



NOV 04 2008

REGISTERED MAIL

Fondation des Arts H.B. Ltee/H.B Arts Foundation Ltd.
8535 St-Laurent Blvd
Montreal QC H2P 2M9

BN: 89244 8960 RR0001
File: 1003987

Attention: Mr. Raymond Lepore, President

**Subject: Notice of Intention to Revoke
Fondation des Arts H.B. Ltee/H.B Arts Foundation Ltd.**

Dear Mr. Lepore:

I am writing further to our letter dated September 23, 2008 (copy enclosed), in which you were invited to submit representations as to why the Minister of National Revenue (the "Minister") should not revoke the registration of Fondation des Arts H.B. Ltee/H.B Arts Foundation Ltd. (the "Charity") in accordance with subsection 168(1) of the *Income Tax Act* (the "ITA").

The Charity informed us on October 22, 2008 that it has chosen not to respond to our letter of September 23, 2008.

Consequently, for each of the reasons mentioned in our letter dated September 23, 2008, I wish to advise you that, pursuant to the authority granted to the Minister in subsections 149.1(4) and 168(1) of the ITA, which has been delegated to me, I propose to revoke the registration of the Charity. By virtue of subsection 168(2) of the ITA, revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

Notice is hereby given, pursuant to paragraphs 168(1)(b) 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(4), of the Income Tax Act and that the revocation of registration is effective on the date of publication of this notice.

Business Number
89244 8960 RR0001

Name
Fondation des Arts H.B. Ltee/H.B Arts
Foundation Ltd.
Montreal, QC

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

Tax and Charities Appeals Directorate
Appeals Branch
Canada Revenue Agency
25 Nicholas Street
Ottawa ON K1A 0L5

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

Please note that the Charity must obtain an order from the Federal Court of Appeal to suspend the revocation process, notwithstanding the fact that it may have filed a Notice of Objection.

Consequences of Revocation:

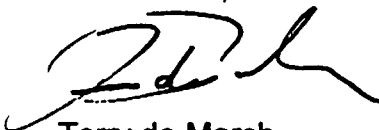
As of the effective date of revocation:

- a) the Charity will no longer be exempt from Part I Tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Charity would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the ITA, respectively;
- b) 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. This revocation tax is calculated on prescribed form T-2046 "*Tax Return Where Registration of a Charity is Revoked*" (the "Return"). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the Notice of Intention to Revoke. A copy of the relevant provisions of the ITA concerning revocation of registration, the tax applicable to revoked charities, and appeals against revocation, can be found in Appendix "A", attached. Form T-2046, and the related Guide RC-4424, "*Completing the Tax Return Where Registration of a Charity is Revoked*", are available on our website at www.cra-arc.gc.ca/charities;

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

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

Yours sincerely,

A handwritten signature in black ink, appearing to read 'T. de March', written in a cursive style.

Terry de March
Director General
Charities Directorate

Attachments:

- CRA letter dated September 23, 2008; and
- Appendix "A", Relevant provisions of the ITA



REGISTERED MAIL

Fondation des Arts H.B. Ltee/H.B Arts Foundation Ltd.
8535 St-Laurent
Montreal (Quebec)
H2P 2MG

BN: 89244 8960 RR0001
File: 1003987

Attention: Mr. Raymond Lepore

September 23, 2008

Dear Mr. Raymond Lepore:

RE: Audit of Fondation des Arts H.B. Ltee /H.B Arts Foundation Ltd.

This letter is further to the audit of the books and records of Fondation des Arts H.B. Ltee/ H.B. Arts Foundation Ltd. (the "Charity") by the Canada Revenue Agency (the "CRA"). The audit related to the operations of the registered charity for the period from January 1, 2005 to December 31, 2006. We are also revisiting certain transactions in which the Charity participated in for the period of January 1, 2003 to December 31, 2004, based on new information now available to the CRA.

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.	Failure to devote resources to charitable activities, Non-charitable purposes	149.1(4), 168(1)(b)
2.	Providing personal benefit to a proprietor, member, shareholder, trustee or settler	149.1(1), 149.1(4), 168(1)(b)
3.	Failure to maintain adequate books and records	149.1(4), 168(1)(e), 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 (the "Minister") may revoke the Charity's registration in the manner described in section 168 of the ITA.

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

Identified Areas of Non-Compliance:

1. Failure to devote resources to charitable activities:

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

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.

It is our view, based on our review, that the Charity does not operate for wholly charitable purposes and the activities it undertakes on a day-to-day basis do not support its charitable purposes in a manner consistent with charitable law. In fact, the evidence on the file, as outlined below, demonstrates a preponderance of effort and resources devoted to non-charitable activities. The Charity has devoted the overwhelming majority of its efforts and resources to participating in two tax shelter donation arrangements and has confirmed it is no longer engaged in any charitable activities and was not engaged in any charitable activities during the audit period.

a. Failure to pursue its charitable mandate

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

The Charity was registered effective January 1, 1994, as an organization established, to promote theatre, music and film in Canada. The Charity's registration was reinstated, after a brief revocation period due to the Charity's failure to file its annual information return, effective January 1, 1998. At that time, the Charity's statement of activities included:

- To organize and develop film, theatrical and musical productions within Canada and with Canadian talent, especially young Canadians.
- To encourage and promote the film and musical industries throughout all of Canada to facilitate the exposure of young Canadian interested in careers in the film, theatrical and musical industries.
- To promote and sensitize international markets to the quality of Canadian film, Theatrical and musical promotion.
- To hire, train, educate and provide "on-the-job" training of young Canadians in all of the various aspects and disciplines essential to the successful realisation of film, theatrical and musical productions including, without limitation, the development of skills in all support facets of such production including technical, accounting, management and general administration.
- To conduct seminars, symposia and workshops to educate, teach and instruct Canadian with respect to all technics and methodologies essential to the advancement of the film, theatrical and musical industry in Canada.
- To publish and distribute pamphlets, brochures, new-letters and comparable promotional and instructional literature to assist in sensitizing and attracting Young Canadians to become associated with and develop special skills in the films, theatrical and musical production industry.
- To raise money through public, private and corporate donation, legacies or similar contribution to assist the Corporation in advancing its objectives as well as to encourage and assist other persons or enterprises- especially those initiated by Young Canadian-in the advancement of film, theatrical and musical production.

Since its registration, the Charity's activities seemingly have declined and, since 2000, have largely consisted of funding a short 45-minute film project entitled "Jack and Ella". The film was released in 2004 and the Charity has no further plans to be active in the future.

In 2005 and 2007, the Charity indicates "inactivity" at line 1800 of its Registered Charity Information Return (the "T3010"). The president of the Charity, M. Raymond Lepore has confirmed to CRA the Charity is inactive despite its indication it was active on the T3010 in 2006, and the "Jack and Ella Film" was released in 2004.

Despite this relative inactivity, as described below, from 2003-2006, the Charity purportedly received in excess of \$13 million in donations and paid \$650,611 in professional fees. In the same period the Charity reported a meagre \$15,344 in charitable activity.

Further, it is clear the Charity is no longer meeting its disbursement quota. Calculated at 3.5% of any property not used in charitable programs or administration, the Charity should be expending approximately \$450,000 *per year* directly on charitable

programs to meet this test.¹ The Charity reports spending \$6,975 in 2005 and \$0 in both 2006 and 2007 on charitable programs.²

It appears, therefore, based on the results of our audit that the Charity is not operating for charitable purposes and not devoting its resources to charitable activities carried on by it and, as such, there may be grounds for the revocation of its status.

b. Non-Charitable Purpose

Based on our audits, current and previous, we have found little evidence the Charity has undertaken activities in support of its charitable mandate since the date of registration. In fact, the evidence on the file, as outlined below, demonstrates a preponderance of the effort and resources of the Charity devoted to participating in tax planning donation arrangements while, as above, an incidental and comparatively insignificant amount of effort and resources were devoted to charitable programming. Therefore, as explained below, it is our opinion the Charity is operating for a non-charitable purpose.

The Charity has participated in four donation arrangements in the 2003 and 2004 fiscal periods by agreeing to accept cash from taxpayers who were also participants in the tax shelters. The Charity has participated in the following programs:

1. ParkLane Charitable Donation Program – 2003 (TS 68494)
2. EquiGenesis 2004 Charitable Donation Program – 2004 (TS69963)
3. Donation Program Supporting Canadian Amateur Athletics, Foundations and Charities – 2004 (TS 69260)
4. Equita Management Charitable Donation Program – 2004 (unregistered tax shelter)

As per the promotional materials, the donation arrangements were to have the following transactions and flow of funds:

- ParkLane Charitable Donation Program: Participant donors contribute actual cash of \$315 per \$1,000 of donation and complete a loan application to borrow from a lender \$1,000 per \$1,000 of donation. The \$315 contributed by the donor is an "arrangement fee". The donor obtains the loan from Plaza Capital Corporation ("Plaza") and completes a promissory note payable in 10-years bearing 3% interest. Via directions completed by the donor and executed by parties involved, the donor's loan of \$1,000 per \$1,000 of donation is forwarded to the Charity, \$240 of the \$315 actual cash contribution is forwarded to Trafalgar Trading Limited ("Trafalgar") and the remaining \$65 is forwarded to Speciality Insurance Company of Bermuda ("Specialty").

¹ Based on the \$13 million in "long-term investments" reported on the T3010 return.

² Line 5000 of the T3010.

Upon receipt of the donor's loan proceeds, the Charity issues an official donation receipt to the donor for 100% of the "donations" received and is required to distribute 99% of the "donations" to ParkLane Financial Group Ltd. ("ParkLane") and Trafalgar. ParkLane markets the donation arrangement and receives 6% of total "donations" received by the Charity. The remaining 93% is paid to Trafalgar is for the Charity's purchase of a "2003 Series A Royalty Agreement" under the "Trafalgar Global Index Futures Program". If profits are earned, 20% of the monthly profit is added to the trading capital, 64% paid to the Charity and 16% is paid to Trafalgar.

- Donation Program Supporting Canadian Amateur Athletics, Foundations and Charities: Participant donors contribute actual cash of \$279 per \$1,000 of donation and complete a loan application to borrow from a lender \$1,120 per \$1,000 of donation. The \$279 contributed by the donor is purportedly for pre-payment interest of \$33.60 and a portion of the unfinanced arrangement fee of \$245.40. The donor obtains the loan from Plaza and completes a promissory note payable in 10-years bearing 3% interest. Via directions completed by the donor and executed by parties involved, \$1,000 of the donor's \$1,120 loan so received is forwarded to the Charity, \$365.40 is forwarded to Speciality and \$33.60 is forwarded to Plaza.

Upon receipt of the donor's loan proceeds, the Charity issues an official donation receipt to the donor for 100% of the "donations" received and is required to distribute 99% of the "donations" to Trafalgar. From this payment, 6% of the total "donations" received by the Charity is paid as referral fees to ParkLane for referring donors to the donation arrangement and 93% is purportedly directed to Trafalgar is for the Charity's purchase of a "2004 Series A Royalty Agreement". If profits are earned, 20% of the monthly profit is added to the trading capital, 64% paid to the Charity and 16% is paid to Trafalgar.

EquiGenesis 2004 Charitable Donation Program: Participant donors contribute actual cash of \$1,100 per \$10,000 of donation and complete a loan application to borrow from a lender \$8,900 per \$10,000 of donation. The donor obtains the loan from qIncome and completes a promissory note payable in 10-years bearing 6% interest. Via directions completed by the donor and executed by parties involved, \$10,000 of the donor's promissory note is forwarded to the Charity whereby upon receipt, the Charity issues an official donation receipt to the donor for 100% of the "donations" received and pays 99% of the "donations" to Trafalgar.

The "donations" are held by Trafalgar and used as follows: \$1,000 per \$10,000 "donation" is to be invested as trading capital and the investment proceeds of \$8,900 per \$10,000 "donation" could be used to: a) to purchase income generating instruments and/or deposits with, or to make interest

bearing loans to, financial institutions and corporations, or b) at the sole discretion of Trafalgar to exercise the Class B Option to purchase units in the EquiGenesis 2004 Limited Partnership, or c) Security for margin regarding the trading capital. If monthly profits are earned on the trading capital, 20% of the monthly profit is added to the trading capital, 64% paid to the Charity and 16% is paid to Trafalgar; trading losses are deducted from the trading capital. Upon termination of the investment period, the Charity is to receive 100% of the trading capital, 80% of the trading profits, 100% of the initial investment in the investment proceeds and then 80% of assets in excess.

- Equita Management Charitable Donation Program: Participant donors contribute actual cash of \$314 per \$1,000 of donation and apply to obtain a loan of \$1,120 per \$1,000 donation from Plaza. Via directions completed by the donor and executed by the parties involved, \$1,000 of the donor's \$1,120 loan obtained is forwarded to the Charity, \$400.40 is forwarded to Specialty and \$33.60 is forwarded to Plaza.

Upon receipt of the "donations", the Charity issued an official donation receipt to the donor for 100% of the "donation" received and was required to pay 99% of the "donations" receipted to Equita Management Ltd, a corporation resident in Bermuda. Of the 99% paid to Equita Management Ltd., 95% was paid to Equita Management Ltd., for the purchase price of the "2004 Series A Royalty Agreement", and 4% was paid as fundraising/referral fees to Equi-Capital Investment Counsel Inc. If profits are earned, 20% of the monthly profit is added to the trading capital, 64% paid to the Charity and 16% is paid to Equita.

The funds "invested" in the different programs are to be "invested" for 20 years with the promoters projecting the Charity will recognize annual expected returns of 8-12%. Thus far, as reported by the Charity on its annual information returns, it has earned a cumulative return of 0.59%, for fiscal periods ending 2004 to 2006, on average investments of \$13 million. As in the preceding section, it is clear that the Charity is not operating for charitable purposes and, even if it were actively pursuing its mandate, it is not meeting its disbursement quota.³

In our view, the Charity's mandate has been hijacked by its collusion with promoters of abusive tax shelter arrangements. Additionally, and as described in the following section, it is clear that the transactions in which the Charity has engaged simply have not occurred as represented. It appears that, for a fee, the Charity has agreed to facilitate these transactions by issuing receipts and circulating funds as instructed.

Throughout 2003 and 2004, the Charity was simply a conduit through which funds were flowed through in an attempt to generate excessive donation tax credits for

³ Given that the disbursement quota would require the Charity to spend a minimum of 3.5% on its charitable programs, this would appear to be seemingly impossible given the investment vehicle it has chosen.

the participants. The Charity receipted at least \$13.6 million in "donations" received as a result of their participation in the four donation arrangements yet received actual cash returns of nearly \$589,000 from a percentage of donations retained and interest income. Of this latter amount, the Charity incurred professional and administration fees totalling \$650,611 between fiscals 2003 and 2006 and, again, meagre charitable expenses of \$15,344. The majority of the professional fees incurred were for fundraising fees paid to various persons compensated for referring donors to participate in the donation arrangements.

As a part of the donation arrangements in which the Charity has participated, it was obligatory the Charity transfer substantially all the loan proceeds received to specific parties often located offshore. Although the Charity allegedly "invested" the loan proceeds received, the terms of the arrangements provide the Charity with no recourse to recover these funds. In our view, this points to the fact that the donation arrangement was orchestrated, with the Charity's willing participation, in such a manner, with the intended result that, the Charity would never have use of the funds for its own use. In fact, the terms of the royalty agreements are worded such that the Charity does not have a right to the trading capital but rather would receive a portion of the trading capital if the balance of the trading capital increases over the life of the contract. Based solely on the trading capital's performance, as noted above, we are not convinced that the Charity would ever receive a portion of the trading capital. Additionally, given Mr. Lepore's concern over the investments continuous losses, the Charity does not appear convinced it will ever receive a portion of the trading capital either.

We would note that the Charity, rather than choose a prudent investment strategy, *a fiduciary obligation of any director of a charity*, the Charity opted to purchase royalty agreements from companies purportedly located offshore. The Charity abdicated access and control over these funds; the royalty payments received to date appear to be extremely low with profit generated only twice a year. The Charity does not have a right to the trading capital but rather would receive a portion of the trading capital if the balance of the trading capital increases over the life of the contract. Based on the trading capital's performance, we are not convinced that the Charity will ever receive a portion of the trading capital.

In our view, the Charity has completely neglected its charitable mandate. Instead, it appears the primary, if not sole purpose of the Charity is to receive funds and flow these funds to offshore accounts as instructed, issue tax receipts, and to pay persons associated with the scheme. In our view, it is clear that the Charity no longer operates for charitable purposes, but is operating primarily if not exclusively for the promotion of abusive tax shelter arrangements which is not charitable at law.

The Charity, in our view, has failed to demonstrate *any* due diligence undertaken to verify the authenticity of the donation program or how participation in the program furthers the objects of the Charity. In discussions with Mr. Lepore, he indicated he never verified if the funds he acknowledged by official donation receipt were actually received nor did he confirm if the funds were allocated/invested as per his signed

directions. He also indicated he inquired with Equita Management over the Charity's lack of investment details and continuous losses however failed to follow-up with his inquiry. These inactions demonstrate the Charity was not overly concerned about the potential returns to be earned on the Royalty Agreements or its "investments". As discussed in the following section, our audit has revealed that these transactions did not occur as represented to the CRA. All of these facts point to a pattern of active willingness to participate in schemes designed to produce inappropriate tax benefits.

It is our preliminary 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 foundation "constituted and operated exclusively for charitable purposes". For this reason alone it remains our view that there may be grounds for revocation of the charitable status under paragraph 168(1)(b).

c. Participation in Abusive Transactions

The CRA's audit has revealed that the transactions to which the Charity has lent its registered status to simply did not occur as represented. In our view this is an extremely serious matter and the participation of the principals in this arrangement represents a serious abuse of the charitable tax incentive and the receipting privileges of a registered charity.

CRA audits have revealed that in all instances the loans purportedly obtained by the donors were no more than daylight loans, i.e. loans existing for less than one working day, and that all loan proceeds injected into the donation arrangement ended up back in the hands of the lender within the same day or shortly thereafter. The audits also discovered that despite representations made to donors and the CRA, that the actual cash contributions by the donor were used to pay arrangement fees, interest pre-payments and to acquire insurance, this did not occur. Our audit has revealed that actual cash contributions were used to primarily pay fundraising/referral fees to promoters, to compensate the charities and other parties involved, i.e. the lender, with a small fraction retained to pay royalty payments. As an example, in the Equita Management Charitable Donation Program, donors did not obtain loans from Plaza but rather funds from Holdec Capital Inc, its sole director and/or spouse. Funds were deposited into an escrow account held in trust for Equi-Capital, a corporation controlled by Mr. Antonio lafigliola, his spouse and children. Prior to each the Charity's five "closings", five separate \$1 million and one \$580,000 wire transfer deposits were made to the escrow account. Within a day, the deposits were repaid by Equi-Capital and included a 0.5% fee.

In this regard, it is our view that at no time in these arrangements did the donor in fact obtain a loan and "donate" these proceeds to the Charity, nor did the Charity "purchase" the above noted royalty agreements. The series of transactions entered into by the donor and the Charity were intended to give the illusion that funds have been loaned to the donor, donated to the Charity and used to acquire royalty agreements when in fact this never occurred. A series of documents exists between all parties

involved to create the notion that funds were moved between each party. It is our position that an artificial paper trail was provided to create the illusion the Charity received the loan proceeds from the donors and subsequently transferred these funds to the identified companies to purchase the royalty agreements.

As further support, the audit of the Equita Management Charitable Donation Program discovered that the transactions as described above were in fact never executed. In fact, we have been unable to confirm the existence of a corporation, resident in Canada or Bermuda, operating or established under the name Equita Management Ltd. We were able to confirm, of the \$1,434 in funds available in the arrangement, \$1,125.60 was used to repay the loan, \$10 was retained by the Charity, \$40 was paid as referral fees to Equi-Capital and Equita Management retained the remaining \$258.40. The audit also revealed that Mr. Iafigiola retained complete control over the donation arrangement at all times and he was unable to provide any information as to the whereabouts of the funds and who controls them.

Mr. Iafigiola also benefits as the Charity agreed to compensate him 20% of all funds it receives from the ParkLane Charitable Donation Program and Equita Management Charitable Donation Program.

In our view, the Charity has improperly issued receipts for transactions that do not qualify as gifts. Its role in this arrangement was simply to act as a conduit in these arrangements issuing receipts to donors and passing funds to accounts as instructed. In our view these transactions do not qualify as gifts for the following reasons:

- The transactions were abusive – The Charity participated in a series of transactions wherein individuals obtained loans which were represented as not having to be repaid. These funds were “donated” to a registered charity which, in turn, transferred these funds to an off-shore account. These funds were, in turn returned to the lender.
- The transactions lacked the requisite *animus donandi*. Participants were presented with an opportunity to profit from the tax system by receiving an inflated tax receipt for a minimal monetary payment. These schemes represented a variety of means by which this would be accomplished. However, the essential characteristic in each of these is that, as above, the transactions did not occur as represented and the funds were “kicked back” to repay the loans taken out by donors.
- Even were we to accept that the transactions occurred as represented, proposed section 248(34), introduced in 2003, should have been taken into account in the issuance of donation receipts – reducing the amount of the gift to the amounts paid out-of pocket by participants.

In our view, during the period January 1, 2003 to December 31, 2004, the Charity facilitated an abusive tax shelter arrangement by issuing receipts other than in accordance with the ITA or its Regulations and there may be grounds for the revocation of its registration under paragraph 168(1)(d).

2. Providing Personal Benefit to a Proprietor, Member, Shareholder, Trustee or Settlor:

A "charitable foundation" is one of which "... no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof" per subsection 149.1(1) of the ITA.

It is our view the resources of the Charity have benefited Raymond Lepore individually and Teresa Forte indirectly via a corporation solely controlled by herself. Each is a director of the Charity. As summarized below, each director has benefited from their position as director by receiving payments from the Charity for services or as loans. **The payments of the services were not supported with adequate details regarding the type/nature of the services supplied to the Charity in exchange for the fees charged/paid.** The Charity has failed to show how these payments relate to the Charity's mandate.

The audit has revealed that 93% of the Charity's annual expenses were devoted to management and administrative expenses paid to the president of the Charity and/or to a related corporation as follows:

Expense Category	FPE 2005	FPE 2006	Person Receiving Payment
Professional fees	\$15,000		Raymond Lepore
Professional fees	\$11,502		6306331Canada Inc.
Administration fees	\$14,013		6306331 Canada Inc
Loan	<u>\$20,553</u>	<u>\$14,831</u>	Raymond Lepore
Total	<u>\$61,068</u>	<u>\$14,831</u>	

The Charity has not conducted any activities, charitable or otherwise, since its involvement in the tax shelters. As above, the Charity has confirmed it is not active and any funds received to date from its involvement in the donation arrangements has been used for non-charitable expenses such as fundraising fees and payments to related persons. It appears therefore that the Charity is merely retaining its registered charity status to collect the minimal interest income payments received and using them for personal gain.

It is further our view, therefore, that by operating for the private gain of its directors, the Charity has failed to demonstrate that it meets the test for continued registration under 149.1(1) as a charitable foundation "operated exclusively for charitable purposes" or as a charitable organization that "no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof". For this reason, it appears to us that there may be grounds for revocation of the charitable status of Fondation des Arts H.B. Ltee/H.B Arts Foundation Ltd.

3. Failure to maintain adequate books and records:

Section 230(2) of the ITA requires that every registered charity maintain adequate books and records, and books of account, at an address in Canada recorded with the Minister. In addition to retaining copies of donation receipts, as explicitly required by section 230(2), section 230(4) provides that

"every person required by this section to keep 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 period as prescribed; and
- (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 date of the last taxation year to which the records and books relate."

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

- it is the responsibility of the registered charity to prove that its charitable status should not be revoked⁴ ;
- 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 not sufficient to supply the required documentation and records subsequent thereto⁵; and
- the failure to maintain proper books, records and records of account in accordance with the requirements of the ITA is itself sufficient reason to revoke an organization's charitable status⁶.

In the course of the audit, the director M. Raymond Lepore was unable to provide documentation supporting the expenses incurred for fundraising and administration purposes as outlined above.

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. It is our position Fondation des Arts H.B. Ltee/H.B Arts Foundation Ltd. has failed to

⁴ *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*, 2002 FCA 72 (FCA)

⁵ *Supra*, footnote 3; *The Lord's Evangelical Church of Deliverance and Prayer of Toronto v. Canada*, (2004) FCA 397

⁶ *(College Rabbiniqque de Montréal Oir Hachaim D'Tash v. Canada (Minister of the Customs and Revenue Agency)*, (2004) FCA 101; ITA section 168(1)

comply with and has contravened section 230 of the ITA. For this reason alone there may be grounds to revoke the registered status under paragraph 168(1)(e).

The Charity's Options:

a) No Response

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

b) Response

Should you choose to respond, please provide your written representations and any additional information regarding the findings outlined above **within 30 days** from the date of this letter. After considering the representations submitted by the Charity, the Director General of the Charities Directorate will decide on the appropriate course of action, which may include the issuance of a Notice of Intention to Revoke the registration of the Charity in the manner described in subsection 168(1) of the 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 that individual to discuss your file with us.

If you have any questions or require further information or clarification, please do not hesitate to contact the undersigned at the numbers indicated below.

Yours sincerely,

Rachelle Métellus
Verification and Enforcement Division
Tax Services Office: 08 - Montréal

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