charity with which it does not deal at arm's length and it has expended, before the end of the next taxation year, in addition to its disbursement quota for each of those taxation years, an amount that is less than the fair market value of the property, on charitable activities carried on by it or by way of gifts made to qualified donees with which it deals at arm's length, the registered charity is liable to a penalty under this Act for that subsequent taxation year equal to 110% of the difference between the fair market value of the property and the additional amount expended.

### **Audit Findings**

According to our calculations, we have determined that the Foundation has not met its DQ obligations. We have attached a working paper detailing our calculations. Please see Appendix A, which is enclosed with this letter. for more information.

#### Misused gifts received from registered charities that are at non-arm's length

As outlined above, the Foundation received a gift of land from Public Good, a registered charity, on January 12, 2016 at a FMV of \$17,110,000. Based on the facts outlined below, it is our position that Public Good operated at non-arm's length to the Foundation at the time of the gift.

In addition, the Foundation received the following gifts of cash from registered charities which we also consider to be not at arm's length with the Foundation based on the facts below:

- June 9, 2016 \$35,000 from Timothy Foundation (Timothy)
- August 15, 2016 \$100,000 from Timothy
- October 3, 2016 \$99,998 from CHIMP

As a result, the Foundation was required to expend, in addition to its DQ, a total of \$17,344,998, by the end of its following fiscal period (that is, November 30, 2017). to arm's length registered charities.

According to the amounts reported by the Foundation on its T3010, *Registered Charity Information Returns*, the total amount of gifts made to qualified donees<sup>27</sup> over the course of its 2016 and 2017 fiscal periods was \$10,660,000. As this amount is less than the FMV of the gifts received from Public Good, Timothy, and CHIMP (\$17,344,998), it is impossible for the Foundation to have met its expenditure requirement.

Further, included in the Foundation's \$10,660,000 in gifts to qualified donees were the following:

- November 9, 2016 \$45,000 to Timothy
- January 7, 2017 \$100,000 to Public Good

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<sup>27</sup> The Foundation's only activity is gifting to qualified donees.

- January 20, 2017 \$10,500,000 to CHIMP

As it is our position these entities were not dealing at arm's length with the Foundation, the gifts cannot be included as a contribution towards the Foundation's expenditure requirement as set out at paragraph 149.1(4.1)(d) of the Act.

Furthermore, the Foundation may also be liable to a penalty equal to 110% of the difference between the FMV of the gifts received from non-arm's length registered charities and the additional amount expended on gifts to arm's length registered charities per subsection 188.1(12) of the Act. The Foundation's potential penalty is as follows:

<b>Eden Glen Foundation</b>				
<b>Fiscal Period</b>	<b>Type of</b>	<b>Sanction %</b>	<b>Sanctioned Amount</b>	<b>Sanction</b>
<b>Ending</b>	<b>Sanction</b>			
Nov. 30, 2017	Gifts not at arm's length	110%	\$ 17,329,998 <sup>28</sup>	\$ 19,062,998

Please note, the Foundation made an additional gift of \$15,000 to Kildonan Foundation Society on December 7, 2016. As we do not have sufficient information to determine the arm's length status of the entities at the time of the transaction, we have included the amount of the gift as a contribution towards the Foundation's expenditure requirement and deducted it from the sanctioned amount.

Non-arm's length status of entities

Below are facts about the entities involved in the above-mentioned transactions:

The Foundation

- Per the Foundation's bylaws, the members have the power to elect, remove, and extend the board of directors.
- The Foundation's members are all employees of [REDACTED] one of a group of companies known as [REDACTED] is owned and operated by [REDACTED]
- Two of three of the Foundation's directors are [REDACTED] employees. The third director is a [REDACTED]
- Although [REDACTED] is neither a member or director of the Foundation, he has signing authority on its bank account and signed cheques during the audit period.
- The Foundation paid invoices from [REDACTED] signed by [REDACTED] for consulting services during the audit period.
- Documentation provided during the audit shows that the Foundation's members/directors seek instruction and approval from [REDACTED]

<sup>28</sup> (\$17,110,000 + \$35,000 + \$100,000 - \$99,998) - \$15,000 = \$17,329,998.

For example, in emails from October 2, 2017, director Sheila Britton requests and receives approval from [REDACTED] for payment of an invoice issued to the Foundation by [REDACTED]

#### Public Good

- Per the bylaws of Public Good, the members have the power to elect, remove, and extend the board of directors.
- There are three members of Public Good, one being [REDACTED] and another an employee of [REDACTED]
- Two of Public Good's three directors are [REDACTED] employees.

#### Timothy

- Per the bylaws of Timothy, the members have the power to elect, remove, and extend the board of directors.
- [REDACTED] is a member of Timothy and the other two members are [REDACTED] employees.
- All three directors of Timothy are [REDACTED] employees.
- [REDACTED] signed a faxed request sent to [REDACTED] on June 7, 2016 to transfer \$35,000 from Timothy's trust account to the Foundation's.

#### CHIMP

- Per the bylaws of CHIMP, the members have the power to elect, remove, and extend the board of directors.
- The only member of CHIMP is Chimp Fund.
- [REDACTED] and his [REDACTED] are two of the three members of Chimp Fund.

Based on the above facts, we have concluded that the Foundation was not acting at arm's length with either Public Good, Timothy, or CHIMP at either the time that the Foundation received gifts from Public Good, Timothy and CHIMP, or when it subsequently made gifts to these same three entities. Our conclusion is such due both to the relationship [REDACTED] had with each of the four entities, along with his level of involvement in the decision making of each entity, at the time of the gifts.

#### **In summary**

Based on the above audit findings, we have found that the Foundation has not met its DQ as it misused gifts that were received from registered charities that were acting at non-arm's length to the Foundation. We are considering revoking and/or sanctioning the Foundation for this non-compliance.

Under paragraph 149.1(4.1)(d) of the Act, the Minister may revoke the registration of a registered charity, such as the Foundation, when it misuses gifts that were received from non-arm's length charities. As such, we have concluded that there are grounds for the Minister to revoke the charitable status of the Foundation in the manner described under paragraph 168(1)(b) of the Act.

### **Penalty proposed**

Furthermore, under subsection 188.1(12) of the Act, we are also considering assessing a financial penalty against the Foundation for misusing the gifts it received from registered charities of which it was acting at non-arm's length.

### **3. Had an ineligible individual that is a director, trustee, or officer of the charity, or controls or manages the charity**

The definition of **ineligible individual** at subsection 149.1(1) of the Act reads,

**ineligible individual**, at any time, means a person who has been

- (a) convicted of a relevant criminal offence unless it is a conviction for which
  - (i) a pardon has been granted and the pardon has not been revoked or ceased to have effect, or
  - (ii) a record suspension has been ordered under the Criminal Records Act and the record suspension has not been revoked or ceased to have effect,
- (b) convicted of a relevant offence in the five-year period preceding that time,
- (c) a director, trustee, officer or like official of a registered charity or a registered Canadian amateur athletic association during a period in which the charity or association engaged in conduct that can reasonably be considered to have constituted a serious breach of the requirements for registration under this Act and for which the registration of the charity or association was revoked in the five-year period preceding that time,
- (d) an individual who controlled or managed, directly or indirectly, in any manner whatever, a registered charity or a registered Canadian amateur athletic association during a period in which the charity or association engaged in conduct that can reasonably be considered to have constituted a serious breach of the requirements for registration under this Act and for which its registration was revoked in the five-year period preceding that time, or
- (e) a promoter in respect of a tax shelter that involved a registered charity or a registered Canadian amateur athletic association, the registration of which was revoked in the five-year period preceding that time for reasons that included or were related to participation in the tax shelter.

A **relevant criminal offence** is defined in the Act as,

a criminal offence under the laws of Canada, and an offence that would be a criminal offence if it were committed in Canada, that

(a) relates to financial dishonesty, including tax evasion, theft and fraud, or

(b) in respect of a charity or Canadian amateur athletic association, is relevant to the operation of the charity or association.

The Act provides the CRA with the discretionary authority to suspend or revoke the registration of a registered charity where an ineligible individual is a director, trustee, officer or like official of the charity, or if such an individual controls or manages the charity directly or indirectly.

### **Audit Findings**

According to the Register of Members provided during the audit, Leslie Brandlmayr is a member of the Foundation. Leslie Brandlmayr was previously a director of a registered charity, Canadian Education Forum, which had its charitable status revoked as the result of an audit, effective May 19, 2018. Leslie Brandlmayr was a director of Canadian Education Forum during the period it was under audit.

Based on this information, it is our position that Leslie Brandlmayr meets the definition of an ineligible individual pursuant to subsection 149.1(1) of the Act and as such, there are grounds for either a suspension of the Foundation's charitable status under paragraph 188.2(2)(d) of the Act, or a revocation of the Foundation's charitable status under paragraph 149.1(4.1)(e) of the Act.

### **In summary**

Based on the above audit findings, we have found that an ineligible individual, Leslie Brandlmayr, controlled and/or managed the affairs of the Foundation. We are considering revoking and/or suspending the Foundation's registered status for this non-compliance.

Under paragraph 149.1(4.1)(e) of the Act, the Minister may revoke the registration of a registered charity, such as the Foundation, when it is managed and/or controlled, either directly or indirectly, by an ineligible individual. As such, we have concluded that there are grounds for the Minister to revoke the charitable status of the Foundation in the manner described under paragraph 168(1)(b) of the Act.

### **Suspension proposed**

Furthermore, under paragraph 188.2(2)(d) of the Act, we are also considering suspending the Foundation's registered status for being managed and/or controlled by an ineligible individual.



**The Foundation's options:**

**1. Respond**

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

- no compliance action;
- issuing an educational letter;
- resolving the issues through a Compliance Agreement;
- applying penalties or suspensions or both, as described in sections 188.1 and 188.2 of the Act; or
- issuing a notice of intention to revoke the registration of the Foundation in the manner described in subsection 168(1) of the Act.

**2. Do not respond**

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

If the Foundation appoints a third party to represent it in this matter, please send us a written authorization with the party's name, contact information, and clearly specify the appropriate access granted to the party to discuss the file with us.

If you have any questions or require further information or clarification, do not hesitate to contact me at the numbers below. My team leader, Crystal Scott, may also be reached at 250-857-2222.

Sincerely,



Lacy Ballan  
Audit Division  
Vancouver Island and North Tax Services Office

Telephone: 236-464-5411  
Facsimile: 250-363-3000  
Address: c/o 9755 King George BLVD  
Surrey, BC V3T 5E1

Enclosure

- Appendix A – Disbursement Quota Calculation

## Appendix A - Disbursement Quota Calculation

**Name:** Eden Glen Foundation                      **Prepared by:** Lacy Ballan  
**BN:** 819877184RR0001

**Purpose:** To calculate the disbursement quota (DQ) and determine whether there is a DQ shortfall or excess.

**Procedures:** Review the Foundation's books and records  
Determine the amount spent on charitable activities  
Review DQ calculation per subsection 149.1(1) of the Act

### Calculation of assets and current DQ

	2015-11-30	2016-11-30	2017-11-30
<b>Assets not used in charitable activities</b>			
Cash and short term deposits	\$ -	\$ 129,549	\$ 577,481
Land and buildings	-	17,110,000	5,750,000
Total assets not used in charitable activities	-	17,239,549	6,327,481
Total assets in 24 months before fiscal	-	-	17,239,549
	50%	50%	50%
Line 5900 - average in 24 months before fiscal per CRA	-	-	<b>8,619,775</b>
Line 5900 per CRA	-	-	8,619,775
Line 5900 per Foundation (T3010)	-	-	8,555,000
Discrepancy Note 1	-	-	64,775
Note 1	Discrepancy is due to the inclusion of cash in average asset value. Discrepancy is immaterial when carried through to DQ calculation.		
Line 5900 reported by Foundation	-	-	8,555,000
Disbursement quota percentage	3.5%	3.5%	3.5%
DQ requirement per Foundation	-	-	<b>299,425</b>
Line 5900 per CRA	-	-	8,619,775
Disbursement quota percentage	3.5%	3.5%	3.5%
DQ per CRA	-	-	<b>301,692</b>
DQ Discrepancy (CRA less Foundation)	-	-	2,267

## Calculation of cumulative DQ

	2015-11-30	2016-11-30	2017-11-30
DQ as calculated by Foundation	-	-	299,425
<b>Add:</b>			
Per 149.1(4.1)(d) - gifts from non-arm's length QDs added to DQ requirement in year after gift if not spent on charitable activities or gifted to arm's length QDs	-	-	17,344,998
Total disbursement requirement	-	-	17,644,423
Total gifts made to QDs as reported on T3010	-	45,000	10,615,000
Less gifts made to non-arm's length QDs - docs not meet 149.1(4.1)(d) requirement	-	45,000	10,600,000
<b>DQ Shortfall or (excess) per CRA</b>	-	-	<b>\$ 17,629,423</b>
			<b>DQ Shortfall</b>

**Conclusion:** As the Foundation received gifts from registered charities with which it does not deal at arm's length in its fiscal year ending November 30, 2016, it was required to expend a total of \$17,344,998, by the end of the following fiscal period (November 30, 2017), on either its own charitable activities or by way of gifts made to qualified donees with which it deals at arm's length. Note that the above expenditure requirement is in addition to its DQ of \$299,425.

The Foundation made gifts of \$10,600,000 to non arm's length registered charities and as such, they do not count as a contribution towards its expenditure requirement.

As a result, the Foundation had an overall DQ shortfall of \$17,629,423 in its fiscal year ending November 30, 2017.