



October 19, 2018

REGISTERED MAIL

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Dear Leslie Brandlmayr:

**Subject: Audit of Howe Sound Samaritans' Foundation**

This letter results from the audit of Howe Sound Samaritans' Foundation (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from February 1, 2013, to January 31, 2015.

On October 19, 2018, the Organization was advised that the CRA identified specific areas of non-compliance with the provisions of the Income Tax Act and its Regulations in the following areas.

AREAS OF NON-COMPLIANCE		
	Issue	Reference
1.	Failure to devote resources to charitable activities/lack of public benefit/delivery of non-incident private and/or undue benefit/resourcing (a) non-qualified donee(s)/gifts made not at arm's length	149.1(1), 149.1(4), 149.1(4.1)(d), 168(1)(b), 188.1(4) and (5), 188.1(12)
2.	Failure to issue official donation receipt in accordance with the Act and/or its Regulations Receipt format Receipt issued not at fair market value	110.1, 118.1, 168(1)(d), Reg. 3500, 3501(1), 188.1(7),
3.	Failure to maintain adequate books and records Lack of supporting documentation Failure to file T2081 Excess Corporate Holdings Worksheet for Private Foundations Failure to file T3010 Registered Charity Information Return on time and in prescribed form	230(2), 168(1)(e), 149.1(14), 168(1)(c)

This letter describes the areas of non-compliance identified by the CRA relating to the legislative and common law requirements that apply to registered charities, and offers the ~~Organization an opportunity to respond and present additional information.~~ The Organization must comply with the law; if it does not, its registered status may be revoked in the manner described in section 168 of the Act.

## Background

The Organization was registered as a private foundation under the fourth head of charity (benefits to the community in a way regarded as charitable at law) on February 19, 1996, with the following objects:

“The objects of the Corporation are:

- a) to fund, facilitate, promote and carry out activities and programs as well as fund and supply equipment and facilities that contribute to the relief of poverty, the advancement of education, the advancement of religion and other purposes which are beneficial to the community as a whole in a way the law regards as charitable;
- b) to receive gifts, bequests, trusts, funds and property and beneficially, or as a trustee or agent, to hold, invest, develop, manage, administer and distribute funds and property for the purposes of the Corporation, for and to such other organizations as are "qualified donees" under the provisions of the Income Tax Act and for such other purposes and activities as are authorized for registered charities under the provisions of the Income Tax Act; and
- c) to conduct any and all activities and exercise any and all such powers as are necessary for the achievement of the foregoing and in furtherance of the objects of the Corporation.”

The original directors resigned in November 2000 and were replaced with Leslie Brandlmayr, Blake Bromley (Mr. Bromley) and John Bromley. Mr. Bromley acts as the President, the Secretary, [REDACTED] and Ms. Brandlmayr acts as the Treasurer.

The Organization was inactive from November 2000 until it was activated in April 2005 with the contribution of \$250,000 from Theanon Charitable Foundation (Theanon)<sup>1</sup>.

It was explained to the CRA during the audit interview that the purpose of the Organization was to receive the Archon Minerals Ltd. (Archon)<sup>2</sup> shares that were held by

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<sup>1</sup> Theanon Charitable Foundation was revoked for cause in February 2018 and is non-arm's length as Mr. Bromley is a director of Theanon.

<sup>2</sup> Archon Minerals Ltd. is a thinly held, thinly traded public corporation. [REDACTED]

Theanon, Prescient Foundation (Prescient), and HSEF Renaissance Academy (HSEF Renaissance)<sup>3</sup> to assist [REDACTED] Stewart Blusson with tax planning.

### Prior audit

An audit of the Organization's 2006 to 2009 fiscal years concluded in 2010 with a Compliance Agreement. Mr. Bromley and Ms. Brandlmayr signed the Compliance Agreement and, as directors, agreed to eliminate the disbursement quota shortfall of \$263,554 and agreed to file the T3010 Registered Charity Information Return (T3010) on time and with accurate information. The signed Compliance Agreement also advised that the Organization could potentially be revoked if the corrective measures were not implemented.

### Events and transactions during the current audit period

The following events and transactions occurred during this current audit period:

- i) October 22, 2013 – John Bromley resigned as director and was replaced by Erin Dexter, [REDACTED]
- ii) October 29, 2013 – The Organization purchased 3,288,400 Archon shares at \$1.65 each from [REDACTED] Blusson, resulting in the Organization owing [REDACTED] Blusson \$5,425,860.<sup>5</sup>

Legal ownership of the 3,288,400 Archon shares was not transferred to the Organization at the time of purchase – rather, they were held in bare trusts by the following registered charities that acted as title-holder charities - Prescient (2,000,000 shares), HSEF Renaissance (1,060,000 shares), and Theanon (228,400 shares). The title-holder charities transferred the shares to the Organization's investment account in April 2014.

- iii) October 30, 2013 – Global Charity Fund (Global),<sup>6</sup> a non-arm's length registered charity, gifted a promissory note valued at \$4,515,757 to the Organization. The promissory note was owed by [REDACTED] Blusson to Global. The Organization assumed

<sup>3</sup> Two title-holder charities were non-arm's length with the Organization. Prescient Foundation was revoked for cause in February 2011; HSEF Renaissance Academy is currently registered. Two of Prescient's three directors at the time of the share transaction with the Organization were employees of [REDACTED]. Blake Bromley sat as a director on all three title-holder charities and Ms. Brandlmayr sat as a director on HSEF Renaissance and Theanon.

<sup>4</sup> [REDACTED]

<sup>5</sup>  $3,288,400 \times \$1.65 = \$5,425,860$ .

<sup>6</sup> Ms. Brandlmayr [REDACTED] were directors of Global at the time of this gift. Mr. Bromley was a Director of Global prior to the gift but he remained as a signatory throughout this period. Global revoked voluntarily in June 2014.

Blusson's debt to Global, and used it as partial payment to purchase the Archon shares from Blusson.<sup>7</sup> In essence, Blusson exchanged \$4,515,757 personal debt he owed for land he purchased from Global, for his Archon shares.

- iv) December 20, 2013 – Blusson forgave the remaining amount owed to him for the purchase of the Archon shares in exchange for a \$911,103 official donation receipt (\$5,425,860 - \$4,515,757 = \$910,103).<sup>8</sup>
- v) January 15, 2014 – The Organization gifted 2,000,000 of the 3,288,400 Archon shares to Homestead On The Hill Foundation (Homestead).<sup>9</sup> A bare trust agreement for the Organization to hold the shares on behalf of Homestead was signed on the same date. This means these 2,000,000 Archon shares held by Prescient in trust for Blusson and then held by Prescient in trust for the Organization, were then held in trust by Prescient for Homestead. The 2,000,000 Archon shares were eventually transferred to Homestead's investment account in June 2014.

Concerns identified related to these transactions are explained below.

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

##### **1. Failure to devote resources to charitable activities/ lack of public benefit/delivery of non-incident private and/or undue benefit/payments to non-qualified donees/gifts made not at arm's length**

A charitable activity is one that directly furthers a charitable purpose - which requires a clear relationship and link between the activity and the purpose it purports to further. The Act permits private foundations to either make gifts to other organizations that are qualified donees or to carry on their own activities. In the case of making a gift, paragraph 149.1(4)(b.1) provides that a private foundation may be revoked if it makes a gift other than to a qualified donee or in the course of charitable activities carried on by it.<sup>10</sup> In summary, a private foundation may carry on its own charitable activities, it may make gifts to qualified donees or, it may make a gift in the course of charitable activities carried on by it.

<sup>7</sup> The unsigned promissory note, now due to the Organization, was held in bare trust by Global.

<sup>8</sup> This \$1,000 discrepancy between the calculation and the official donation receipt amount appears to be an error by the Organization.

<sup>9</sup> Erin Dexter, director of the Organization, became a director of Homestead on January 30, 2014, 16 days after the gift of the 2,000,000 Archon shares.

<sup>10</sup> This provision is retroactive to December 20, 2002, and covers the period under audit. <http://www.fin.gc.ca/drlcg-apl/nwmm-amvm-1012n-05-eng.asp>, see Clause 308.

To be charitable at law, a purpose must fall within a category of charity and deliver a public benefit. However, it is not enough that a purpose, on its face, falls within one or more of the four categories of charity and delivers a charitable benefit to a properly defined eligible beneficiary group. The public requirement also means a charity may not provide private benefits as it advances and furthers a charitable purpose, except within legally acceptable boundaries.<sup>11</sup> The charity is responsible for establishing that any private benefit that may be delivered is acceptable.

Generally, a private benefit is a benefit or advantage provided to a person or organization that is not a charitable beneficiary, or a benefit provided to a charitable beneficiary that exceeds the bounds of charity. An acceptable private benefit is one that is incidental to achieving a charitable purpose. A private benefit will usually be incidental where it is necessary, reasonable, and proportionate to the resulting public benefit.<sup>12</sup>

Necessary essentially means legitimately and justifiably resulting from an action that directly contributes towards achieving a charitable purpose, or a required step in, or consequence or by-product of, an action taken only to achieve a charitable purpose.<sup>13</sup> Reasonable means related to the need and no more necessary to achieve the purpose,<sup>14</sup> and fair and rational. Proportionate to the resulting public benefit means a private benefit must be secondary and subsidiary to a charitable purpose.<sup>15</sup> It cannot be a substantial part of a purpose, or form an additional or independent non-charitable end in and of itself. The public benefit cannot be too indirect, remote or speculative as compared to a more direct private benefit, particularly where the direct benefit is to private persons, entities or businesses.<sup>16</sup>

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

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<sup>11</sup> See for example *Prescient Foundation v MNR*, 2013 FCA 120 at para 36, [2013] FCJ no 512.

<sup>12</sup> For more information, see CRA Policy Statement CPS-024, *Guidelines for Registering a Charity: Meeting the Public Benefit Test*.

<sup>13</sup> See for example *Incorporated Council of Law Reporting for England and Wales v AG*, [1972] Ch 73, [1971] 3 All ER 1029 (CA); *Royal College of Surgeons of England v National Provincial Bank*, [1952] AC 631; *Royal College of Nursing v St Marylebone Borough Council*, [1959] 1 WLR 1007 (CA); *IRC v Oldham Training and Enterprise Council*, [1996] BTC 539.

<sup>14</sup> See for example *Joseph Rowntree Memorial Housing Association Ltd and Others v AG*, [1983] Ch 159 (Ch D); *In Re Resch's Will Trusts And Others v Perpetual Trustee Co Ltd*, [1969] 1 AC 514 (PC).

<sup>15</sup> *Incorporated Council of Law Reporting for England and Wales v AG*, [1972] Ch 73, [1971] 3 All ER 1029 (CA); *Inland Revenue Commissioner v City of Glasgow Police Athletic Association*, [1953] AC 380 (HL); *IRC v Oldham Training and Enterprise Council*, [1996] BTC 539.

<sup>16</sup> See for example *IRC v Oldham Training and Enterprise Council*, [1996]-BTC 539; *Canterbury Development Corporation v Charities Commission*, [2010] NZHC 331; *Hadaway v Hadaway*, [1954] 1 WLR 16 (PC); *Re Co-operative College of Canada et al and Saskatchewan Human Rights Commission*, [1975] 64 DLR (3d) 531.

A charity must be able to show through documented evidence and proper books and records that it undertook charitable activities in furtherance of its charitable purposes and not simply made a transfer of resources to a non-qualified donee.

### **Purchase of Archon shares**

The purchase of 3,288,400 Archon shares by the Organization from ██████ Blusson was transacted at \$1.65 per share on November 29, 2013. The Organization explained this purchase price was based on the closing price on the TSX Venture Exchange (TSXV) on November 28, 2013. Ten thousand three hundred and forty (10,340) Archon shares were traded on that day on the TSXV. This share volume was an anomaly as the Archon shares are thinly traded. To illustrate, only 344 shares in total were traded in the prior 20 trading days.

This \$1.65 closing price was also an anomaly as it was \$.45 higher than the previous 17 trading days' closing price of \$1.20. Our research found no news release, or similar event, close to November 28, 2013, to trigger a price increase. There were no reported Archon share trades on the TSXV on November 29, 2013. The Archon share price fell back to \$1.27 on the next trading day, December 2, 2013, and remained at that price for the next 14 trading days.

Due to these identified anomalies, a fair market valuation of the Archon shares was obtained from the Business Equity Valuations (BEV) area of the CRA. Based upon the review by BEV, it was determined that even though the shares were traded on a listed stock exchange, the volume of shares purchased far exceeded the daily average volume of shares traded. Therefore, if a person was to sell 3,288,400 shares on the open market at once, it would have saturated the market, thereby causing the share price to decrease. As a result, the valuation by BEV determined a fair market value in the range of \$.94 to \$1.07 per Archon share with a median fair market value of \$1.01 as at November 29, 2013. This price range is a result of applying a block discount related to the high volume of shares purchased at once.

If the Archon shares were purchased at the median fair market value as determined by our BEV area, the total purchase cost would have been \$3,321,284. As the promissory note gifted to the Organization was worth \$4,515,757, this means that after applying this amount towards the share purchase debt, ██████ Blusson would still owe the Organization \$1,194,473 for the remaining amount of the promissory note thereby eliminating the donation receipt that was issued for \$911,103.

In addition to the outstanding balance on the promissory note, using the median value determined by BEV, the Organization over-compensated ██████ Blusson on the purchase of

the shares by \$2,104,576<sup>17</sup> resulting in a private and/or undue benefit conferred by the Organization on █████ Blusson.

Overall, the transactions involving the purchase of the 3,288,400 Archon shares did not further a charitable purpose, provided no public benefit and in fact provided a non-incidental private and/or undue benefit to █████ Blusson. We conclude that the Organization has not devoted its resources exclusively to charitable purposes and activities, as required by subsection 149.1(1) of the Act.

Providing an unacceptable private and/or undue benefit means that all of the Organization's resources are not devoted to exclusively charitable purposes and activities, as required by subsection 149.1(1) of the Act and provides grounds for revoking the registration of a registered charity, under subsection 168(1) and paragraph 149(4)(b.1).

In addition, a registered charity that confers an undue benefit may be liable for a penalty equal to 105% of the amount of the benefit, increasing to 110% if the offence is reproduced within five years.<sup>18</sup> Accordingly it appears the Organization may be liable for a penalty that ranges from \$2,002,636 to \$2,451,502 (\$1,907,272 to \$2,334,764 x 105%) using the values determined by BEV.

### **Due diligence of Board of Directors**

An organization's Board of Directors is responsible to safeguard the organization's assets and act in the best interests of the organization they represent. A Board must ensure that material transactions occur at fair market value. To merely accept the latest closing price of a share as fair market value, for a transaction involving millions of dollars, does not equate to due diligence and does not fulfill the obligations of the Board to act in the best interests of the Organization.

When complying with the requirements of the Act, it is expected that directors would use a high degree of diligence, using the sources of information, facilities and resources available. Paying an amount in excess of the fair market value for the Archon shares shows the directors were not diligent in their duties.

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<sup>17</sup>  $3,288,400 \times \$1.65 = \$5,425,860$  original purchase price.  
 $3,288,400 \times \$0.94 = \$3,091,096$  – lowest fair market value per BEV valuation.  
 $3,288,400 \times \$1.07 = \$3,518,588$  – highest fair market value per BEV valuation.  
 $3,288,400 \times \$1.01 = \$3,321,284$  – median fair market value per BEV valuation.  
 $\$5,425,860 - \$3,091,096 = \$2,334,764$  – overcompensated amount at \$0.94 purchase price.  
 $\$5,425,860 - \$3,518,588 = \$1,907,272$  – overcompensated amount at \$1.07 purchase price.  
 $\$5,425,860 - \$3,321,284 = \$2,104,576$  – overcompensated amount at \$1.01 median price.

<sup>18</sup> See subsection 188.1(4) of the Act.

The duties of the directors of a charity include decision making, investing charitable property, performing corporate governance and the active management and protection of ~~charitable assets~~. The fiduciary duties of the directors go beyond furthering the charitable objects of the charity and the interests of the charity should be put ahead of the interests of any other individual or entity.

Trust law imposes on a registered charity's directors the obligation to properly manage the assets of a charity. While it is often difficult for directors to foresee whether an asset they propose to acquire on behalf of the charity will be a good investment, the rules of prudent administration require that they take reasonable steps to ensure that the investment is a wise one which will ultimately be favourable for the charity.

It is our view that the Organization did not acquire the Archon shares for investment purposes since 2,000,000 of the shares were held for a brief period of time (approximately 47 days). Furthermore, the Organization did not receive any financial compensation related to the disposition of the shares since they were gifted to another registered charity (Homestead) at \$1.25 per share, resulting in an \$800,000 loss to the Organization.<sup>19</sup>

A review of the Organization's Board meeting minutes and other books and records revealed that although the Board "accepts" the annual financial statements at its annual general meetings,<sup>20</sup> there was no indication of any discussions taking place at Board meetings regarding these material transactions before the transactions occurred.

#### **Payments to non-qualified donees**

The Organization disbursed \$85,588 to a non-arm's length corporation, Enabling Environment Endeavours Inc.<sup>21</sup> We queried the purpose of these costs and have carefully considered your responses.<sup>22</sup> Based on the responses you provided, it is our position that this \$85,588 distribution of the Organization's charitable resources was for the benefit of either Mr. Bromley's personal consulting business and/or the Government of China, both of whom are non-qualified donees.

The Organization also paid \$17,920 to Benefic Law Corporation, a non-arm's length corporation.<sup>23</sup> The invoice stated that it was "for professional services related to all dealings with Stu Blusson and transfer of income producing assets into Archon and issues

<sup>19</sup>  $2,000,000 \times (\$1.65 - \$1.25) = \$800,000$ .

<sup>20</sup> No minutes recording acceptance of the 2014 financial statements was provided.

<sup>21</sup> Enabling Environment Endeavours Inc. is owned 100% by Blake Bromley. This was an expense in the 2016 fiscal year; however the invoice was provided during the audit field visit so queries were made about this expense.

<sup>22</sup> CRA queries were dated October 18, 2016, and the Organization's responses were received in January 2017.

<sup>23</sup> Benefic Law Corporation is owned 100% by Blake Bromley.



related to enhancing the value of the Foundation's Archon holdings". We queried how these legal costs specifically contributed to the charitable purposes of the Organization. In summary, the explanations provided indicated that these legal consultations were necessary in order to increase the value of the Archon shares, and therefore, the investment value to the Organization. Although this may support the need for legal consultations, it is not a charitable cost of the Organization.

As a result, it is our view that the Organization distributed its charitable resources to non-arm's length, non-qualified donees and that the distributions did not have a charitable purpose or a public benefit.

### **Gifts not at arm's length**

As stated earlier in this letter in the Prior audit section, Mr. Bromley and Ms. Brandlmayr signed the 2010 Compliance Agreement, and, as directors, agreed to eliminate the disbursement quota shortfall of \$263,554.

The disbursement quota shortfall was reported as being eliminated in the 2011 fiscal year when the Organization distributed \$265,000 to Philanthropy Without Frontiers/Philanthropie Sans Frontieres (Philanthropy), a non-arm's length charity of which Mr. Bromley was a director, and \$9,800 to 4 What Matters Foundation (4 What Matters), a non-arm's length charity of which Mr. Bromley was a director. A \$300,000 contribution from Theanon, a non-arm's length charity of which Mr. Bromley was also a director, was the source of the funds for the \$265,000 payment to Philanthropy and the \$9,800 payment to 4 What Matters.

As stated in 149.1(4.1)(d), a registered charity can be revoked if the Organization did not spend the amount of the gift from the non-arm's length charity, in addition to its disbursement quota 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 gift of \$300,000 from a non-arm's length charity and the subsequent \$274,800 re-distribution of that gift to non-arm's length charities meets the parameters of this subsection of the Act. As a result, the Organization did not comply with the 2010 Compliance Agreement. These types of transactions could also attract a penalty under subsection 188.1(12). Consequently, in addition to possibly being revoked, the Organization could also be liable for a penalty of \$302,280.<sup>24</sup>

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<sup>24</sup>  $\$274,800 \times 110\% = \$302,280.$

## Summary

Based on our findings, the Organization has shown it does not devote all of its resources to charitable activities. Rather, it appears that the Organization was involved in a series of pre-ordained circular transactions among related persons and charities that occurred in a limited amount of time. These transactions were undertaken to assist [REDACTED] Blusson with tax planning, to provide a non-incidental private and/or undue benefit to [REDACTED] Blusson, and had no apparent charitable purpose or public benefit.

Furthermore, the Organization's directors failed to demonstrate due diligence by allowing the Organization to purchase Archon shares at a price greater than fair market value and then dispose of 61% of the purchased shares, 47 days later, at an \$800,000 loss. As such, it is our position that the directors used the Organization to transact this series of transactions for the benefit of [REDACTED] Blusson.

It is also our position that the Organization distributed \$103,508 of its charitable resources to non-qualified donees.

Based on the above findings, it is our position that the Organization failed to meet the requirements of subsections 149.1(1) of the Act, that being that it be constituted for exclusively charitable purposes, with all its purposes falling within one or more of the four categories of charity and delivering a public benefit, without conferring an unacceptable private benefit. For these reasons, and each of these reasons, it appears there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

### **2. Failure to issue donation receipt in accordance with the Act and/or its Regulations**

#### **Receipt format**

Subsection 3501(1) of the Regulations provides that each official donation receipt that a registered charity issues must include, in a manner that cannot be readily altered, the prescribed contents of a receipt.

Review of the Organization's one official donation receipt issued in the audit period for \$911,103 shows the Organization did not issue the official donation receipt according to the requirements of the Regulations. Specifically,

- i) No middle initial of the donor is included on the receipt; and,

- ii) No details are provided on the receipt regarding the non-cash gift of forgiveness of debt.

### **Receipt issued not at fair market value**

Regulation 3501(h)(ii) states that every official receipt shall show clearly the amount that is the fair market value of the property donated at the time that the gift is made.

As detailed above, the official donation receipt issued for \$911,103 resulted from the computation of the difference between the purchase of 3,288,400 Archon shares at \$1.65 (\$5,425,860) and the value of the promissory note (\$4,514,757) that was exchanged for the Archon shares.

The CRA recognizes the complexity of valuing non-cash gifts and recommends the use of an independent appraiser where a registered charity issues a tax receipt of significant value for a gift-in-kind. We recognize that appraisals are not required under the Act or its Regulations; however, the onus is on the Organization to ensure that the receipt value assigned to a donated non-cash gift reflects the fair market value of the gift.

Subsection 188.1(7) states a registered charity that issues an official donation receipt that includes incorrect information is liable to a penalty equal to 5% of the eligible amount stated on the receipt. This penalty increases to 10% for a repeat infraction within 5 years.

It is our view that the Organization exercised a lack of due diligence when determining the fair market value of the Archon shares. Mr. Bromley, as the director and planner/creator of these transactions knew or should have known that had the shares been purchased openly on the stock exchange that the market would not have endured a value of \$1.65/share. Similarly, [REDACTED] Blusson, [REDACTED] knew or should have known that the value of \$1.65 used for these transactions was not a rate that would have been tolerated in an open market. Ms. Brandlmayr, as the director and signatory on the official donation receipt knew or should have known that the value of \$1.65 used for these transactions was over-valued.

In addition, based on the fair market values determined by the CRA's BEV area, Dr. Blusson should not have received an official donation receipt. In fact, if the Archon shares were purchased at the median fair market value as per BEV, [REDACTED] Blusson would still be indebted to the Organization by way of the outstanding promissory note.

Accordingly, it is our position that the Organization has failed to meet the requirements of sections 3500 and 3501 of the Regulations. For these reasons, and each of these

reasons, it appears there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(d) of the Act. A penalty may also be applied as per ~~188-1(7), which would total \$45,555.15 (5% of \$911,103).~~

### **3. Failure to maintain adequate books and records as required**

Pursuant to subsection 230(2) of the Act, 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:

- a) information in such form as will enable the Minister to determine whether there are any grounds for revocation of its registration under the Act;
- b) a duplicate of each receipt containing prescribed information for a donation received by it;
- c) other information in such form as will enable the Minister to verify the donations to it for which a deduction or tax credit is available under this Act.”

In addition, subsection 230(4) also states “Every person required by this section to keep records and books of account shall retain:

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

The policy of the CRA relating to the maintenance of books and records, and books of account, is based on several judicial determinations and the law, which have held that:

- a) it is the responsibility of the registered charity to prove that its charitable status should not be revoked;<sup>25</sup>
- b) a registered charity must maintain, and make available to the CRA at the time of an audit, meaningful books and records, regardless of its size or resources. It is

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<sup>25</sup> See Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at paras 26-27, [2002] 2 CTC 93.

not sufficient to supply the required documentation and records subsequent thereto;<sup>26</sup> and

- c) the failure to maintain proper books, records, and records of account in accordance with the requirements of the Act is itself sufficient reason to revoke an organization's charitable status in the case of material or repeated non-compliance.<sup>27</sup>

### **Lack of supporting documentation**

The Organization's books and records do not support that its transactions were made in support of a charitable purpose or were done for the public benefit.

Specifically the Organization's books and records do not contain:

- i) Supporting documentation, such as records of discussions, emails or other correspondence, that shows the directors discussed the purchase of the 3,288,400 Archon shares;
- ii) Supporting documentation, such as records of discussions, emails or other correspondence, that shows the directors discussed and validated the price of \$1.65/share for the purchase of the Archon shares; and,
- iii) Supporting documentation, such as records of discussions, emails or other correspondence that shows the directors discussed the decision to gift the 2,000,000 Archon shares to Homestead while incurring an \$800,000 loss.

The CRA attempted to obtain supporting documentation for the decisions noted above, but the Organization did not provide additional documentation or information to support the transactions.

### **Failure to file T2081 Excess Corporate Holdings Worksheet for Private Foundations**

Effective March 19, 2007, a private foundation that holds issued and outstanding shares (whether public or private) of a share class of a corporation may be subject to certain requirements.

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<sup>26</sup> Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at para 39, [2002] 2 CTC 93. Furthermore, failing to comply with the requirements of section 230 of the Act by refusing to make documents available can lead to a fine and imprisonment, in addition to the penalty otherwise provided. See subsection 238(1) of the Act.

<sup>27</sup> See *Prescient Foundation v MNR*, 2013 FCA 120 at para 51, [2013] FCJ no 512.

As per page five of the Archon Minerals Ltd. Notice of Meeting and Management Information and Proxy Circular dated November 26, 2013, the Archon shares purchased by the Organization represented approximately 6%<sup>28</sup> of the total issued and outstanding shares of the Company. The Organization continued to own 2.39% of the outstanding Archon shares after the 2,000,000 shares were gifted to Homestead in January 2014.

If a foundation's total corporate holdings percentage of any class of shares of a corporation exceeds 2% of the issued and outstanding shares of that class at any time during its fiscal period, the foundation has to determine and report to the CRA the percentage of shares that it and any relevant persons with material interests held, at the end of that fiscal period, of each class of shares of the corporation. This required reporting must be reported on Form T2081, Excess Corporate Holdings Worksheet for Private Foundations, and filed with the T3010.

It is noted that this required form was not filed during or after the audit period.

#### **Failure to file T3010 Registered Charity Information Return on time and in prescribed form**

Subsection 149.1(14) of the Act states that every registered charity and registered Canadian amateur athletic association shall, within six months from the end of each taxation year of the charity or association and without notice or demand, file with the Minister both an information return and a public information return for the year in prescribed form and containing prescribed information.

It is the responsibility of the Organization to ensure that the information provided in its T3010 returns, schedules and statements, is factual and complete in every respect. A charity is not meeting its requirements to file an information return in prescribed form if it fails to exercise due care with respect to ensuring the accuracy thereof.

The Organization signed a Compliance Agreement in 2010 agreeing to file its T3010 accurately and on time. This audit has shown that the Organization filed its 2014 and 2015 T3010s late, and therefore, did not comply with the 2010 Compliance Agreement. The Organization filed its original 2014 T3010 with material transactions omitted. A T1240 Registered Charity Adjustment Request (T1240) was filed to correct most of the financial data; however, the 2014 T3010 contained further errors and omissions that were not corrected on the T1240. Details related to these errors and omissions are detailed in Appendix A.

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<sup>28</sup> (3,288,400/53,716,758) issued and outstanding shares of Archon Minerals Ltd.

## **Summary**

In summary, the Organization was not able to support material decisions/transactions with documentation; did not prepare its official donation receipt in accordance with the Regulations; failed to file Form T2081 Excess Corporate Holdings Worksheet for Private Foundations; and, did not complete its T3010 in prescribed form or file its 2014 and 2015 T3010s on time.

As a result, it is our view that the Organization failed to maintain adequate books and records as required under subsection 230(2) of the Act. Under paragraph 168(1)(e) of the Act, the Minister may, by registered mail, give notice to the charity that she proposes to revoke its registration because the Organization fails to comply with or contravenes any sections of 230 to 231.5 of this Act. For this reason alone there are grounds for revocation of the Organization's registered status.

## **The Organization's options:**

### **a) 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, the Director General of the Charities Directorate 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 Organization in the manner described in subsection 168(1) of the Act.

### **b) Do not respond**

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

If the Organization appoints a third party to represent it in this matter, send us a written request with the individual's name, the individual's contact information, and explicit authorization that the individual can 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 indicated below. My team leader, Sherri Davis, may also be reached at 250-363-3128.

Yours sincerely,



Terri Letchford,  
Auditor  
Vancouver Island and North Tax Services Office

Telephone: 250-363-0518  
Facsimile: 250-363-3000  
Address: c/o 9755 King George Blvd.  
Surrey BC V3T 5E1

Enclosure



**HOWE SOUND SAMARITANS' FOUNDATION**

**T3010 ERRORS AND OMISSIONS**

**APPENDIX A**

**The Organization made the following errors or omissions on its 2014 T3010 Registered Charity Information Return**

**Section C: Programs and general information**

**C1 Line 1800 – Was the charity active during the fiscal period?**

This was answered "no "; however, the Organization was active during the fiscal period as it purchased shares, received gifts and made a gift to a qualified donee.

**C3 Line 2000 – Did the charity make gifts or transfer funds to qualified donees or other organizations?**

This was answered "no "; however, the Organization gifted 2,000,000 Archon Minerals Limited shares to a qualified donee.

**C11 Line 4000 – Did the charity receive any non-cash gifts for which it issued tax receipts?**

This was answered "no"; however, [REDACTED] Blusson forgave an amount due to him for the purchase of Archon shares from him, in exchange for an official donation receipt for \$911,103.

**Foundations – Schedule 1**

**Line 130 – Did the foundation own more than 2% of any class of shares of a corporation? If yes, you must complete and attach Form T2081, Excess Corporate Holdings Worksheet**

This was answered "no", however; the Organization owned 1,288,400 of the 53,716,758 issued and fully paid Archon Minerals Limited shares at the end of the 2014 fiscal period. This equates to 2.38% of the issued and fully paid Archon Minerals Limited shares.

The T2081 Excess Corporate Holdings Worksheet was not completed in 2014 or 2015.

**Schedule 5 – Non-Cash Gifts**

~~This schedule was not completed even though the Organization issued a tax receipt to [REDACTED] Blusson for \$911,103 that represents forgiveness of debt.~~

**Qualified Donees Worksheet**

This worksheet is not completed even though the Organization gifted 2,000,000 Archon Minerals Limited shares to Homestead on the Hill Foundation on January 15, 2014.