

In conclusion, because the private benefit was not necessary, reasonable or proportionate to the resulting public benefit, it is our view that by not enforcing the terms of its rental agreement with FADA, the Organization has provided an unacceptable private benefit to FADA.

As stated above, it is our view that in enabling FADA to not pay either the rent or interest owing as per the conditions of a legally binding rental agreement, and willingly allowing the limitations period to elapse, that the Organization has effectively given all of the amounts owing per the agreement to FADA<sup>30</sup>.

While gifting such amounts to FADA constitutes a private benefit, it is our position that the gifting of said funds represents a disbursement by way of a gift, made by the Organization, to a non-qualified donee. The gift of these funds was not made in the course of a charitable activity nor was it made in pursuit of a charitable purpose. As a result, it is our position that there may be grounds for revocation of the charitable status of the Organization under subparagraph 149.1(3)(b.1) of the Act.

## 2) Amounts loaned by the Organization to the Institute

The Organization had an unwritten expense-sharing arrangement with the Institute which based on records made available to the CRA during the audit, appears to have began during the FPE September 30, 2013 FPE and was operative up to at least the end of the FPE May 31, 2019. The arrangement was established as the employees of the Institute also provide services to the Organization. The Organization would forward funds to the Institute to cover the payroll-related expenses, which were paid directly by the Institute. Based on available information, no interest was charged by the Organization nor were there any repayment terms.

The mechanics of the arrangement were as follows:

- 1) The Institute's employees provided services to the Organization and the Institute;
- 2) The Institute recorded a payable equal to the full amount of wages owed to the employees;
- 3) Since the Institute did not have funds to cover this payable, the Organization provided the funds (to the Institute) to cover the full amount of wages of the employees;
- 4) The Organization recorded these funds as an amount owing (that is, a receivable) from the Institute;
- 5) The Organization also recorded a wage expense for the portion of the wages that were attributable to work performed by the employees for the Organization; This wage expense reduced the amount otherwise owing from the Institute.

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<sup>30</sup> The financial figures related to this benefit are outlined in detail below under the subheading entitled "Conferred an undue benefit on a person".

It is our view that the expense-sharing arrangement was effectively operating as a loan of funds from the Organization to the Institute. As indicated above, the Organization paid the entire upfront cost, yet according to its books and records, the Organization did not charge interest to the Institute in return for the use of the Organization resources<sup>31</sup>. By providing the Institute with access to its resources, without charging the Institute a reasonable rate of interest, we believe that the Organization has provided a private benefit to the Institute<sup>32</sup>.

As with the private benefit the Organization provided to FADA discussed above, we must now consider whether the private benefit the Organization has provided to the Institute is acceptable. That is, we must determine if the private benefit was necessary, reasonable and proportionate to the resulting public benefit.

The expense-sharing arrangement between the Organization and the Institute was established as a result of the fact that the two entities share employees. As such, a portion of the total wage expense was incurred to conduct the Organization's own charitable programs. Inarguably, the portion of the wage expenses related to providing such services was necessary and contributed to the potential public benefit that the Organization was hoping to provide through its charitable activities. However, as a result of the expense-sharing arrangement, the Organization forwarded funds to the Institute in excess of the amounts required to cover the Organization's portion of the wage expenses. Accordingly, this latter portion of the wage expense, that is the amount of which the benefit is based, was not necessary in order for a public benefit to be provided by the Organization. As such, we do not view the private benefit that the Organization provided to the Institute (that is, the interest-free loan) to be necessary.

Regarding the reasonableness of the private benefit, since the Organization received no compensation (such as interest payments) for paying the Institute's portion of the wage expenses, we do not believe that the private benefit it provided to the Institute was reasonable.

Finally, as discussed during our analysis of the Organization's rental agreement with FADA, as it unclear if the Organization's activities ever provided a material public benefit, there is no public benefit for this private benefit to be proportionate to.

In conclusion, because the private benefit derived by the Organization providing an interest-free loan to the Institute was not necessary, reasonable and proportionate to the resulting public benefit, it is our view that the private benefit is unacceptable.

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<sup>31</sup> The resources being the Organization's upfront payments of the wage expenses.

<sup>32</sup> For a calculation of the private benefit, please refer to the section of this letter that discusses undue benefits.