REGISTERED MAIL

JUL 2 0 2015

Canadian Friends of Pearl Children
119 Ross Avenue, Suite 201
Ottawa ON K1Y 0N6

BN:80674 6814 RR0001
File #: 3038292

Attention: Ms. Deborah Rotenberg

Subject: **Revocation of Registration**
Canadian Friends of Pearl Children

Dear Ms. Rotenberg:

The purpose of this letter is to inform you that a notice revoking the registration of Canadian Friends of Pearl Children (the Organization) was published in the *Canada Gazette* on July 18, 2015. Effective on that date, the Organization ceased to be a registered charity.

Consequences of Revocation:

a) The Organization is no longer exempt from Part I tax as a registered charity and **is no longer permitted to issue official donation receipts**. This means that gifts made to the Organization are no longer 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 *Income Tax Act*, respectively.

b) By virtue of section 188 of the Act, the Organization 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 Return is enclosed. The related Guide RC-4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, is available on our website at www.cra-arc.gc.ca/E/pub/tg/rc4424.

Section 188(2) of the Act stipulates that a person (other than a qualified donee) who receives an amount from the Organization is jointly and severally liable with the Organization for the tax payable under section 188 of the Act by the Organization.

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

In accordance with *Income Tax Regulation* 5800, the Organization is required to retain its books and records, including duplicate official donation receipts, for a minimum of two years after the Organization's effective date of revocation.

Finally, we wish to advise that subsection 150(1) of the Act requires that every corporation (other than a corporation that was a registered charity throughout the year) file a return of income with the Minister of National Revenue in the prescribed form, containing prescribed information, for each taxation year. The return of income must be filed without notice or demand.

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

Yours sincerely,

Robert Delaney
Director
Compliance Division
Charities Directorate
Telephone: 613-957-8682

Enclosures
- Copy of the Return (Form T-2046)
- Canada Gazette publication

c.c.: Drache Aptowitzer, LLP
Adam Aptowitzer
226 McLaren Street
Ottawa ON K2P 0L6

COMMISSIONS

CANADA REVENUE AGENCY

INCOME TAX ACT

Revocation of registration of a charity

The following notice of proposed revocation was sent to the charity listed below revoking it for failure to meet the parts of the *Income Tax Act* as listed in this notice:

"Notice is hereby given, pursuant to paragraphs 168(1)(*b*), 168(1)(*c*), 168(1)(*d*) and 168(1)(*e*) of the *Income Tax Act*, that I propose to revoke the registration of the organization listed below and that the revocation of registration is effective on the date of publication of this notice."

Business Number Numéro d'entreprise	Name/Nom Address/Adresse
806746814RR0001	CANADIAN FRIENDS OF PEARL CHILDREN, OTTAWA, ONT.

CATHY HAWARA
Director General
Charities Directorate

[29-1-o]

COMMISSIONS

AGENCE DU REVENU DU CANADA

LOI DE L'IMPÔT SUR LE REVENU

Révocation de l'enregistrement d'un organisme de bienfaisance

L'avis d'intention de révocation suivant a été envoyé à l'organisme de bienfaisance indiqué ci-après parce qu'il n'a pas respecté les parties de la *Loi de l'impôt sur le revenu* tel qu'il est indiqué ci-dessous :

« Avis est donné par les présentes que, conformément aux alinéas 168(1)*b*), 168(1)*c*), 168(1)*d*) et 168(1)*e*) de la *Loi de l'impôt sur le revenu*, j'ai l'intention de révoquer l'enregistrement de l'organisme de bienfaisance mentionné ci-dessous et que la révocation de l'enregistrement entrera en vigueur à la date de publication du présent avis. »

La directrice générale
Direction des organismes de bienfaisance
CATHY HAWARA

[29-1-o]

CANADIAN INTERNATIONAL TRADE TRIBUNAL

APPEAL

Notice No. HA-2015-007

The Canadian International Trade Tribunal (the Tribunal) will hold a public hearing to consider the appeal referenced hereunder. This hearing will be held beginning at 9:30 a.m., in the Tribunal's Hearing Room No. 1, 18th Floor, 333 Laurier Avenue West, Ottawa, Ontario. Interested persons planning to attend should contact the Tribunal at 613-998-9908 to obtain further information and to confirm that the hearing will be held as scheduled.

Customs Act

Andritz Hydro Canada Inc. v. President of the Canada Border Services Agency

Date of Hearing:	August 18, 2015
Appeal No.:	AP-2014-036
Goods in Issue:	Hydraulic turbine-driven electric generating sets
Issue:	Whether the goods in issue are properly classified under tariff item No. 8502.39.10 as other electric generating sets, as determined by the President of the Canada Border Services Agency, or should be classified under tariff item No. 9948.00.00 as articles for use in automatic data processing machines, as claimed by Andritz Hydro Canada Inc.
Tariff Items at Issue:	Andritz Hydro Canada Inc.—9948.00.00 President of the Canada Border Services Agency—8502.39.10

[29-1-o]

TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

APPEL

Avis nº HA-2015-007

Le Tribunal canadien du commerce extérieur (le Tribunal) tiendra une audience publique afin d'entendre l'appel mentionné ci-dessous. L'audience débutera à 9 h 30 et aura lieu dans la salle d'audience nº 1 du Tribunal, 18e étage, 333, avenue Laurier Ouest, Ottawa (Ontario). Les personnes intéressées qui ont l'intention d'assister à l'audience doivent s'adresser au Tribunal en composant le 613-998-9908 si elles désirent plus de renseignements ou si elles veulent confirmer la date de l'audience.

Loi sur les douanes

Andritz Hydro Canada Inc. c. Président de l'Agence des services frontaliers du Canada

Date de l'audience :	18 août 2015
Appel nº :	AP-2014-036
Marchandises en cause :	Groupes électrogènes électriques hydrauliques entraînés par turbine
Question en litige :	Déterminer si les marchandises en cause sont correctement classées dans le numéro tarifaire 8502.39.10 à titre d'autres groupes électrogènes électriques, comme l'a déterminé le président de l'Agence des services frontaliers du Canada, ou si elles doivent être classées dans le numéro tarifaire 9948.00.00 à titre d'articles devant servir dans des machines automatiques de traitement de l'information, comme le soutient Andritz Hydro Canada Inc.
Numéros tarifaires en cause :	Andritz Hydro Canada Inc. — 9948.00.00 Président de l'Agence des services frontaliers du Canada — 8502.39.10

[29-1-o]

Canada Revenue Agency | Agence du revenu du Canada

Tax Return Where Registration of a Charity is Revoked

Protected B when completed

OTTAWA ON K1A 0L5

Identification

Name of Charity

Canadian Friends of Pearl Children

Address

City

Province or territory | Postal code

Do not use this area

Former BN/Registration number

806746814 RR 0001

File Number

3038292

You must use Guide RC4424, *Completing the Tax Return Where Registration of a Charity is Revoked* to fill out this form properly.

Location of the charity's books and records (if different from above)

Name of the person in possession of the books and records			
Address (number, street, apartment number or lot and concession number)			
City	Province or territory	Postal code	Telephone number ( )

Contact information

Name of the person who filled out this return and whom we can contact for more information			
Address (number, street, apartment number or lot and concession number, R.R. number or PO box number)			
City	Province or territory	Postal code	Telephone number ( )

50 **Day 1** (the day the Minister issued a Notice of Intention to Revoke a Charity's Registration) is: **2015-06-03**

51 This return is due on or before: **2016-06-02**

Form authorized by the Minister of National Revenue

(Vous pouvez obtenir ce formulaire en français à **www.arc.gc.ca/formulaires** ou en composant le **1-800-959-7383**.)

Canada

Schedule 1 - Property

Enter the fair market value of the charity's property on Day 1.

Cash on hand and in the bank	111	
Amounts receivable (loans, mortgages, accounts receivable)	112	
Investments	113	
Capital property at fair market value (equipment, vehicles, land and buildings) Specify: _____	114	
All other property. Specify: _____	115	
Total property (add lines 111 to 115) (Transfer this amount to line 100 of the Summary of calculations)	116	$

Schedule 2 - Income and expenditures

Enter all the income and expenditures of the charity after Day 1.

Income

Gifts from all sources	211	
Income from governments	212	
Interest and investment income	213	
Gains/losses from the disposition of property	214	
Rental income (land and buildings)	215	
Memberships, dues, and association fees	216	
Income from fundraising (not previously reported)	217	
Income from sale of goods and services (not previously reported)	218	
Other income	219	
Total Income (add lines 211 to 219)	220	$

Expenditures

Advertising and promotion	251	
Interest and bank charges	252	
Licenses, memberships, and dues	253	
Travel and vehicle	254	
Office supplies and expenses	255	
Occupancy costs	256	
Professional and consulting fees	257	
Education and training for staff and volunteers	258	
Salaries, wages, benefits, and honoraria	259	
Expenditures on charitable activities (not previously reported)	260	$
Other expenditures	261	
Total expenditures (add lines 251 to 261)	270	$

Net Income (line 220 minus line 270) (Transfer this amount to line 200 of the Summary of calculations)	280	$

Portion of Line 270 that is the total expenditures on charitable activities	290	$

Schedule 3 - Appropriations (refer to Guide RC4424)

Enter details of all transactions that occurred in the 120-day period ending on Day 1 that meet the definition of an appropriation in the guide.

Property transferred	Date of transfer	Name of recipient	Address, city, province or territory, postal code, and phone number of recipient	Amount
Total appropriations (Transfer this amount to line 300 of the Summary of calculations) 302				$

Section B

Schedule 4 - Outstanding debts

List all debts (by creditor) that were outstanding on Day 1.

Creditor - name and address	Amount outstanding
Total outstanding debts (Transfer this amount to line 400 of the Summary of calculations) 402	$

Schedule 5 - Transfer of property to an eligible donee (refer to Guide RC4424)

Fill out a separate Schedule 5 for each eligible donee. An additional copy is available in the guide.

You must show proof of each transfer to an eligible donee. Include documents such as cancelled cheques, proof of transfers of title to property, or other supporting documents.

An eligible donee is a charity that meets the following criteria at the time the property was transferred to it:

a) It is a "registered charity" under the *Income Tax Act*.

b) More than half of the members of its board of directors/trustees deal at arm's length with each member of the board of directors/trustees of the revoked charity.

c) It has filed all its annual information returns (Form T3010).

d) It is not subject to a suspension of its tax-receipting privileges.

e) It has no unpaid liabilities under the *Income Tax Act* or the *Excise Tax Act*.

f) It is not the subject of a certificate under the *Charities Registration (Security Information) Act*.

Certification of eligibility

I hereby certify that _____
Recipient charity's name and BN/registration number

met all the criteria listed above and was therefore an eligible donee at the time the property listed below was transferred to it.

_____ _____
Name of authorized representative of eligible donee (recipient charity) Date

_____ ( ) _____
Signature Telephone number

Description of transferred property	Date of transfer	Eligible amount transferred	Proof of transfer attached
			☐
			☐
			☐
Total eligible amount transferred (Transfer this total to line 500 of the Summary of calculations)	502	$	

If the charity transferred property to more than one eligible donee, add the amount reported at line 502 in each completed Schedule 5, and then transfer this combined total to line 500 of the Summary of calculations.

REGISTERED MAIL

Canadian Friends of Pearl Children
119 Ross Avenue, Suite 201
Ottawa ON K1Y 0N6

JUN 0 3 2015

BN: 8674 6814RR0001

Attention: Deborah Rotenberg

File #: 3038292

Subject: Notice of Intention to Revoke
Canadian Friends of Pearl Children

Dear Ms. Rotenberg:

We are writing further to our letter dated September 3, 2014 (copy enclosed), in which you were invited to submit representations as to why the registration of Canadian Friends of Pearl Children (the Organization) should not be revoked in accordance with subsection 168(1) of the *Income Tax Act* (the Act).

We have now reviewed and considered your written response dated November 4, 2014. However, notwithstanding your reply, our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity have not been alleviated. Our position is fully described in Appendix "A" attached.

Conclusion

The audit by the Canada Revenue Agency (CRA) has revealed that the Organization operated primarily for the non-charitable purpose of furthering a tax shelter donation arrangement, the MissionLife Financial Inc. Canadian Relief Program. The Organization agreed to accept alleged gifts of property from participants and to act as a receipting agent for this donation arrangement. For the period June 1, 2008 to December 31, 2012, the Organization improperly issued receipts totalling over $167 million for purported donations of cash and pharmaceuticals, which were not legitimate gifts. Of the over $4 million in cash contributions it received, the Organization paid $3.19 million to the promoters of the tax shelter. With the over $163 million worth of tax receipts issued for the gifts of pharmaceuticals, the CRA determined that the Organization significantly over-reported the value of the alleged property, resulting in

grossly inflated tax receipts to participants. Further, the Organization failed to demonstrate that it had actually received the tax-receipted pharmaceuticals or that it had carried out any charitable activities using these pharmaceuticals.

The audit has shown that the Organization has failed to comply with several requirements set out in the *Income Tax Act*. It is our opinion that the Organization has operated for the non-charitable purpose of promoting a donation gifting arrangement. The Organization also failed to devote all of its resources to charitable activities, failed to accept valid gifts in accordance with the Act, failed to issue receipts in accordance with the Act, failed to maintain or provide adequate books and records, and failed to file an accurate T3010, *Registered Charity Information Return*. For all of these reasons, and for each reason alone, it is the position of the CRA that the Organization no longer meets the requirements necessary for charitable registration and should be revoked in the manner described in subsection 168(1) of the Act.

Consequently, for each of the reasons mentioned in our letter dated November 4, 2014, we wish to advise you that, pursuant to subsection 168(1) of the Act, we propose to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, 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), 168(1)(c), 168(1)(d), and 168(1)(e) of the* Income Tax Act, *that I propose to revoke the registration of the organization listed below and that the revocation of registration is effective on the date of publication of this notice.*

Business number	**Name**
806746814RR0001	Canadian Friends of Pearl Children Ottawa ON

Should you wish to object to this notice of intention to revoke the Organization's registration in accordance with subsection 168(4) of the Act, 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
250 Albert Street
Ottawa ON K1A 0L5

Notwithstanding the filing of an objection, 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 Organization's registration will be revoked on the date of publication.

A copy of the relevant provisions of the Act concerning revocation of registration, including appeals from a notice of intent to revoke registration can be found in Appendix "B", attached.

Consequences of revocation

As of the effective date of revocation:

a) the Organization 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 Organization 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 Act, respectively;

b) by virtue of section 188 of the Act, the Organization 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 T2046, *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. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix "B". Form T2046 and the related Guide RC4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, are available on our Web site at www.cra-arc.gc.ca/charities;

c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the *Excise Tax Act*. As a result, the Organization may be subject to obligations and entitlements under the *Excise Tax Act* that apply to organizations other than charities. If you have any questions about your Goods and Services Tax/Harmonized Sales Tax (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, we wish to advise that subsection 150(1) of the *Income Tax Act* 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 the prescribed form, containing prescribed information, for each taxation year. The return of income must be filed without notice or demand.

Yours sincerely,

Cathy Hawara
Director General
Charities Directorate

Attachments:

- CRA letter dated September 3, 2014
- Organization letter dated November 4, 2014
- Appendix "A", Comments on representations
- Appendix "B", Relevant provisions of the Act

c.c.: Drache Aptowitzer, LLP
Adam Aptowitzer
226 McLaren Street
Ottawa ON K2P 0L6

CANADA REVENUE AGENCY | AGENCE DU REVENU DU CANADA

REGISTERED MAIL

Canadian Friends of Pearl Children
471 Clarence Street,
Ottawa ON K1N 5R9

BN: 80674 6814RR0001

Attention: Ms. Deborah Rotenberg

File #: 3038292

September 3, 2014

Subject: **Audit of Canadian Friends of Pearl Children**

Dear Ms. Rotenberg:

This letter is further to the audit of the books and records of the Canadian Friends of Pearl Children (the Organization) conducted by the Canada Revenue Agency (the CRA). The audit related to the operations of the Organization for the period from June 1, 2008 to December 31, 2012.

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

AREAS OF NON-COMPLIANCE:		
	Issue	**Reference**
1.	Failure to Devote Resources to Charitable Activities	149.1(1), 168(1)(b)
2.	Failure to Accept Valid Gifs in Accordance with the ITA	118.1, 168)(1)(b), 248(32)
3.	Failure to Issue Receipts in Accordance with the ITA	149.1(1), 168(1)(d), Reg. 3501
4.	Failure to Maintain or Provide Adequate Books and Records	149.1(1), 168(1)(e), 230(2)
5.	Failure to File an Accurate T3010 Information Return	149.1(1), 168(1)(c)

The purpose of this letter is to describe the areas of non-compliance identified by the CRA during the course of the audit as they relate to the legislative and common law requirements applicable to registered charities, and to provide the Organization with the opportunity to address our concerns. In order for a registered Organization to retain its registration, legislative and common law compliance is mandatory, absent which the Minister of National Revenue (the Minister) may revoke the Organization's registration in the manner described in section 168 of the ITA.

WPK105

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

Identified Areas of Non-Compliance:

1. Failure to Devote Resources to Charitable Activities

In order to satisfy the definition of a "charitable organization" pursuant to subsection 149.1(1) of the ITA, "charitable organization" means an organization, "all the resources of which are devoted to charitable activities".

To qualify for registration as a charity under the ITA, an organization must be established for charitable purposes that oblige it to devote all its resources to its own charitable activities. This is a two-part test. First, the purposes it pursues must be wholly charitable and second, the activities that a charity undertakes on a day-to-day basis must support its charitable purposes in a manner consistent with charitable law. Charitable purposes are not defined in the ITA and it is therefore necessary to refer, in this respect, to the principles of the common law governing charity. An organization that has one or more non-charitable purposes or devotes resources to activities undertaken in support of non-charitable purposes cannot be registered as a charity.

The Organization was registered with the following objectives:

- "To improve the quality of life of orphans in Uganda by building dormitories, schools and housing for them.
- Find and provide healthy water sources, nutritious food, health care, and general care providers for orphans in Uganda"

The Organization appears to have applied for and received a Supplementary Letters Patent dated March 9, 2012, which changed the formal objects of the Organization to read as follows:

- "To improve the quality of life of orphans and impoverished families in East Africa by building dormitories, schools and housing for them.
- Find and provide healthy water sources, nutritious food, and health care and general care providers for orphans and impoverished families in East Africa."

Once registered, a charity must only pursue activities in furtherance of the specific charitable purposes as approved by CRA. The implicit understanding is that the charity will not undertake any activity beyond those described in the application for charitable registration. This is necessary to ensure that the charity will operate within the limitations imposed by the ITA. When an organization wishes to change its formal stated objects, it must formally notify the Charities Directorate of the change.

Based on our audit findings, the Organization has demonstrated that it does not operate for purely charitable purposes. In fact, the evidence on the file, as outlined below,

demonstrates that the preponderance of the effort and resources of the Organization are devoted to participating in a tax planning donation arrangement. Operating for the purpose of promoting a tax planning donation arrangement is not a charitable purpose at law.

Operating Ultra Vires

As above, registered charities are required to pursue activities in furtherance of the purposes for which they are established. There is some concern that the Organization is operating outside of its stated objects as approved by CRA upon registration and subsequent filing of its Supplementary Letters Patent.

It appears that the Organization is engaging in activities that are not consistent with these objects and, in our view, are not charitable at law. Based on documentation provided during the audit, the Organization 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 Organization has devoted a substantial portion of its efforts and resources to participating in non-charitable activities including promoting a registered tax shelter donation arrangement.

a) Promoting a Registered Tax Shelter Arrangement

It has consistently been CRA's position that the promotion of a tax shelter or donation arrangement is not charitable at law. Our position has been published in several publications as a matter of courtesy to inform the public of our position. An excerpt from one such publication, *Registered Charity Newsletter No 29 – Winter 2008*, states the following:

> *Registered charities and registered Canadian amateur athletic organizations participating in abusive or fraudulent arrangements will be subject to revocation and/or monetary penalties. Further, any person, promoter, tax professional, or other third party who is closely involved with the development of an abusive or fraudulent tax shelter arrangement may be liable to penalties regarding false or misleading information, or omission of or inappropriate use of the tax shelter identification number.*

In October of 2009, the Organization established a relationship with MissionLife Financial Inc., a registered tax shelter whereby the Organization was named as a participating charity. The tax shelter program is a leveraged donation arrangement in which participants purportedly donated pharmaceuticals to a registered charity for which "innovative financing" was provided for the purchase of the pharmaceuticals. The basic premise of the tax shelter is that participants acquire "credit certificates" though the tax shelter that allows them to exchange the credit certificate for pharmaceuticals. The pharmaceuticals acquired by the tax shelter participants are then donated to the Organization along with a small, 3% of the pharmaceuticals alleged fair market value, cash contribution. The Organization purportedly distributes the pharmaceuticals as part of its own charitable programs and issues official donation receipts to the participants as directed by the tax shelter promoter. As a result of its

tax shelter participation, the Organization has receipted for nearly $164 million in pharmaceuticals and cash.

By comparison, during the four years under audit, the Organization reports gifting $87,558 to qualified donees and increasing its total revenue from $1,754 in 2008 to $39.9 million in 2009; the year it willingly agreed to promote and facilitate the tax shelter program.

It is our opinion, viewed as a whole that the primary purpose of this arrangement is to allow participants to profit from making a "gift" through the claiming of a donation credit. As an example, a $10,000 loan would be granted to a participant in exchange for four years of prepaid interest totalling $1,800. The participant would also have to pay a 3% cash donation to the participating charity. So, in essence the participant would be out of pocket $2,100 yet obtain donation receipts totalling $10,240. Ultimately, participants are out of pocket no more than 20% of the total receipted value. Using the Ontario tax credit rate of 46.41%, a participant's tax credit for a net donation of $10,563 is $4,752 and net return on cash outlay is $2,652. The return on cash for residents of other provinces varies based on the tax credit rates applicable to each province. Based on the promotional material provided by the tax shelter, the cash return can be increased in increments with the same cash on cash return so that virtually 100% of a participant's income tax is refunded.

In 2009, the Organization began issuing receipts for the participants' "gifts" of treatment units, receipting over $164 million for treatment units to date. The Organization also continued to receive cash "gifts" from participants as a part of the series of transactions required to participate in the donation arrangement. Of the over $4 million received in cash during the audit period, the audit revealed that the Organization spent $3.19 million on marketing fees paid to the promoter. This represents, an average, 79% of the total funds received from the participants of the tax shelter. In summary, during the four years under audit, the Organization spent approximately $468,585 on charitable activities in support of its charitable programs while over $3.19 million was paid to the promoter for what the Organization identified as administrative payments.

We find the Organization's participation in this tax shelter arrangement to be problematic, as, in our view, the Organization appears to be facilitating an arrangement designed to avoid the application of the provisions of the ITA and may be designed to create improper tax results. In our view, the Organization is operating primarily for the purpose of promoting a tax shelter program as the Organization has not shown or otherwise indicated it is conducting any other activities aside from the small portion of gifts made to qualified donees. The Organization is an integral part of the arrangement being paid to issue tax receipts and circulate funds (as directed) in an artificial manner to facilitate and lend legitimacy to the overall arrangement.

Based on the evidence provided during the audit and given the manner in which the Organization has structured its financial affairs for the private benefit of the tax shelter, its promoters and its directors along with its proportionally high levels of involvement and collusion in these financial arrangements, it is our view that a collateral purpose, if not the primary purpose of the Organization is, in fact, to support and promote the tax shelter

arrangements. Operating for the purpose of promoting a tax shelter is not a charitable purpose at law. As such it is our view that the Organization does not meet the test of "charitable organization", as defined in 149.1(1) in that it not constituted and operated for exclusively charitable purposes. For this reason, it appears to us that there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the ITA.

b) Failure to Carry Out its Own Charitable Activities

In section 149.1, the ITA states that a charitable organization must devote all of its resources to charitable activities carried on by the organization itself. The ITA reinforces this requirement in paragraph 149.1(4)(b), by authorizing the Minister to revoke the registration of a charity if it fails to make required expenditures on charitable activities carried on by it and by way of gifts to qualified donees.

The legislative intent conveyed by the expression "carried on by the organization itself" at paragraph 149.1(1)(a) of the ITA requires a charitable organization to actively engage in its own charitable activities. A charity is permitted to have another organization or individual act on its behalf. In such a relationship; however, the registered Canadian charity must be responsible in a direct, effectual and constant manner for the charitable activities to which its resources are being applied. The fact that the activities being undertaken by another organization may be consistent with the goals and objectives of the registered charity is insufficient to meet this operational test.

A registered charity can work with other organizations or persons and still meet the "own activities" test provided it employs certain arrangements that enable it to retain direction and control over its resources. Such can be accomplished through agents, contractors or other intermediaries under structured arrangements that allow it to retain direction and control of its resources. While there is no requirement at law that an agency agreement has to be in written form, it is essential for the registered Canadian charity to establish the parameters of its relationship with its agent by maintaining adequate bookkeeping and record systems.

The charity must demonstrate, through documented evidence, that actual events transpired which prove the continued existence of the principle-agent relationship. The charity must provide CRA with a means of examining the internal decision making mechanisms within the charity's own structure through it books and records. This can be demonstrated with minute records such as: minutes of board meetings that contain sufficient detail to illustrate direction and control over the relationship; internal communications; and policies and procedures that show that the charity acted as the guiding-mind in the principle-agent relationship.

Accordingly, where a charity works in this manner, the CRA strongly recommends that it enter into a formal arrangement, in each case, which establishes that:

- the intermediary is to carry out certain identified and fully described activities that the charity wishes to accomplish, on the charity's behalf, during a specified term. The

scope of the intermediary's authority to act on the charity's behalf should be clearly defined in relation to each project;
- the charity's funds will remain separate and apart from those of the intermediary, so that the charity's role in any particular project or endeavour is independently identifiable as its own charitable activity; and,
- the intermediary will provide regular and comprehensive written reports to the charity, including expense vouchers and receipts, concerning the on-going activities that are carried out on the charity's behalf. While the exact reporting schedule may depend on the nature of the individual project, it is suggested that reports should be required quarterly or semi-annually, at minimum. These written reports should be supplemented at least annually by a complete financial report outlining the use of all transferred funds.

The audit revealed that the Organization does not have the appropriate agreements in place with respect to the activities it conducts outside Canada so that it can demonstrate that it maintained control over the use of its funds and resources at all times. Further, the Organization failed to provide adequate documentation in the absence of such an agreement to fully demonstrate that the Organization maintained control over the use of its funds and resources.

There were three agreements provided: one between the Organization and Saph Integrated Training Centre; another between the Organization and Pearl Children Care Centre; and the last one between the Organization and [redacted], all of which are located in Uganda. The Saph Integrated Training Centre is the sole recipient of the millions of dollars of treatment units purportedly received by the Organization from participants in the MissionLife tax shelter. The following deficiencies were noted with respect to these agreements and/or supporting documentation:

i. Agreement with Saph Integrated Training Centre

- the activities the Agent is required to carry out on behalf of the Organization are vague. It is not clear how the activities carried out on the Organization's behalf will meet its registered objects;
- there was no documentary evidence provided to support that the Agent maintained a separate bank account for the funds sent by the Organization;
- there was no documentary evidence provided during the audit to support that regular and comprehensive written reports were provided by the Agent outlining the activities that were carried out on the Organization's behalf or that goods shipped to it were ever received or distributed. The Organization's website contains limited photos displaying distribution of items yet it cannot be verified whether the items in the boxes shown are the pharmaceuticals received as a result of its tax shelter involvement nor are they proof of the Organization's continual oversight and direction of this program and its Agent;
- the agreement was signed June 16, 2010; however, came into effect as of January 20, 2009, nearly 18 months after signing; and
- an acknowledgement letter for receipt of goods allegedly provided to the Agent by way of this agreement was dated April 15, 2010; prior to the signing of the agreement.

ii. Agreement with Pearl Children Care Centre

- there was no documentary evidence provided to support that the Agent maintained a separate bank account for the funds sent by the Organization; and
- there was no documentary evidence provided during the audit to support that regular and comprehensive written reports were provided by the Agent outlining the activities that were carried out on the Organization's behalf, the goods that were received or any distribution details with respect to these goods;

iii. Agreement with [redacted]

- there was no documentary evidence provided to support that the Agent maintained a separate bank account for the funds sent by the Organization; and
- there was no documentary evidence provided during the audit to support that regular and comprehensive written reports were provided by the Agent outlining the activities that were carried out on the Organization's behalf, the goods that were received or distribution details with respect to these goods.

Further, the Organization did not provide sufficient documentary evidence through board meeting minutes, correspondence or other related documents to substantiate that it had taken the appropriate steps to direct and control the use of its resources or allow the CRA to verify that all of the charity's resources have been used for its own activities.

Given the manner in which the Organization allegedly structured and conducted its activities to accommodate the tax shelter, and the proportional levels of involvement in this arrangement, it is our view that a collateral purpose, if not primary purpose of the organization is, in fact, to support and promote a tax shelter arrangement. In this regard, it appears that the Organization enthusiastically lent its physical, financial and human resources (not to mention tax receipting privileges and registered charity status) to support the tax shelter arrangement, with little regard for the mandate and best interests of the Organization itself. Operating for the purpose of promoting tax shelters is not a charitable purpose at law. It is our view, therefore, that by pursuing this non-charitable purpose, the Organization has failed to demonstrate that it meets the test for continued registration under subsection 149.1(1) of the ITA as a charitable organization "all the resources of which are devoted to charitable activities".

It is further our view that by failing to demonstrate the Organization's on-going direction and control of its distribution of treatment units and permitting other organizations to use the Organization's registered status to flow donations through it, the Organization has failed to demonstrate that it meets the test for continued registration under subsection 149.1(1) of the ITA as a charitable organization "...all the resources of which are devoted to charitable activities". For this reason, it appears to us that there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the ITA.

2. Failure to Accept Valid Gifs in Accordance with the ITA

It is our position that both the cash and in-kind donations received by the Organization from participants are not valid gifts under section 118.1 of the ITA. We offer the following explanations to support our position.

No *Animus Donandi*

Under the common law, a gift is a voluntary transfer of property without consideration. However, an additional essential element of a gift is *animus donandi* - that the donor must be motivated by an intention to give. As stated in Grant McPherson v. HMQ *(2007 DTC 326)*:

> "[20] There is an element of impoverishment which must be present for a transaction to be characterized as a gift. Whether this is expressed as an animus donandi, a charitable intent or an absence of consideration the core element remains the same."

Justice J. Bowie further clarifies in 2004 UDTC 148, Dwight Webb (Appellant) v. Her Majesty the Queen (Respondent):

> "These cases make it clear that in order for an amount to be a gift to charity, the amount must be paid without benefit or consideration flowing back to the donor, either directly or indirectly, or anticipation of that. The intent of the donor must, in other words, be entirely donative." [Emphasis added]

Although it is agreed that the receipt of a normal donation credit under section 118.1 of the ITA cannot be considered a benefit, Justice Bowie further goes on to comment on 2004 UDTC 103, Mark Doubinin (Appellant) v. Her Majesty the Queen (Respondent):

> I do not read Madam Justice Campbell as purporting there to extend what was said by Mr. Justice Linden in Friedberg to suggest that a scheme entered into whereby a person would be put in a position to claim tax credits for charitable donations in excess of the donation actually made, by the issuing of false receipts or by the kickback of part of the donation, to be a normal transaction and something that would not be considered a benefit within the context of the definition of what constitutes a gift.

Judge Woods, J. makes note of the elements in the definition of the gift from *Friedberg v. The Queen* (see above) in the case of *Coombs et al. v. The Queen, 2008 DTC 4004*:

> [15] It is relevant here to make note of certain elements in this definition. First, it is necessary that the gifted property be owned by the donor, second that the transfer to the charity should be voluntary, third that no consideration should flow to the donor in return for the gift, and fourth that the subject of the gift be property, which distinguishes it from providing services to the charity. These elements reflect the general notion that a tax payer must have a donative intent in regards to the transfer of property to the charity.

It must be clear that a donor intends to enrich the donee, by giving away property, and to generally grow poorer as a result of making the gift. It is our view, based on the transactions of the donation arrangement as described above, that the primary motivation of the participant was not to enrich the Organization, but through a series of transactions and a minimal monetary investment, to make a profit through the tax credits so obtained. We recognize that the charitable tax credits available with respect to donations are not usually an advantage or benefit that would affect whether a gift is made. However, it is our position that mass-marketed donation arrangements promising participants that they will be able to claim tax credits for charitable donations far in excess of the expenditures actually made (i.e. the actual cash outlay and subsequent reduction in the donor's net worth), lack the requisite *animus donandi* for the transactions to be considered gifts. It is further our position, that the series of events allegedly entered into by the participant, were done in a manner to create the illusion that no benefit or advantage was received by the participant.

In support of this position, we note the promotional materials primarily focus on the participant's substantial "cash on cash return" as a result of participation. Minimal investment is required of the participant in order to acquire treatment units from the authorized vendor (LogiPharm) and the participant is not required under the arrangement to incur any additional cash outlay to repay the loan. The terms of repayment of the promissory note stated that the loan was repayable by cash or by "credit certificate". The participant has the option to repay the promissory note by delivering to the tax shelter, a credit certificate, which can be obtained from LogiPharm, or by delivering to the latter, identical pharmaceuticals. Under the loan agreement the participant granted the tax shelter a limited power of attorney to transfer any unapplied prepaid interest, to any authorized agent in connection with the tax shelter. The authorized agent acquires the identical pharmaceuticals on behalf of the participant from the world market for significantly lower prices than the alleged fair market value of the treatment units bought on credit. Therefore, if a participant exercises his/her option to repay the promissory note by credit certificate through the acquisition of identical pharmaceuticals, the participant would have no further obligations to the tax shelter beyond the original cash outlay. It is our opinion that no prudent person would select the option to repay by cash, requiring a cash outlay from personal resources equal to the face value of the credit certificate, knowing that the option to repay by credit certificate would not require any additional cash outlay from personal resources.

The participants rely upon the tax shelter and LogiPharm to acquire the treatment units and transfer title of the treatment units to the Organization without using or seeing the property. The participants' involvement is limited to completing and signing the documents and issuing the required cheques described above. All of the transactions were conducted on behalf of the participants by the promoter and LogiPharm. Minimal information is provided to the prospective participants as to how the treatment units will benefit the Organization, what the Organization will do with the treatment units or the activities of the Organization aside from its participation in the tax shelter arrangement. Transactions are pre-arranged and handled entirely by promoters or other pre-arranged third parties. A participant in the arrangements is merely expected to put forward a minimal investment to receive generous tax receipts in return.

As such, it is our position that there is no intention to make a "gift" within the meaning assigned at section 118.1 of the ITA. Participants in this donation arrangement are primarily motivated by the artificial manipulation of the tax incentives available rather than a desire to enrich the participating charity. In our view, these transactions, given the combination of the tax credits and other benefits received, lack the requisite *animus donandi* to be considered gifts.

Transfers not gifts – Benefit Received

Additionally, we are of the opinion that the transactions themselves lack the necessary elements to be considered gifts at law. The participants receive some form of advantage or benefit that is linked to their participation in the tax shelter program. It is clear, based upon our audit and the promotional materials of the tax shelter that there was a clear expectation of financial return with respect to the donation made to the Organization. The participants acquire treatment units on 100% credit and have the option to repay their promissory note in treatment units, not dollars. Thus, the benefit stems from the terms of repayment of the promissory note. Participants are able to repay the promissory note by delivering to the tax shelter, a credit certificate obtained by LogiPharm, by delivering to the latter, identical treatment units. The treatment units may be acquired on the international market, at amounts significantly less than the alleged fair market value of the treatment units bought on credit. The fact that the promissory note was payable by credit certificate through the purchase of identical pharmaceutical at a significantly lower price represents a material and significant benefit to the participant. It is our view that the tax shelter promoters should have been aware that the treatment units could be purchased from the Indian manufacturer for a unit price much lower than the value of $120 per treatment unit "donated" to the Organization.

The fact that a benefit was received as a result of the financing arrangements with the tax shelter and not directly from the Organization does not render the transfer a valid gift since the financing was not provided separately from the donation and the two are intricately linked. It is our opinion that since the financing forms an integral part of the donation any benefit that flows to the participant through the series of predetermined transactions would invalidate the gift. In Marechaux v. The Queen 2010 FCA 287, Evans, J.A. stated:

> "We are not persuaded that the Judge got the law wrong. Counsel cited no authority for the proposition that only a benefit provided to an alleged donor by the donee can prevent a payment to a charity from being a gift for the purpose of section 118.1. Nor do we see any principled reason in the present context for disregarding a benefit simply because it was provided by a third party, particularly where, as the Judge found in this case, the "donation" was conditional on the provision of the benefit." [Emphasis added]

In our view, it is clear that the treatment units transferred to the Organization were not gifts in the sense understood at law and that the Organization was not entitled to issue official donation receipts for the overstated value of the treatment units. In our findings, for the four years audited, the Organization has issued in excess of $164 million in donation receipts for transactions that did not qualify as gifts and for amounts clearly in excess of the treatment units' factual fair market value. It is clear from our audit and the promotional materials of the

tax shelter, that the Organization knew, or ought to have known that there was discrepancy in value of the units "donated" to it. The Organization knew, or ought to have known, that it was not entitled to issue donation receipt for these transactions.

Calculation of an Advantage

Even without reference to the common law definition of a gift, it is our position that section 248(32) of the ITA applies to these transactions as well. This legislation applies to all transactions covered by the audit period under review. In our view, the financing of the tax shelter loan, results in an advantage received in consideration[1] for the gift made to the Organization or is otherwise related to this gift[2]. As per above, the financing arrangement enabled the participant to finance 100% of the purchase price of the treatment units. The terms of the promissory note provide the option to repay the promissory note by delivering a credit certificate to the tax shelter, which the participant could obtain from LogiPharm, by delivering to the latter identical pharmaceuticals. As a result, a participant who exercises this option would not be required to make an additional cash outlay to acquire the identical pharmaceuticals. Therefore, a participant's cash outlay in respect of the cost of the pharmaceutical is zero since the treatment units were purchased on 100% credit and the terms of repayment of the financing arrangement are such that participants would not be required to incur any future cash outlay to settle their obligation. The Organization was therefore required by the ITA to reduce the value reflected on the receipts issued by the value of the advantage.

The Organization obtained an opinion from [redacted] (the Valuator) on whether the participants would receive an advantage under the then proposed subsections 248(31) and 248(32) of the ITA[3]. The Valuator provided the opinion that a cash gift of 3% of the pledged pharmaceuticals made to the Organization as a precondition to participate in the program would give rise to a small advantage to the participant. Based on this opinion, the Organization issued donation receipts for 20% of the cash gifts. The remaining 80% of the cash gift (which as a whole represents 3% of the purported fair market value of the pharmaceutical donation) was reported as an advantage on the cash donation receipts.

It is our opinion that the advantage reported on the receipt is grossly understated given that the participants' cash outlay to acquire the treatment units was zero and that they were not required under the financing arrangement to incur any additional cash outlays from their own resources to settle their debt obligation as stated above.

Paragraph 248(35)(a) of the ITA deems the fair market value of property acquired by a taxpayer under a gifting arrangement that is a tax shelter as defined by subsection 237.1(1) of the ITA to be the lesser of the fair market value (FMV) otherwise determined or the cost of the property. It is our view the FMV otherwise determined is approximately $9.69/treatment unit and the participant's actual cost of the medicine units is nil. As such, the FMV of the treatment units is deemed, by virtue of subsection 248(35) of the ITA, to be no more than zero.

[1] See sub-paragraph 248(32)(a)(i)
[2] See sub-paragraph 248(32)(a)(iii)
[3] This legislation has since been passed by Parliament and enacted into law.

Consequently the amount that the Organization was required under the ITA to record on its official donation receipts as the deemed FMV of the gift is significantly lower than what was actually recorded by the Organization.

Additionally, it appears that the Organization participated in an arrangement designed to avoid the application of subsection 248(35) of the ITA. We would note that subsection 248(38) of the ITA states that where it can be reasonably concluded that the particular gift relates to a transaction or series of transactions one of the purposes of which is to avoid the application of subsection 248(35) of the ITA, the eligible amount of the property so gifted is nil. As such, it is our view that even if the property received by the Organization is a "gift", which, as described above, given the motivation of the donors, is unlikely, the property so received by the Organization was not eligible for tax receipts reflecting a value greater than zero. Therefore of the receipts issued totalling over $164 million, only approximately $984,000 represents cash received as a condition of participation in the tax shelter. As such, the Organization has improperly issued receipts for over $164 million.

Fair Market Value

Fair market value is not defined by the ITA; however, a standard definition generally accepted is, the highest price, expressed in dollars, obtainable in an open and unrestricted market between informed, prudent parties dealing at arm's length and under no compulsion to buy or sell[4].

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

It is our position the conclusion made by Rothstein, J.A. also applies to the donation of treatment units. Based on the quantities donated, the relevant asset is considered to be the group of goods donated, not the individual items within each group. Rothstein, J.A. continues by stating it is wrong to assume that the FMV of a group of items is necessarily the aggregate of the price that could be obtained for the individual items in the group.

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

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

Based on our findings, the FMV on the donation receipts issued is not indicative of the factual FMV of the goods donated. The FMV recorded on the official donation receipts is based upon the Canadian retail market and based upon the individual pills included in one treatment unit and not the treatment unit, in its entirety, as one unit. The valuation method used by the appraiser commissioned by the tax shelter claimed that the Ontario Drug Benefit Plan Formulary (ODBF) was an appropriate standard for establishing the price of the treatment units. The ODBF generally establishes prices for individual pills bought by individual Ontario consumers for individual consumption. We are of the opinion the retail market is not the relevant market as the treatment units are manufactured, sold and distributed outside of Canada, acquired in bulk and were never intended to be used for personal consumption in Canada.

The Organization provided an opinion on the fair market value as at April 30, 2009. It is not clear if the tax shelter or the Organization was responsible for commissioning this opinion. Based on the ODBF prices, the valuator concluded that the FMV of one treatment unit was $120 which coincidently is the same price LogiPharm purportedly paid for the treatments units. A treatment unit consists of seven doses of 3-in-1 AIDS ARV Cocktail (Lamivudine-150mg, Zidovudine-300mg, Nevirapine-200 mg, one dose of Ciprofloxacin-250mg and seven doses of Fluconazole-150mg). The value attached to the Ciprofloxacin was $1.00, the ARV Cocktail was valued at $80.50, and finally the Fluconazole was valued at $38.50. The valuator's report indicated that LogiPharm provided a coupon price of $18.00 per treatment unit. This price represented an approximate 15% discount from the cash price. Conversely, a valuation was conducted by CRA valuators who valued the treatment units at $9.69 per unit.

As a result, it is our opinion that the FMV and the discounted value recorded on the official donations receipts remain overstated for the reasons above.

We note with interest that the tax shelter and the Organization relied on [redacted] to determine the FMV of the drugs used in the program. It is our understanding that the tax shelter purchased the drugs in bulk from the manufacturer in India through a series of predetermined and interconnected transactions. It would seem logical then, that the original purchase invoices for the treatment units would be used to determine the exact cost or FMV of the treatment units. Yet the Organization chose to obtain a valuation to support the alleged FMV of the drugs when purchased by a participant in the tax shelter program. It would seem that under these circumstances, the valuation obtained was not necessary.

Due Diligence

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

As above, we note a failure by the Organization to demonstrate its due diligence in verifying the authenticity of the tax shelter. By failing to do so the Organization has allowed

official donations receipts to be prepared for transactions that are not valid gifts which have resulted in the Organization issuing receipts for property it did not receive and has operated as a conduit for the tax shelter program.

Under paragraph 168(1)(d), the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the ITA and its *Regulations*. It is our position that the Organization has issued receipts otherwise than in accordance with the ITA and the *Regulations*. For each reason identified above, it appears to us that there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(d) of the ITA.

3. Failure to Issue Receipts in Accordance with the ITA

The law provides various requirements with respect to the issuing of official donation receipts by registered charities. These requirements are contained in *Regulation* 3500 and 3501 of the ITA and are described in some detail in Interpretation Bulletin IT-110R3, *Gifts and Official Donation Receipts*.

The audit revealed that the donation receipts issued by the Organization do not comply with the requirements of *Regulation* 3501 of the ITA and IT-110R3 as follows:

- Receipts issued to acknowledge goods received as a result of the Organization's participation tax shelter were not valid gifts under section 118.1 of the ITA. Under the *Income Tax Act*, a registered charity can issue official donation receipts for income tax purposes for donations that legally qualify as gifts. Our findings are explained above;
- Receipts issued to acknowledge goods received as a result of the Organization's participation the tax shelter were not independently appraised by the Organization. The Organization used the same valuation report commissioned by the tax shelter promoter as support for the values recorded on the official donation receipts issued. The Organization did not seek to obtain an independent valuation report. As above, we are of the view that the amounts recorded on the tax receipts are not reflective of the FMV of the property donated.

Additionally, we would like to inform you that the amendments to the ITA, which were introduced as part of Bill C-33 and discussed earlier in this, letter also apply to official donation receipts. As a result of the amendments, a registered charity that issues an official donation receipt that includes incorrect information is liable pursuant to subsection 188.1(7) of the ITA 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.

Pursuant to subsection 188.1(9) of the ITA, a registered charity that issues an official donation receipt that includes false information is liable to a penalty equal to 125% of the eligible amount stated on the receipt, where the total does not exceed $25,000. Where the total exceeds $25,000, the charity is liable to a penalty equal to 125% and the suspension of tax-receipting privileges as per paragraph 188.2(1)(c). We do not believe that either of these sanctions are an appropriate alternative, given the serious nature of the non-compliance identified in our audit.

Under paragraph 168(1)(d) of the ITA, the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the ITA and its *Regulation*. It is our position that the Organization has issued receipts otherwise than in accordance with the ITA and the *Regulation*. For each reason identified above, it appears to us that there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(d) of the ITA.

4. Failure to Maintain or Provide Adequate Books and Records

Subsection 230(2) of the ITA requires that every registered charity shall keep records and books of account at an address in Canada recorded with the Minister or designated by the Minister containing:

- Information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under the ITA;
- A duplicate of each receipt containing prescribed information for a donation received by it; and
- 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 the ITA.

In addition, subsection 230(4) also states "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 is 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".

Our audit revealed the books and records kept by the Organization were inadequate for the purposes of the ITA. In the course of the audit, the following deficiencies were noted concerning the Organization's records:

- The Organization did not keep/provide minutes of meetings relative to important board decisions. In particular, discussions that stipulated the basis for choosing particular intermediaries, budgeting documentation and discussions for programming, and discussions regarding the participation in the tax shelter were not documented. Per above, it is our opinion the Organization's primary purpose was to facilitate the promotion of a tax shelter donation arrangement rather than pursue its own charitable purposes.
- The Organization did not keep/provide documentation to substantiate the basis for the administration fees paid to the tax shelter. In one instance there was an invoice #2010421DK dated April 21, 2010, indicating shipping costs of $5,000; however, no supporting documentation was provided. The Organization did not provide any

agreements between itself and the tax shelter to substantiate these fees. We find this behavior inconsistent with normal business practices.

- A complete general ledger or other such document itemizing the transactions of the Organization was not provided for the 2011 and 2012 years. This prevented the auditor from accurately reconciling amounts, understanding the purpose and intent of certain expenditures and determining whether all the Organization's resources were used in charitable activities.
- It appears that personal expenses of the Organization's director Ms. Devorah Rottenberg were intermingled with the Organization's banking statements. It was unclear from the records provided if these amounts were ever repaid by Ms. Rottenberg or whether a personal benefit was calculated by the Organization on her behalf.
- Documentation to support monies sent and/or goods shipped overseas was incomplete. This prevented the auditor from determining whether the Organization maintained adequate direction and control over its resources at all times and if the goods were actually used in charitable activities.
- Bank statements, invoices and other supporting documentation appear to be missing as a complete and accurate reconciliation of amounts reported on the T3010 for the periods under audit was not possible.

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 the Organization has failed to comply with and has contravened section 230 of the ITA. For this reason alone there may be grounds to revoke the registered status of the Organization.

5. Failure to File an Accurate T3010 Information Return

Pursuant to subsection 149.1(14) of the ITA, every registered charity must, within six months from the end of the charity's fiscal period (taxation year), without notice or demand, file a Registered Charity Information Return (T3010) with the applicable schedules.

It is the responsibility of the Organization to ensure that the information provided on its T3010, schedules and statements, is factual and complete in every respect. A charity is not meeting its requirement to file an Information Return if it fails to exercise due care with respect to ensuring the accuracy thereof. Further, Budget 2012 introduced new measures to ensure that charities are accurately reporting all the activities in which they engage. The CRA was granted the authority to suspend the tax-receipting privileges of a charity that provides inaccurate or incomplete information in its annual information return until the charity provides the required information.

Given the serious deficiencies previously identified in this letter with respect to the adequacy of the books and records or lack thereof, it is highly probably that the T3010 returns filed by the Organization for the audit period are inaccurate and do not provide an accurate picture of the Organization's financial transactions in relation to its charitable activities. The CRA auditor was unable to identify and/or quantify all the specific instances of inaccurate

filings due to the unreliability and incompleteness of the records provided but a review of the T3010's filed with the CRA reveal that the Organization:

- Failed to report total tax-receipted tax shelter gifts on its information return. By way of example, in 2012 and 2010, the Organization failed to report the $23,986,689 and $47,003,250 respectively as tax-receipted donations at line 4500, *Total eligible amount of all gifts for which the charity issued tax receipts* of the T3010 but rather reported the amounts on line 4530, *Total other gifts received for which a tax receipt was* ***not*** *issued by the charity*. Additionally, in 2011, the Organization reported failed to report $57,408,061 as tax receipted gifts instead reporting this amount on line 4630, *Total non tax-receipted revenue from fundraising*. The Organization did report its total tax-receipted tax shelter gifts in 2009 on line 5000.
- Failed to complete section C4 and Schedule 2 of the T3010 regarding activities and projects carried on outside Canada. If the Organization had actually distributed the pharmaceuticals outside Canada as it claims, as per its participation in the tax shelter program, it should have completed this section of the T3010 and Schedule 2 completely and accurately.
- Failed to complete lines 5000 to 5100 on the T3010 regarding the breakdown of the expenditures.
- Failed to provide complete information about its Directors on worksheet T1235, *Directors/Trustees and Like Officials Worksheet* and about gifts made to qualified donees on T1236, *Qualified Donees Worksheet/Amounts Provided to Other Organizations*.
- Misrepresented its on-going programs in Section C. The T3010 returns filed consistently report the Organization's on-going programs as "Support[ing] an orphanage in Jinja, Uganda through an agency agreement" which does not include its main program, the promotion and facilitation of a gifting tax shelter arrangement.

Under paragraph 168(1)(c) of the ITA, the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it fails to file a charity information return as an when required under the ITA. It is our position the Organization has failed to comply with the ITA by failing to file an accurate information return. For this reason there may be grounds to revoke the registered status of the Organization under paragraph 168(1)(c).

<u>The Organization's Options</u>:

a) No Response

You may choose not to respond. In that case, the Director General of the Charities Directorate may give notice of its intention to revoke the registration of the Organization by issuing a Notice of Intention 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 Organization, the Director General of the Charities Directorate will decide on the appropriate course of action, which may include:

- no compliance action necessary;
- the issuance of an educational letter;
- resolving these issues through the implementation of a Compliance Agreement; or
- the Minister giving notice of its intention to revoke the registration of the Organization by issuing a Notice of Intention 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,

Tracey McKelvie
Audit Advisor
Charities Directorate
320 Queen Street, 7th Floor
Ottawa ON K1A 0L5

Telephone: [redacted]
Facsimile: (519) 585-2803

cc: Charles Rotenburg
c/o Doris Law Office
222 Somerset St., West
2nd Floor,
Ottawa, ON K2P 2G3

DRACHE APTOWITZER LLP

Adam Aptowitzer
226 MacLaren St.
Ottawa, Ontario
K2P 0L6

adamapt@drache.ca
613.237.3300 x 12
613.237.2786
www.drache.ca

November 4, 2014

SENT BY FAX: (519) 585-2803

Canada Revenue Agency
Audit Division
Charities Directorate
320 Queen Street, 7th Floor
Ottawa, ON K1A 0L5

"PRIVATE & CONFIDENTIAL"

ATTENTION: Ms. Tracey McKelvie, Audit Advisor

Dear Ms. McKelvie:

Re: Canadian Friends of Pearl Children
Our File #M1481
Your File #3038292

We are the solicitors for Canadian Friends of Pearl Children (the "Charity"). Attached please find an authorization to that effect. We are writing in response to the administrative fairness letter ("AFL") from the Canada Revenue Agency ("CRA") dated September 3, 2014. The AFL concerned the audit ("Audit") of the Charity encompassing the period from June 1, 2008 to December 31, 2012 ("Audit Years"). A copy of the AFL is attached as Schedule A of this submission.

We have reviewed the allegations in the AFL, and we are concerned that CRA has come away from the Audit with a significant misunderstanding of the Charity and its activities. The CRA auditor did not in fact review all relevant information and supporting documents to demonstrate the exclusively charitable nature of the Charity's programs and its consistent and ongoing compliance with the *Income Tax Act* (the "Act"). The Charity is and has always been committed to full compliance with the Act, and each of its programs is for a recognized charitable purpose of aiding individuals in Uganda. The Charity has not committed any violation of the Act that would justify CRA's proposal of revocation.

This submission seeks to provide CRA with a complete picture of the Charity's charitable programs and to address each specific allegation of non-compliance in the AFL. This supplementary information demonstrates that CRA's allegations and concerns in the AFL are generally unfounded and that any instances of non-compliance can be adequately addressed with a compliance agreement.

1. **Background to the Charity**

The Charity since its inception has been dedicated to improving the quality of life of Ugandan orphans, disadvantaged children, and impoverished families through the provision of lifesaving pharmaceuticals, mosquito nets and life straws and through their work with the communities towards sustainable development. The aid that the Charity has supplied over the years has been welcomed and appreciated by the Ugandan government, local Catholic Dioceses and local community organizations. The Charity was registered in 2008 and since that time has conducted activities substantially similar to its current programs.

The Charity has never been audited before and has always ensured that its activities were exclusively charitable and ensured that it, and any foreign contractors it worked with, conducted themselves in accordance with their charitable purposes.

2. **Current Audit and Allegations of Non-Compliance**

The CRA conducted its audit of the Charity during the period of June 1, 2008 to December 31, 2012. The main issue on which the AFL focuses is the relationship the Charity has with MissionLife Financial Inc., a registered tax shelter. The AFL makes the following basic allegations:

a) the Charity does not operate for purely charitable purposes as the majority of the effort and resources of the Charity are devoted to participating in a tax planning donation arrangement;
b) the Charity does not exercise sufficient direction and control over its resources in respect to the activities it conducts outside of Canada;
c) the Charity did not accept valid gifts from participants in the MissionLife Financial Inc. tax shelter;
d) the Charity failed to issue proper donation receipts that were in compliance with *Regulation* 3501 of the Act; and
e) the Charity failed to maintain or provide adequate books and records and failed to file accurate T3010 Information Returns.

The Charity disagrees with each of these allegations. Participation in a tax shelter is not in of itself illegal. Fundraising has always been understood as an exclusion from the general requirement that a charity operate for purely charitable purposes. In this light, the implicit contention that fundraising is an unstated charitable purpose of every charity is, respectfully, disingenuous. The Charity's involvement with MissionLife Financial Inc. was limited to paying administrative fees and at no time did the Charity participate in the promotion of the tax shelter. Given the Charity acted as a passive recipient of the donated money, any involvement in the tax shelter falls outside of its stated activities.

Our response to the allegations in the AFL are as follows:

(a) The Charity does not operate for purely charitable purposes as the majority of the effort and resources of the Charity are devoted to participating in a tax planning donation arrangement.

i. The AFL, on page 4, states that the Charity is "an integral part of the arrangement being paid to issue tax receipts and circulate funds (as directed) in an *artificial manner* to facilitate and lend legitimacy to the overall arrangement." Even if this were actually the case the charity is required to maintain conformity with the *Income Tax Act*. The statement above does not contend that the Charity offended any provisions of the Act.

ii. CRA's Guidance CG-013 "Fundraising by Registered Charities" states that a Charity is entitled to hire an outside fundraiser to help in raising funds for its activities. The Charity paid MissionLife Financial Inc. as a fundraiser and paid it for administrative work that was completed on the Charity's behalf. The Auditor states on page 4 of the AFL that the Charity "structured its financial affairs for the private benefit of the tax shelters, its promoters and its directors" and had a "proportionally high level of involvement and collusion in these financial arrangements". It is unclear from this statement what private benefit the Auditor is referring to and what offence the Charity has committed and we therefore request further clarification.

(b) The Charity does not exercise sufficient direction and control over its resources in respect to the activities it conducts outside of Canada.

CRA's Guidance CG-002 "Canadian Registered Charities Carrying Out Activities Outside Canada" clearly states that CRA may consider a charity to be carrying out its own activities by transferring certain resources to a non-qualified donee if, at a minimum, the following three conditions are met:

a) the nature of the property being transferred is such that it can reasonably be used only for charitable purposes (for example, **medical supplies like antibiotics and instruments, which will likely only be used to treat the sick**, or school supplies like textbooks, which will likely only be used to advance education);
b) both parties understand and agree the property is to be used only for the specified charitable activities; and
c) based on an investigation into the status and activities of the non-qualified donee receiving the property (including the outcome of any previous transfers by the charity), it is reasonable for the charity to have a strong expectation that the organization will use the property only for the intended charitable activities.

i. <u>*Saph Integrated Training Centre*</u>

As was known to the Auditor, the pharmaceuticals that the Charity received as part of the program were insulin and medication used for the treatment of AIDS; property whose only use would be of a charitable nature. In mid-2010, the Charity was in possession of donated AIDS medication and was having difficulty with the National Drug Authority in Uganda. Saph Integrated Training Centre, a community based organization in Kampala, assisted in negotiating with the NDA and in distributing the medications, as the Charity was unable to return to Uganda for that particular distribution. Given that the distribution dealt only with AIDS medication, there was no

need for a written agreement between the Charity and Saph Integrated Training Centre. Even so, the Charity did set out to ensure that an Agency Agreement was entered into (please note that our office is waiting for an executed copy of the Agency Agreement from the Charity and will forward it to you once received). Furthermore, given that the only donations were AIDS medications, no separate bank account would have been needed, as it would have been impossible to set up bank accounts for these types of donations.

ii. [redacted]

In regards to the work done with [redacted], an Agency Agreement was also entered into (we are currently seeking an executed copy of the Agency Agreement). Such an Agreement is necessary to ensure the Charity had direction and control over the use of the donated funds. The funds in this Agreement were used for the supply of bunk beds to the primary school in the Abayudaya community in Uganda and to run a students' lunch programme. Once we have secured an executed Agency Agreement we will provide additional comments.

iii. *Pearl Children Care Centre*

The work accomplished with the Pearl Children Care Centre was done by volunteers of the Charity directly, who flew to Uganda specifically to do this work. Given this, they would have had complete control over the funds and resources of the Charity at all times, thereby eliminating the need for a written agreement. Also, given that the only donations through the Centre were medicines, no bank account would be needed. We would imagine, that as your audit was rather detailed, evidence of this should be within your files. However, if not we would be happy to provide it for you.

(c) *The Charity did not accept valid gifts from participants in the MissionLife Financial Inc. tax shelter.*

i. The AFL states that both the cash and in-kind donations received by the Charity from participants in the program are not valid gifts under section 118.1 of the Act as they lacked the requisite *animus donandi*. It is our position that the Charity was under no obligation to review the motivation of the donor and whether or not a donor had donative intent. The Charity did not participate in the promotion of the tax shelter and was only involved with MissionLife Financial Inc. when donors chose to donate pharmaceuticals to the Charity. The Charity was at no time part of the "mass-marketed donation arrangements promising participants that they will be able to claim tax credits for charitable donations far in excess of the expenditures actually made".

The CRA's own Guidelines for the Application of Intermediate Sanctions imply that the punishment to a charity must be commensurate with its culpability. We would submit that where the Charity is simply a recipient of donations rather than the perpetrator of a fraud (not that the tax shelter in question was a fraud) there is no justification for the revocation of the Charity's status.

ii. The Auditor also states that the transactions lacked the necessary elements to be considered gifts at law, as the participants received some sort of advantage or benefit for their participation in the tax shelter program. As a result, the Auditor states that these transactions should be classified as *transfers* of the treatment units to the Charity and not as gifts to the Charity. Again, we submit that since the Charity was not a participant in the tax shelter itself, but only received the donated pharmaceuticals from donors, the Charity had no involvement in what the tax shelter promoters "ought" to have known, and should not, as a result of the donated gifts they received, be punished for any errors that the tax shelter may have committed.

iii. The Fair Market Value (FMV) of the pharmaceuticals donated to the Charity was obtained from [redacted]. Per CRA policy, when any gift-in-kind is donated to a charity a valuation must be completed on that item. The Charity completed its due diligence and hired the evaluator to determine the FMV of the donated medicines. It is completely unfair of the Auditor to assume that the Charity would have any knowledge of the price of the medications in the Canadian or world markets. Furthermore, given the Charity was not directly involved with the tax shelter, the Charity had no knowledge of who or where the tax shelter purchased their medications from, and would have had no access to any original purchase invoices that the tax shelter may have had. Even if the Auditor is correct that the FMV of the pharmaceuticals should have been lower than stated, the error was entirely due to the Charity's reliance on the knowledge of the evaluator, and if anything, should be an issue for a compliance agreement and not revocation.

(d) The Charity failed to issue proper donation receipts that were in compliance with Regulation 3501 of the ITA.

The AFL states that the Charity failed to get an independent evaluator for the gifts-in-kind it received. We submit that the Charity paid for and received a proper evaluation per CRA's definition of fair market value, set out in CRA's Summary Policy CSP-F02 "Fair Market Value". The evaluation report was independent of the donor as required. The Charity independently paid the evaluator to complete the evaluation on the FMV, and even if they should have known that the same evaluator was used by the tax shelter, it should not be a reason dismiss the FMV numbers they were provided. As a result, the donation receipts issued to donors for the gifts-in-kind do comply with *Regulation* 3501 of the Act and IT-110R3. The Charity should not be subject to any penalties pursuant to subsection 188.1(7) and 188.1(9) of the Act and should not have its receipting privileges suspended.

(e) the Charity failed to maintain or provide adequate books and records and failed to file accurate T3010 Information Returns.

i. The Auditor states in the AFL that the books and records kept by the Charity "were inadequate for the purposes of the ITA". As a result of the deficiencies listed on pages 15 and 16 of the AFL, the Auditor has suggested that the Charity has failed to comply with, and has contravened, section 230 of the Act. We would like to remind you that

the Federal Court of Appeal stated in *Prescient Foundation v. M.N.R.* 2013 FCA 120, that "the registration of a charity that fails to maintain proper records should, therefore, only be revoked on this ground in case of material or repeated non-compliance." The Charity has not been cited before for non-compliance of maintaining proper books and records, and although the Charity may still need to submit more documentation to CRA in order for a proper reconciliation of accounts, there is no basis in law to revoke the Charity's registration.

ii. In respect to the T3010 Information Return, this issue, if our above submissions are accepted, will no longer be relevant or can be addressed in a compliance agreement.

3. **Revocation is Inappropriate**

This submission demonstrates to CRA that the Charity has maintained full direction and control over all of its funds, at no time participated in the promotion of a tax shelter and has not committed any instances of serious or wilful non-compliance. Furthermore, the proposal of revocation is based on a misunderstanding of the Charity's involvement with MissionLife Financial Ltd. and is therefore inappropriate. The Charity has not engaged in any wilful misconduct and there is no reason to believe that the Charity is unwilling or unable to bring itself into compliance. Given that the Charity was not involved in promoting a tax shelter, we submit that revocation for any other reason would be unfair and inconsistent with CRA's published policies on the application of the compliance tools in the Act.

The Charity remains committed to full compliance with the Act. If upon a more complete understanding of the facts, CRA continues to have concerns in regards to the Charity's activities outside of Canada or the maintenance of its books and records, the Charity would be appreciative of any guidance that CRA may wish to provide and may be prepared, if necessary, to enter into a compliance agreement.

Once you have had an opportunity to review this submission, we would suggest that either an in-person meeting, or telephone conference call be arranged to discuss any additional questions or concerns that you may still have about the Charity as a result of the Audit, the AFL or this submission. In addition, should CRA have any further concerns, the Charity would request the opportunity to address these concerns by further written communications.

Yours Truly,

Adam Aptowitzer

Canadian Friends of Pearl Children
Comments on Representations of November 4, 2014

Based on the Canada Revenue Agency's (CRA) audit of Canadian Friends of Pearl Children (the Organization), and our review of all the documentation provided to us, we remain of the opinion that the Organization has primarily operated for the purpose of furthering a gifting tax shelter, MissionLife Financial Inc. (MLF) by agreeing to accept alleged gifts of cash and pharmaceuticals from participants and to act as a receipting agent for this donation arrangement. Under this arrangement, the Organization purportedly obtained over $163 million of pharmaceuticals and over $4 million in cash during the periods audited. The Organization purportedly distributed the pharmaceuticals as part of its own charitable programs and issued official donation receipts to the participants as directed by the tax shelter promoter; however, it failed to provide adequate documentation to demonstrate that it had control over this program at all times. The Organization issued millions of dollars in tax-receipts for the supposed donations which are, in our opinion, overvalued. Furthermore, the Organization failed to maintain adequate books and records, failed to file an accurate information return and failed to issue receipts in accordance with the Act. As described in the balance of this letter, and in our previous letter dated September 3, 2014, the Organization has failed to remain compliant with, and is in serious breach of, the requirements for continued registration under the *Income Tax Act*. As a result, its registration should be revoked.

The representations state that CRA has come away from the audit with "a significant misunderstanding of the [Organization] and its activities" and that the auditor did not review all the relevant information and supporting documentation. The CRA auditor reviewed all documentation and representations provided to it by the Organization during the course of conducting this review in addition to conducting additional research in an attempt to fully understand the complete activities and scope of the Organization. The November 4, 2014 representations did not include any new or additional information for us to consider, furthering the auditor's understanding of the Organization's activities. As such, it remains our position that the Organization has facilitated a gifting tax arrangement designed to avoid the application of the provisions of the Act and designed to create improper tax results. In our view, the Organization has operated primarily for the purpose of promoting a tax shelter program as the Organization has not shown or otherwise indicated it is conducting any other activities aside from the small portion of gifts made to qualified donees. The Organization was an integral part of the arrangement, being paid to issue tax receipts and circulate funds (as directed) in an artificial manner to facilitate and lend legitimacy to the overall arrangement. To our knowledge, the Organization's participation in this gifting tax shelter arrangement continues to date.

Background to the Organization

Your submission claims that "the [Organization] since its inception has been dedicated to improving the quality of life of Ugandan orphans, disadvantaged children, and impoverished families through the provision of lifesaving pharmaceuticals, mosquito nets and life straw and through their work with the communities towards sustainable development." Our audit did not reveal, nor was adequate documentation provided to establish this claim as fact. Minimal

documentation was submitted to support that any activity was carried out by the Organization other than the facilitation and promotion of the MLF tax shelter and some gifting to qualified donees. The majority of the items reviewed concerning programs in Uganda were directly linked to the purported distribution of pharmaceuticals obtained through the MLF program. While there was mention of other activities in the written reports of the Organization's director, Ms. Deborah Rotenberg, it was unclear if these activities were those of the Organization, another entity or her personal endeavours. Additionally, there was a serious absence of documentary evidence provided supporting that the described activities in said reports were actually those of the Organization.

As such, it remains clear from our audit that the Organization has operated for the purpose of furthering a tax shelter arrangement by agreeing, for a fee, to act as the receipting agent in the arrangement, accepting cash payments of which nearly 80% was returned to the promoter and highly overvaluing the pharmaceuticals it reportedly received. As detailed in our previous letter, the overall conduct of the Organization in this arrangement demonstrated that the Organization operated for the purpose of promoting and supporting a tax shelter arrangement and operated for the benefit of the tax shelter promoters. Beyond issuing receipts and transferring funds as directed by promoters, the Organization has not demonstrated that it conducts any other activities. The representations submitted do not alter this finding.

Current Audit and Findings of Non-Compliance

We understand that you disagree with our position as outlined in our previous letter and are of the opinion that "participation in a tax shelter is not of itself illegal". While this may be true, it has been CRA's consistent and well published opinion that promotion of a tax shelter or donation arrangement is not charitable at law. In fact, the Organization was specifically advised in this regard, in a letter dated March 11, 2010, whereby it was explained that the CRA was aware of the Organization's participation in the MissionLife Inc. tax shelter. The letter went on to outline, in general, CRA's concerns with respect to registered charities participating in these types of arrangements. The letter provided several references to CRA issued tax alerts it provided to donors, and to CRA produced technical publications that outline our position. Further, the Organization was also advised that the CRA had committed, and continues to uphold this commitment, that it will audit all participants in such arrangements.

You further comment that "fundraising has always been understood as an exclusion from the general requirement that a charity operate for purely charitable purposes." You also comment that "the [Organization's] involvement with MissionLife Financial Inc. was limited to paying administrative fees and at no time did the [Organization] participate in the promotion of the tax shelter. Given that the [Organization] acted as a passive recipient of the donated money, any involvement in the tax shelter falls outside of its stated activities."

i. Tax shelter participation as fundraising

With respect to fundraising, as is stated in our publication titled CG-013, *Fundraising by Registered Charities,* "The Canada Revenue Agency (CRA) recognizes that registered charities in Canada often depend on donations to carry out their charitable activities, and that appropriate fundraising activities are often necessary for the sustainability of the charitable

sector. For many charities, this means that a portion of their resources (including time, property, and money) will be used for fundraising to support their charitable work. While recognizing the necessity of fundraising, the CRA expects charities to be transparent and conduct all fundraising within acceptable legal parameters."

As a way of measuring whether or not a fundraising activity is acceptable, within the legal parameters mentioned above, this publication further outlines when fundraising activities will not be acceptable. When the fundraising activity is a purpose of the charity (a collateral, non-charitable purpose); delivering a more than incidental private benefit (a benefit that is not necessary, reasonable, or proportionate in relation to the resulting public benefit); illegal or contrary to public policy; deceptive; or an unrelated business it is generally not an acceptable fundraising activity.

As stated in our previous letter, it remains our view that a collateral purpose, if not the primary purpose of the Organization is, in fact, to support and promote this "fundraising" activity. Our position is overwhelmingly supported by the documentary evidence provided to us during the audit. While you have contended that the Organization's participation in the MLF program is merely a "fundraising activity", your representations did not provide any additional documentation to support this notion, or change our position.

Further, you stated in your representations that "the [Organization] paid MissionLife Financial Inc. as a fundraiser and paid it for administrative work that was completed on the [Organization's] behalf". We find this view problematic. Again, as stated above and in our publication, a fundraising activity must be conducted within legal parameters, one of which is that it must not be illegal or contrary to public policy. Although tax shelter participation may not be illegal, as discussed earlier in this letter, we are of the opinion that the Organization's relationship with MLF in this regard is contrary to public policy as audit evidence suggests that the amounts collected under this relationship were used primarily to pay associated costs that were unreasonable, unjustifiable, and not proportionate to the amount of money raised for charitable purposes based on society's "fundamental interest in ensuring that monies from the general public for which deductions create a loss in tax revenue will go to benefit the intended beneficiary".[1]

We bring to the Organization's attention that the Courts have ruled against the validity of contracts between charities and professional fundraisers where, in the court's opinion, there has been a breach of public policy. *Innovative Gifting v. House of the Good Shepherd et. al. [OSC 2010]* is the most recent demonstration of the Court's willingness to intervene in private contractual matters between charities and fundraisers to ensure that the public interest is protected. For example, Justice Roberts reasoned:

> "The agreements are also repugnant on the ground that they are against the public interest because monies raised for charitable purposes do not go to the intended beneficiaries. The applicant does not disclose its fees on its website. A reasonable person would expect that there would be some administrative cost associated with charitable fund-raising and that the cost would be proportionate to the amount of

[1] Ontario (Public Guardian and Trustee) v. Aids Society for Children (Ontario), supra note 7 at paras. 51-56; Innovative Gifting Inc., supra note 19 at paras. 19-23; Public Guardian and Trustee (Ont.) v. National Society for Abused Women and Children, supra note 20 at paras. 25-27.

> money raised for charitable purposes. The applicant's demanded fees of 90 per cent of the amounts raised cannot be accepted as reasonable."

In keeping with the spirit of the aforementioned court decision, it is our view the Organization demonstrated a willingness to enter into contracts that are a breach of public policy. Our audit concluded that the Organization knowingly entered into an agreement with a tax shelter promoter whereby it agreed to transfer to the promoter nearly 80% of its cash received under this program in addition to issuing official donation receipts for pharmaceuticals that were grossly overvalued.

Further, we note that the directors of not-for-profit and charitable organizations have a fiduciary duty of care to maintain and protect the assets of the organization that they represent. In fact, the courts have found directors of a charity to be in breach of their fiduciary duty when they enter into improper contracts, thereby failing to adequately manage and protect the charitable property entrusted to them[2]. Under the Act, an organization is obliged to devote all its resources, including assets and property entrusted to them, to its own charitable activities in support of the charitable purposes under which it was formed. Engaging in activities that require an organization to use its assets for any other purpose, including entering into contracts that are contrary to public policy, may jeopardize an organization's registered charitable status.

For these reasons, we cannot accept your argument that the relationship that the Organization has with MLF is an acceptable fundraising arrangement that is generally permitted by CRA.

ii. Promotion of a Tax Shelter

Your representations suggest that our position, as outlined in our September 3, 2014 letter, whereby the CRA alleges that the Organization is "an integral part of the arrangement being paid to issue tax receipts and circulate funds (as directed) in an artificial manner to facilitate and lend legitimacy to the overall arrangement" is false. You also suggest that even if this were true, it is your opinion that the above statement suggests that the Organization's actions do not "offend any provisions of the Act".

We do not doubt that the members of the Organization *themselves* did not promote the tax shelter scheme. However, we note that the Organization reported and incurred fundraising fees payable to MLF. MLF is responsible for the promotion and solicitation of the participants who make gifts to the Organization. As such, we disagree with your characterization that the Organization does not promote the program. In fact, it appears that the Organization is, by contracting MLF for fundraising, clearly involved in the promotion of this program.

Nonetheless, our view that the Organization operated for the purposes of promoting a tax shelter arrangement is not solely based on the Organization's part in the *solicitations*. As detailed in our previous letter, it is our view that the overall conduct of the Organization in this arrangement demonstrates that the Organization operated to promote and support a tax shelter arrangement and is operated for the benefit of the tax shelter promoters.

---

[2] Refer to cases The AIDS Society for Children (Ontario) v. Public Guardian and Trustee [2001] O.J. No. 2170 and Public Guardian & Trustee v. National Society for Abused Women and Children [2002] O.J. No. 607 (QL)

As explained in our letter, operating for the purpose of promoting a tax shelter is not a charitable purpose at law. It remains our view that the Organization is promoting the MLF donation arrangement as its primary purpose as demonstrated through the documentation presented during the audit. As such, it appears that the Organization does not meet the test at section 149.1 of the Act for a "charitable organization", because a part of their resources has been devoted to activities which further the non-charitable purpose of promoting a tax shelter. Further, it is our opinion that the series of transactions described in our previous letter and which you refer to above, in which the Organization has overwhelmingly played a key role in facilitating, were designed to reduce taxes owing by the participants in such a manner that they are inconsistent with the overall spirit of the law. Therefore, it is our opinion that this series of transactions are part of an abusive arrangement that violates the spirit and intent of the law. As also previously explained in our letter, registered charities and registered Canadian amateur athletic organizations participating in abusive or fraudulent arrangements will be subject to revocation and/or monetary penalties.

iii. Activities Outside Canada

In your representations you refer to a specific set of criteria that is outlined in CRA's Guidance CG-002, *Canadian Registered Charities Carrying Out Activities Outside Canada* where CRA will consider an organization to be carrying out its own activities provided said criteria are met:

> •The nature of the property being transferred is such that it can reasonably be used only for charitable purposes (for example, medical supplies like antibiotics and instruments, which will likely only be used to treat the sick, or school supplies like textbooks, which will likely only be used to advance education); please note that transfers of money are not acceptable, and always require ongoing direction and control.
> •Both parties understand and agree the property is to be used only for the specified charitable activities.
> •Based on an investigation into the status and activities of the non-qualified donee receiving the property (including the outcome of any previous transfers by the charity), it is reasonable for the charity to have a strong expectation that the organization will use the property only for the intended charitable activities.

It should be noted here that your submission did not include the statement from this guidance that states [emphasis added] "**In certain limited circumstances**, the CRA may consider a charity to be carrying out its own activities by transferring certain resources to a non-qualified donee. The CRA will take into account all relevant circumstances when determining this, but at a minimum, **the following three conditions must all apply**".

While we are not disputing that some of the activities the Organization has engaged in during the audit period may have met the three criteria listed above, there are several other conditions and parameters within this guidance not cited here that were not met. These specific instances were outlined in our letter of September 3, 2014.

This guidance provides very clear information on the requirements an organization that chooses to carry out activities outside Canada must meet to fulfill its charitable purposes.

Again as stated in our previous letter, the Organization has failed to demonstrate through documentary evidence provided during our audit that it maintained the necessary direction and control over its resources with respect to these activities as is required to maintain continued registration.

a) Staph Integrated Training Centre

We disagree with your position that the Organization did not need to have a written agreement for its dealings with Staph Integrated Training Centre (Staph). We also disagree with your claim that the Organization was only distributing its pharmaceuticals, therefore it was precluded from doing so under a written agreement or with the proper controls. The guidance clearly states that "The Canada Revenue Agency (CRA) requires that a charity take all necessary measures to direct and control the use of its resources when carrying out activities through an intermediary. When carrying out activities through an intermediary, the following steps are strongly recommended:

> •Create a written agreement with the intermediary, and implement its terms.
> •Communicate a clear, complete, and detailed description of the activity to the intermediary.
> •Monitor and supervise the activity.
> •Provide clear, complete, and detailed instructions to the intermediary on an ongoing basis.
> •Arrange for the intermediary to keep the charity's funds separate from its own, and to keep separate books and records.
> •Make periodic transfers of resources, based on demonstrated performance.
>
> A charity must maintain a record of steps taken to direct and control the use of its resources, as part of its books and records, to allow the CRA to verify that all of the charity's resources have been used for its own activities"

The copy of the agreement provided during the audit between the Organization and Staph did not contain all of the elements which could demonstrate that the organization exercised a degree of direction and control of the activities as was outlined in our previous letter. Further, there was little to no documentary evidence provided during the audit to demonstrate that the elements that were listed in the agreement (although not complete) were followed, that the Organization monitored the activity or ever provided clear and detailed instructions to Staph on an ongoing basis. The auditor did review evidence that suggested cash funds were sent to Staph in addition to pharmaceuticals[3], contrary to what you attest in your submission. However, there was no evidence that demonstrated that the Organization segregated its funds from those of the agent, thus protecting them from misuse.

Despite the fact that Staph may have aided the Organization with its difficulties of having the pharmaceuticals cleared for admittance by the National Drug Authority in Uganda and purportedly distributed the same pharmaceuticals once cleared, the Organization should have

[3] Your representations indicate that insulin was included as part of the pharmaceuticals that were obtained by MLF and purportedly distributed by the Organization. Neither the documentation provided nor our research on the MLF program included any indication that insulin was part of the pharmaceuticals purportedly distributed but rather only the Aids ARV Cocktail, which does not include insulin.

maintained the appropriate documentary evidence to support that it controlled the use of its resources at all times. No such documentation was provided at the time of the audit or in any subsequent submission made by the Organization.

b) [redacted]

Again, the copy of the agreement provided during the audit between the Organization and [redacted] did not contain all of the elements which could demonstrate that the organization exercised a degree of direction and control over the activities as was outlined in our previous letter. Further, there was little to no documentary evidence provided during the audit to demonstrate that the elements that were listed in the agreement (although not complete) were followed, that the Organization monitored the activity or ever provided clear and detailed instructions to [redacted] on an ongoing basis. Further, there was no evidence that demonstrated that the Organization segregated its funds from those of the agent, thus protecting them from misuse.

c) Pearl Children Care Centre

You suggest in your submission that the work done with the Pearl Children Care Centre was done by volunteers of the Organization who travelled directly to Uganda specifically for this purpose. However, at no point during the audit or in subsequent submissions was documentary evidence provided to suggest that anyone other than the Ms. Rotenberg travelled to Uganda on behalf of the Organization. Further, the documents presented in this regard suggest that Ms. Rotenberg was travelling as part of a monitoring trip and not necessarily to carry out the activities of the Organization.

You further suggest that as the only resources of the Organization that would have been used at this site were pharmaceuticals, this negated the need for an agreement or documentary evidence to support their use. We respectfully disagree, given that, as outlined above, charities must be able to demonstrate ongoing direction and control over their resources.

Lastly, the documentary evidence that was provided during the audit suggested that there were several other transfers of cash funds to individuals located in Uganda and Kenya. However, beyond the record of the actual transfer of the cash, there was no documentation provided that supports the purpose or the use of these funds.

iv. Gifts

Our position remains that the cash donations received by the Organization from participants are not valid gifts under section 118.1 of the Act due to the fact that the primary motivation of the participant was not to enrich the Organization, but through a series of artificial transactions and a minimal monetary investment, to make a profit through the tax credits so obtained. Participants in this arrangement fully intended to recoup the full amount of their "donation" plus an additional return. The amount of this return depends on the participant's province of residence. The promotional material provided during our review by the Organization promises participants the opportunity to earn a profit as a result of making a "donation". It is pre-arranged, as a part of this scheme, that the Organization will "receive" the

property and issue the receipts. It is clear that the primary motivation of the participants is to profit from the charitable tax incentive and not to donate to charity.

In your letter, you submit that "the [Organization] was under no obligation to review the motivation of the donor and whether or not a donor had donative intent". It **is** incumbent on the Organization to determine whether a transaction qualifies as a gift at law before issuing a tax receipt. It is our opinion that arrangements that are mass-promoted promising participants that they will be able to claim tax credits for charitable donations far in excess of the expenditures actually made lack the requisite *animus donandi* (donative intent) for the transactions to be considered gifts.

We further note that the Organization was fully aware of this arrangement and was an active participant in the scheme. The Organization signed a "Charity Partnership Acknowledgement" confirming its participation and agreeing to issue receipts for cash and property received in this program. The Organization had no interaction with the participants beyond the issuance of receipts for the program nor did it ever see or physically receive the purported pharmaceuticals donated to it at the time of the donation. All pharmaceuticals were allegedly shipped from a holding warehouse in another country directly to the recipient countries in Africa.

In the years under review, the Organization has issued receipts totalling more than $167 million. Through the method this arrangement was promoted, the promotional materials provided to it and its own participation in this arrangement the Organization knew, or ought to have known, the participants motivation in this arrangement.

v. Fair Market Value – Improper Receipts

As stated in our letter of September 3, 2014, it was unclear as to whether the Organization or the tax shelter promoter was responsible for commissioning the [redacted] opinion with respect to the fair market value of the pharmaceuticals purportedly procured and used in the donation arrangement.

During the audit, the Organization failed to provide documentary evidence that it independently selected and paid for an appropriate valuation of the pharmaceuticals that it purportedly obtained through its participation in the MLF tax shelter and subsequently receipted for. There was no evidence in the financial records that funds were used to pay [redacted] for such a service. There was also no evidence in any of the board minutes or correspondence of the Organization to suggest that it had considered any other valuation service than the one provided by the MLF tax shelter. In the absence of such evidence, it is reasonable to conclude that the Organization did not exercise the appropriate due diligence required to obtain an independent appraisal to determine the fair market value of the goods it wished to issue official donation receipts for prior to their issuance, as required under Regulation 3501 of the Act.

As such, it remains our opinion that the Organization failed to demonstrate that it performed the necessary due diligence required when issuing receipts for property receipted by it. The CRA conducted a valuation of the goods in question and determined the fair market value of the pharmaceuticals to be $9.69 per treatment unit, substantially less than $120 per treatment

unit as determined by the [redacted] opinion. As such, it appears that the pharmaceuticals were overvalued, and as a result, we remain of the opinion that the Organization has improperly issued official donation receipts.

vi. Books and Records and Failure to File an Accurate Information Return

Your representations suggest that in order for the CRA to revoke one's charitable status for failure to comply with and the contravention of section 230 of the Act, the Organization must be cited more than once for this type of non-compliance. The Organization also relied on the decision of the Federal Court of Appeal in *Prescient Foundation v. M.N.R 2013 FCA 120.* We have the following comments.

In this decision, Mainville J.A. sets two criteria for revocation of a charity when section 230 has been contravened:

> [47] For the revocation of a registration to be reasonable under this ground, the Minister must (a) clearly identify the information which the registered charity has failed to keep, and (b) explain why this breach justifies the revocation of the charity's registration. It is not sufficient to simply state that the charity has failed to keep proper records. Rather, the Minister must clearly set out the particulars of the alleged breach.

Our letter of September 3, 2014, contained a comprehensive list of the types of records that were missing and/or not provided during the audit. Further this same listing also included several explanations as to why these types of records were necessary and what function the provision of these records would fulfil in the course of our audit. In each instance, the auditor clearly stated how this failure to provide the specified records prevented her from accurately assessing the grounds for the Organization's continued registration. As a result it is our opinion that the criteria as outlined by Justice Mainville for considering revocation of the Organization for failing to comply with section 230 of the Act has been met.

As further cited in your representations, a key point in this decision is that CRA does have other, less drastic measures available to it when dealing with non-compliance with respect to inadequate books and records and is summarized as follows:

> [51] Indeed, the Minister has less drastic administrative corrective measures or intermediate sanctions available to him, such as formal notices, compliance agreements, or the suspension of a charity's tax receiving privileges for one year under paragraph 188.2(2)(a) of the Act. The registration of a charity that fails to maintain proper records should, therefore, only be revoked on this ground in case of material or repeated non-compliance. The CRA itself takes this approach in its "Guidelines for applying the new sanctions", available on its web site.

In his comments, Mainville, J.A. further outlines criteria specific to this case that aided him in determining whether the CRA was reasonable in seeking revocation:

> [53] I first note that Prescient maintained no records of its Board of Directors meetings relating to its involvement in the Farm Sale Transactions, most notably concerning its acquisition of 30% of the shares of Vision Poultry. Articles 14.7 and 14.8 of Prescient's own by-laws (Appeal Book ("AB") at p. 23) required its board of directors to approve that acquisition in order to determine both whether it was a prudent investment and whether Prescient should invest in this type of shares.
>
> [54] Moreover, Prescient did not maintain documentation clearly showing that its gift to DATA had been made to an American charity, nor did it disclose this important fact to the CRA auditor in a timely fashion. ...
>
> [56] Though Prescient was remiss in maintaining proper records of the Farm Sale Transactions, the CRA auditor was nevertheless supplied with a considerable amount of information concerning these transactions which allowed her to understand both their scope and their nature. In my view, it would not have been reasonable for the Minister to revoke Prescient's registration on that basis alone. On the other hand, Prescient's failure to maintain adequate records and books of account showing that its contribution to DATA was made to an American charity, coupled with its failure to voluntarily and promptly disclose this fact to the auditor, constitutes a very serious matter. Thus, both failures, taken together, are sufficient, in the circumstances of this case, to conclude that the Minister acted reasonably in revoking Prescient's registration on the ground that it had failed to maintain adequate books and records.

During our audit, we wrote to the Organization on two separate occasions: our letter dated May 6, 2010 and our letter dated August 28, 2013 to request that information and documentation be provided to CRA for review. On both occasions, the Organization was provided with an extensive listing of records required for our review within a specified time period. Also on both occasions, the Organization requested and was subsequently granted a 30-day extension to the deadline. Further, a lengthy telephone conversation was held between the Organization's representative at the time, Mr. Charles Rotenberg, and the auditor to further clarify what specific type of information was being requested. Despite these repeated requests for information and the reasonableness shown on the part of the auditor in granting extensions, the Organization still failed to provide all of the requested documentation.

We acknowledge that the Organization did provide a significant amount of information regarding its tax shelter participation. However, there were still several key areas where there was a serious lack of documentary evidence to support the Organization's charitable activities, financial transactions and its decision making, many of which have been outlined earlier in this letter and in our previous letter. This lack of documentation has seriously compromised the CRA's ability to determine, with certainty, that the Organization has met the necessary requirements to retain its registered status. It remains our opinion that the Organization has failed to maintain and provide adequate books and records in this regard and is in contravention of section 230 of the Act as a result.

Although the Organization has not previously been cited for inadequate books and records non-compliance we believe that this instance of non-compliance is materially significant.

Further, it is our position that, taking into consideration the details and guidelines clarified by Mainville, J.A. in the Prescient decision, the Minister's decision to pursue revocation in this case is justified.

Given the serious deficiencies identified in our previous letter and lack of further representations concerning the inaccurate T3010 returns filed, we remain of the position that the T3010 returns filed by the Organization for the audit period are inaccurate and do not provide an accurate picture of the Organization's financial transactions or activities. CRA was unable to identify and/or quantify all the specific instances of inaccurate filings due to the unreliability and incompleteness of the records provided.

Appropriateness of Revocation:

Finally, we note that your letter concludes by stating, "This submission demonstrates to CRA that the [Organization] has maintained full direction and control over all of its funds, at no time participated in the promotion of a tax shelter and has not committed any instances of serious of wilful non-compliance." In our view, as outlined above and in our previous letter, the non-compliance described is too serious to consider the continued registration of the Organization. In our view, the Organization has operated for the non-charitable purpose of promoting a tax shelter arrangement, failed to exercise control over the resources obtained through this arrangement, and has improperly issued overvalued receipts for in excess of $167 million in transactions.

Further, even viewing the Organization's limited activities which are within its direct control and supervision, we are of the view that the direct expenditures on charitable activities are grossly overshadowed by the expenditures on fundraising and administration incurred as a result of its participation in MLF tax shelter. As such, it is the CRA's position that these are serious contraventions of the *Income Tax Act* and warrant revocation of the Organization's registered status.

Section 149.1 Qualified Donees

149.1(2) Revocation of registration of charitable organization

The Minister may, in the manner described in section 168, revoke the registration of a charitable organization for any reason described in subsection 168(1) or where the organization

(*a*) carries on a business that is not a related business of that charity;

(*b*) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the organization's disbursement quota for that year; or

(*c*) makes a disbursement by way of a gift, other than a gift made

(i) in the course of charitable activities carried on by it, or

(ii) to a donee that is a qualified donee at the time of the gift.

149.1(3) Revocation of registration of public foundation

The Minister may, in the manner described in section 168, revoke the registration of a public foundation for any reason described in subsection 168(1) or where the foundation

(*a*) carries on a business that is not a related business of that charity;

(*b*) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;

(*b.1*) makes a disbursement by way of a gift, other than a gift made

(i) in the course of charitable activities carried on by it, or

(ii) to a donee that is a qualified donee at the time of the gift;

(*c*) since June 1, 1950, acquired control of any corporation;

(*d*) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities; or

(*e*) at any time within the 24 month period preceding the day on which notice is given to the foundation by the Minister pursuant to subsection 168(1) and at a time when the foundation was a private foundation, took any action or failed to expend amounts such that the Minister was entitled, pursuant to subsection 149.1(4), to revoke its registration as a private foundation.

149.1(4) Revocation of registration of private foundation

The Minister may, in the manner described in section 168, revoke the registration of a private foundation for any reason described in subsection 168(1) or where the foundation

(*a*) carries on any business;

(*b*) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;

(*b.1*) makes a disbursement by way of a gift, other than a gift made

(i) in the course of charitable activities carried on by it, or

(ii) to a donee that is a qualified donee at the time of the gift;

(*c*) has, in respect of a class of shares of the capital stock of a corporation, a divestment obligation percentage at the end of any taxation year;

(*d*) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities.

149.1(4.1) Revocation of registration of registered charity

The Minister may, in the manner described in section 168, revoke the registration

(*a*) of a registered charity, if it has entered into a transaction (including a gift to another registered charity) and it may reasonably be considered that a purpose of the transaction was to avoid or unduly delay the expenditure of amounts on charitable activities;

(*b*) of a registered charity, if it may reasonably be considered that a purpose of entering into a transaction (including the acceptance of a gift) with another registered charity to which paragraph (*a*) applies was to assist the other registered charity in avoiding or unduly delaying the expenditure of amounts on charitable activities;

(*c*) of a registered charity, if a false statement, within the meaning assigned by subsection 163.2(1), was made in circumstances amounting to culpable conduct, within the meaning assigned by that subsection, in the furnishing of information for the purpose of obtaining registration of the charity;

(*d*) of a registered charity, 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; and

(*e*) of a registered charity, if an ineligible individual is a director, trustee, officer or like official of the charity, or controls or manages the charity, directly or indirectly, in any manner whatever.

Section 168:
Revocation of Registration of Certain Organizations and Associations

168(1) Notice of intention to revoke registration

The Minister may, by registered mail, give notice to a person described in any of paragraphs (*a*) to (*c*) of the definition "qualified donee" in subsection 149.1(1) that the Minister proposes to revoke its registration if the person

(*a*) applies to the Minister in writing for revocation of its registration;

(*b*) ceases to comply with the requirements of this Act for its registration;

(*c*) in the case of a registered charity or registered Canadian amateur athletic association, fails to file an information return as and when required under this Act or a regulation;

(*d*) issues a receipt for a gift otherwise than in accordance with this Act and the regulations or that contains false information;

(*e*) fails to comply with or contravenes any of sections 230 to 231.5; or

(*f*) in the case of a registered Canadian amateur athletic association, accepts a gift the granting of which was expressly or implicitly conditional on the association making a gift to another person, club, society or association.

168(2) Revocation of Registration

Where the Minister gives notice under subsection 168(1) to a registered charity or to a registered Canadian amateur athletic association,

(*a*) if the charity or association has applied to the Minister in writing for the revocation of its registration, the Minister shall, forthwith after the mailing of the notice, publish a copy of the notice in the *Canada Gazette*, and

(*b*) in any other case, the Minister may, after the expiration of 30 days from the day of mailing of the notice, or after the expiration of such extended period from the day of mailing of the notice as the Federal Court of Appeal or a judge of that Court, on application made at any time before the determination of any appeal pursuant to subsection 172(3) from the giving of the notice, may fix or allow, publish a copy of the notice in the *Canada Gazette*,

and on that publication of a copy of the notice, the registration of the charity or association is revoked.

168(4) Objection to proposal or designation

A person may, on or before the day that is 90 days after the day on which the notice was mailed, serve on the Minister a written notice of objection in the manner authorized by the Minister, setting out the reasons for the objection and all the relevant facts, and the provisions of subsections 165(1), (1.1) and (3) to (7) and sections 166, 166.1 and 166.2 apply, with any modifications that the circumstances require, as if the notice were a notice of assessment made under section 152, if

(*a*) in the case of a person that is or was registered as a registered charity or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(2) to (4.1), (6.3), (22) and (23);

(*b*) in the case of a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.2) and (22); or

(*c*) in the case of a person described in any of subparagraphs (*a*)(i) to (v) of the definition "qualified donee" in subsection 149.1(1), that is or was registered by the Minister as a qualified donee or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.3) and (22).

172(3) Appeal from refusal to register, revocation of registration, etc.

Where the Minister

(*a*) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.2) and (22) and 168(1) by the Minister, to a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for registration as a registered Canadian amateur athletic association, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,

(*a.1*) confirms a proposal, decision or designation in respect of which a notice was issued by the Minister to a person that is or was registered as a registered charity, or is an applicant for registration as a registered charity, under any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) and 168(1), or does not confirm or vacate that proposal, decision or designation within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal, decision or designation,

(*a.2*) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.3), (22) and 168(1) by the Minister, to a person that is a person described in any of subparagraphs (*a*)(i) to (v) of the definition "qualified donee" in subsection 149.1(1) that is or was registered by the Minister as a qualified donee or is an applicant for such registration, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,

(*b*) refuses to accept for registration for the purposes of this Act any retirement savings plan,

(*c*) refuses to accept for registration for the purposes of this Act any profit sharing plan or revokes the registration of such a plan,

(*d*) [Repealed, 2011, c. 24, s. 54]

(*e*) refuses to accept for registration for the purposes of this Act an education savings plan,

(*e.1*) sends notice under subsection 146.1(12.1) to a promoter that the Minister proposes to revoke the registration of an education savings plan,

(*f*) refuses to register for the purposes of this Act any pension plan or gives notice under subsection 147.1(11) to the administrator of a registered pension plan that the Minister proposes to revoke its registration,

(*f.1*) refuses to accept an amendment to a registered pension plan,

(*g*) refuses to accept for registration for the purposes of this Act any retirement income fund,

(*h*) refuses to accept for registration for the purposes of this Act any pooled pension plan or gives notice under subsection 147.5(24) to the administrator of a pooled registered pension plan that the Minister proposes to revoke its registration, or

(*i*) refuses to accept an amendment to a pooled registered pension plan,

the person described in paragraph (*a*), (*a.1*) or (*a.2*), the applicant in a case described in paragraph (*b*), (*e*) or (*g*), a trustee under the plan or an employer of employees who are beneficiaries under the plan, in a case described in paragraph (*c*), the promoter in a case described in paragraph (*e.1*), the administrator of the plan or an employer who participates in the plan, in a case described in paragraph (*f*) or (*f.1*), or the administrator of the plan in a case described in paragraph (*h*) or (*i*), may appeal from the Minister's decision, or from the giving of the notice by the Minister, to the Federal Court of Appeal.

180(1) Appeals to Federal Court of Appeal

An appeal to the Federal Court of Appeal pursuant to subsection 172(3) may be instituted by filing a notice of appeal in the Court within 30 days from

(*a*) the day on which the Minister notifies a person under subsection 165(3) of the Minister's action in respect of a notice of objection filed under subsection 168(4),

(*b*) [Repealed, 2011, c. 24, s. 55]

(*c*) the mailing of notice to the administrator of the registered pension plan under subsection 147.1(11),

(*c.1*) the sending of a notice to a promoter of a registered education savings plan under subsection 146.1(12.1),

(*c.2*) the mailing of notice to the administrator of the pooled registered pension plan under subsection 147.5(24), or

(*d*) the time the decision of the Minister to refuse the application for acceptance of the amendment to the registered pension plan or pooled registered pension plan was mailed, or otherwise communicated in writing, by the Minister to any person,

as the case may be, or within such further time as the Court of Appeal or a judge thereof may, either before or after the expiration of those 30 days, fix or allow.

Section 188: Revocation tax

188(1) Deemed year-end on notice of revocation

If on a particular day the Minister issues a notice of intention to revoke the registration of a taxpayer as a registered charity under any of subsections 149.1(2) to (4.1) and 168(1) or it is determined, under subsection 7(1) of the *Charities Registration (Security Information) Act*, that a certificate served in respect of the charity under subsection 5(1) of that Act is reasonable on the basis of information and evidence available,

(*a*) the taxation year of the charity that would otherwise have included that day is deemed to end at the end of that day;

(*b*) a new taxation year of the charity is deemed to begin immediately after that day; and

(*c*) for the purpose of determining the charity's fiscal period after that day, the charity is deemed not to have established a fiscal period before that day.

188(1.1) Revocation tax

A charity referred to in subsection (1) is liable to a tax, for its taxation year that is deemed to have ended, equal to the amount determined by the formula

A - B

where

A
is the total of all amounts, each of which is

(*a*) the fair market value of a property of the charity at the end of that taxation year,

(*b*) the amount of an appropriation (within the meaning assigned by subsection (2)) in respect of a property transferred to another person in the 120-day period that ended at the end of that taxation year, or

(*c*) the income of the charity for its winding-up period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 as if that period were a taxation year; and

B
is the total of all amounts (other than the amount of an expenditure in respect of which a deduction has been made in computing income for the winding-up period under paragraph (*c*) of the description of A), each of which is

(*a*) a debt of the charity that is outstanding at the end of that taxation year,

(*b*) an expenditure made by the charity during the winding-up period on charitable activities carried on by it, or

(*c*) an amount in respect of a property transferred by the charity during the winding-up period and not later than the latter of one year from the end of the taxation year and the day, if any, referred to in paragraph (1.2)(*c*), to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

188(1.2) Winding-up period

In this Part, the winding-up period of a charity is the period that begins immediately after the day on which the Minister issues a notice of intention to revoke the registration of a taxpayer as a registered charity under any of subsections 149.1(2) to (4.1) and 168(1) (or, if earlier, immediately after the day on which it is determined, under subsection 7(1) of the *Charities Registration (Security Information) Act*, that a certificate served in respect of the charity under subsection 5(1) of that Act is reasonable on the basis of information and evidence available), and that ends on the day that is the latest of

(*a*) the day, if any, on which the charity files a return under subsection 189(6.1) for the taxation year deemed by subsection (1) to have ended, but not later than the day on which the charity is required to file that return,

(*b*) the day on which the Minister last issues a notice of assessment of tax payable under subsection (1.1) for that taxation year by the charity, and

(*c*) if the charity has filed a notice of objection or appeal in respect of that assessment, the day on which the Minister may take a collection action under section 225.1 in respect of that tax payable.

188(1.3) Eligible donee

In this Part, an eligible donee in respect of a particular charity is a registered charity

(*a*) of which more than 50% of the members of the board of directors or trustees of the registered charity deal at arm's length with each member of the board of directors or trustees of the particular charity;

(*b*) that is not the subject of a suspension under subsection 188.2(1);

(*c*) that has no unpaid liabilities under this Act or under the *Excise Tax Act*;

(*d*) that has filed all information returns required by subsection 149.1(14); and

(*e*) that is not the subject of a certificate under subsection 5(1) of the *Charities Registration (Security Information) Act* or, if it is the subject of such a certificate, the certificate has been determined under subsection 7(1) of that Act not to be reasonable.

188(2) Shared liability — revocation tax

A person who, after the time that is 120 days before the end of the taxation year of a charity that is deemed by subsection (1) to have ended, receives property from the charity, is jointly and severally, or solidarily, liable with the charity for the tax payable under subsection (1.1) by the charity for that taxation year for an amount not exceeding the total of all appropriations,

each of which is the amount by which the fair market value of such a property at the time it was so received by the person exceeds the consideration given by the person in respect of the property.

188(2.1) Non-application of revocation tax

Subsections (1) and (1.1) do not apply to a charity in respect of a notice of intention to revoke given under any of subsections 149.1(2) to (4.1) and 168(1) if the Minister abandons the intention and so notifies the charity or if

(*a*) within the one-year period that begins immediately after the taxation year of the charity otherwise deemed by subsection (1) to have ended, the Minister has registered the charity as a charitable organization, private foundation or public foundation; and

(*b*) the charity has, before the time that the Minister has so registered the charity,

> (i) paid all amounts, each of which is an amount for which the charity is liable under this Act (other than subsection (1.1)) or the *Excise Tax Act* in respect of taxes, penalties and interest, and
>
> (ii) filed all information returns required by or under this Act to be filed on or before that time.

188(3) Transfer of property tax

Where, as a result of a transaction or series of transactions, property owned by a registered charity that is a charitable foundation and having a net value greater than 50% of the net asset amount of the charitable foundation immediately before the transaction or series of transactions, as the case may be, is transferred before the end of a taxation year, directly or indirectly, to one or more charitable organizations and it may reasonably be considered that the main purpose of the transfer is to effect a reduction in the disbursement quota of the foundation, the foundation shall pay a tax under this Part for the year equal to the amount by which 25% of the net value of that property determined as of the day of its transfer exceeds the total of all amounts each of which is its tax payable under this subsection for a preceding taxation year in respect of the transaction or series of transactions.

188(3.1) Non-application of subsection (3)

Subsection (3) does not apply to a transfer that is a gift to which subsection 188.1(11) or (12) applies

188(4) Transfer of property tax

If property has been transferred to a charitable organization in circumstances described in subsection (3) and it may reasonably be considered that the organization acted in concert with a charitable foundation for the purpose of reducing the disbursement quota of the foundation, the organization is jointly and severally, or solidarily, liable with the foundation for the tax imposed on the foundation by that subsection in an amount not exceeding the net value of the property.

188(5) Definitions

In this section,

"net asset amount"
« montant de l'actif net »

"net asset amount" of a charitable foundation at any time means the amount determined by the formula

A - B

where

A
is the fair market value at that time of all the property owned by the foundation at that time, and

B
is the total of all amounts each of which is the amount of a debt owing by or any other obligation of the foundation at that time;

"net value"
« valeur nette »

"net value" of property owned by a charitable foundation, as of the day of its transfer, means the amount determined by the formula

A - B

where

A
is the fair market value of the property on that day, and

B
is the amount of any consideration given to the foundation for the transfer.

189(6) Taxpayer to file return and pay tax

Every taxpayer who is liable to pay tax under this Part (except a charity that is liable to pay tax under section 188(1)) for a taxation year shall, on or before the day on or before which the taxpayer is, or would be if tax were payable by the taxpayer under Part I for the year, required to file a return of income or an information return under Part I for the year,

(*a*) file with the Minister a return for the year in prescribed form and containing prescribed information, without notice or demand therefor;

(*b*) estimate in the return the amount of tax payable by the taxpayer under this Part for the year; and

(*c*) pay to the Receiver General the amount of tax payable by the taxpayer under this Part for the year.

189(6.1) Revoked charity to file returns

Every taxpayer who is liable to pay tax under subsection 188(1.1) for a taxation year shall, on or before the day that is one year from the end of the taxation year, and without notice or demand,

(*a*) file with the Minister

> (i) a return for the taxation year, in prescribed form and containing prescribed information, and
>
> (ii) both an information return and a public information return for the taxation year, each in the form prescribed for the purpose of subsection 149.1(14); and

(*b*) estimate in the return referred to in subparagraph (*a*)(i) the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year; and

(*c*) pay to the Receiver General the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year.

189 (6.2) Reduction of revocation tax liability

If the Minister has, during the one-year period beginning immediately after the end of a taxation year of a person, assessed the person in respect of the person's liability for tax under subsection 188(1.1) for that taxation year, has not after that period reassessed the tax liability of the person, and that liability exceeds $1,000, that liability is, at any particular time, reduced by the total of

(*a*) the amount, if any, by which

> (i) the total of all amounts, each of which is an expenditure made by the charity, on charitable activities carried on by it, before the particular time and during the period (referred to in this subsection as the "post-assessment period") that begins immediately after a notice of the latest such assessment was sent and ends at the end of the one-year period

exceeds

> (ii) the income of the charity for the post-assessment period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 if that period were a taxation year, and

(*b*) all amounts, each of which is an amount, in respect of a property transferred by the charity before the particular time and during the post-assessment period to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

189(6.3) Reduction of liability for penalties

If the Minister has assessed a particular person in respect of the particular person's liability for penalties under section 188.1 for a taxation year, and that liability exceeds $1,000, that liability is, at any particular time, reduced by the total of all amounts, each of which is an amount, in respect of a property transferred by the particular person after the day on which the Minister first assessed that liability and before the particular time to another person that was at the time of the transfer an eligible donee in respect of the particular person, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the total of

(*a*) the consideration given by the other person for the transfer, and

(*b*) the part of the amount in respect of the transfer that has resulted in a reduction of an amount otherwise payable under subsection 188(1.1).

189 (7) Minister may assess

Without limiting the authority of the Minister to revoke the registration of a registered charity or registered Canadian amateur athletic association, the Minister may also at any time assess a taxpayer in respect of any amount that a taxpayer is liable to pay under this Part.