



**REGISTERED MAIL**

Cancer Survivors' Fund of Canada  
1425 Marine Drive, Suite 207  
West Vancouver BC V7T 1B9

BN: 85993 2758

Attention: Mr. Michael Yonter

File #: 3035916

January 14, 2013

**Subject: Revocation of Registration**  
**Cancer Survivors' Fund of Canada**

Dear Sir:

The purpose of this letter is to inform you that a notice revoking the registration of Cancer Survivors' Fund of Canada (the Organization) was published in the *Canada Gazette* on January 12, 2013. 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](http://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* (ETA). As a result, the Organization may be subject to obligations and entitlements under the ETA that apply to organizations other than charities. If you have any questions about your GST/HST obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

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 (the Minister) 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 the undersigned at the numbers indicated below.

Yours sincerely,



Danie Huppé-Cranford  
Director  
Compliance Division  
Charities Directorate  
Telephone: 613-957-8682  
Toll free: 1-800-267-2384

Enclosures

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

c.c.: Ms. Brenda Lawson



NOV 30 2012

**REGISTERED MAIL**

Cancer Survivors' Fund of Canada  
1425 Marine Drive, Suite 207  
West Vancouver BC V7T 1B9

BN: 859932758RR0001

Attention: Mr. Michael Yonter, President

File #:3035916

**Subject:      Notice of Intention to Revoke  
                  Cancer Survivors' Fund of Canada**

Dear Mr. Michael Yonter:

I am writing further to our letter dated December 15, 2011 (copy enclosed), in which you were invited to submit representations as to why the registration of Cancer Survivors' Fund of Canada (the Organization) should not be revoked in accordance with subsection 168(1) of the *Income Tax Act*.

We have now reviewed and considered your written response dated January 9, 2012. 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. The basis for our concerns is explained below.

Although the Organization was registered to provide scholarships, it was predominately involved in fundraising. Of the \$1,139,122 raised by the Organization, only \$37,521, roughly 3% was used for charitable activities. It is the Canada Revenue Agency's (CRA) view that a significant amount of the Organization's resources were devoted to fundraising activities, and that fundraising was a main and independent purpose on its own. As such, the Organization failed to devote all of its resources to carrying out its charitable activities in furtherance of its charitable purposes.

Secondly, the Organization provided undue benefits to third parties. The Organization entered into an agreement with a third party fundraiser, Millennium Teleservices of Canada, whereby the fundraiser received more than 90% of the funds raised from donors. As well, the Organization paid SMY Advisors LLC, a non-arms' length party, for consulting services which were unsubstantiated. The Organization failed to show that the amounts it paid were at fair market value and reasonable. The use of the Organization's resources to pay for excessive and/or unsubstantiated expenses confers an undue benefit.

**Canada**

Place de Ville, Tower A  
320 Queen Street, 13th Floor RR350 E (08)  
Ottawa ON K1A 0L5

Thirdly, the Organization failed to maintain adequate books and records. Notwithstanding that the books and records were in electronic format, they were not maintained at an address in Canada recorded with the Minister. Specifically, the following deficiencies were noted:

The Organization did not provide complete records to enable CRA to verify the gross revenue of the Organization. Detailed documentation pertaining to third party fundraiser fees and expenses were also not provided. The Organization failed to maintain control over the issuance of its official donation receipts. Official donation receipts bearing the Organization's name were reportedly mailed out with donation pledge kits by the third party fundraiser, without any control by the Organization. The Organization did not receive any donor information from the fundraiser.

In addition, the Organization's board of directors did not demonstrate that it exercised due diligence and that its directors acted in the Organization's best interest. The Organization was controlled by a single director. Some individuals, although listed as directors, were not involved in the governance of the Organization. The board of directors failed to maintain adequate meeting minutes and its corporate annual filings was not kept up to date.

The Organization also failed to provide all documentation, as indicated on its website, pertaining to the receipt and evaluation of scholarship applications, and the issuance of scholarship funds. The Organization's website included information pertaining to the activity of a U.S. organization, which was not the activity of the Organization itself. CRA's records also show that the Organization did not file T4A slips as required.

Lastly, the audit revealed that the Organization failed to exercise due care in the filing of its information returns. There were numerous material errors and omissions. The Organization reported that its physical address and location of its books and records were in Canada, which was not the case. For 2010, the Organization failed to report fundraising expenditures of \$698,620 on line 5020 of its return. It also incorrectly included amounts paid to consultants as charitable expenditures.

#### **Conclusion:**

The Canada Revenue Agency's (CRA) audit has revealed that the Organization is not complying with the requirements set out in the Act. In particular, it was found that the Organization failed to devote all its resources to charitable activities carried on by the Organization itself; provided undue benefits; failed to maintain adequate books and records; and failed to file an information return as required. 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 section 168(1) of the Act.

Consequently, for each of the reasons mentioned in our letter dated December 15, 2011, I wish to advise you that, pursuant to subsection 168(1) of the Act, I 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), 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.*

<b>Business Number</b>	<b>Name</b>
859932758RR0001	Cancer Survivors' Fund of Canada West Vancouver B.C.

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

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, unless the Canada Revenue Agency (CRA) receives an order, **within the next 30 days**, from the Federal Court of Appeal issued under paragraph 168(2)(b) of the Act extending that period.

Please note that the Organization must obtain a stay to suspend the revocation process, notwithstanding the fact that it may have filed a Notice of Objection.

#### **Consequences of Revocation**

As of the effective date of revocation:

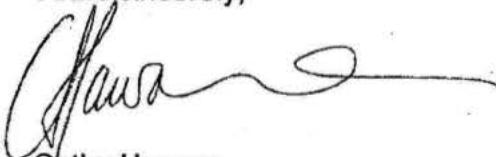
- a) the Organization will no longer be exempt from Part I Tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to

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 T-2046, *Tax Return Where Registration of a Charity is Revoked* (the Return). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the Notice of Intention to Revoke. A copy of the relevant provisions of the Act concerning revocation of registration, the tax applicable to revoked charities, and appeals against revocation, can be found in Appendix "A" attached. Form T-2046 and the related Guide RC-4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, are available on our website at [www.cra-arc.gc.ca/charities](http://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* (ETA). As a result, the Organization may be subject to obligations and entitlements under the ETA that apply to organizations other than charities. If you have any questions about your GST/HST obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

Finally, I wish to advise that subsection 150(1) of the 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 December 15, 2011
- Appendix "A", Relevant provisions of the Act

c.c.: Ms. Brenda Lawson, Director





CANADA REVENUE  
AGENCY

AGENCE DU REVENU  
DU CANADA

**REGISTERED MAIL**

December 15, 2011

**BY FAX: 1 (281) 437-9568**

Cancer Survivors' Fund of Canada  
1425 Marine Drive, Suite 207  
West Vancouver BC V7T 1B9

BN: 859932758RR0001

File #: 3035916

**Attention:** Mr. Michael Yonter, President

**Subject:** **Audit of Cancer Survivors' Fund of Canada**

Dear Mr. Michael Yonter:

This letter is further to the audit of the books and records of the Cancer Survivors' Fund of Canada (the Organization) conducted by the Canada Revenue Agency (the CRA). The audit related to the operations of the Organization for the period from April 1, 2008 to March 31, 2011.

During our telephone conversation of August 31, 2011 and October 17, 2011, you were advised that the CRA has identified specific areas of non-compliance with the provisions of the *Income Tax Act* and/or its *Regulations* in the following areas:

<b>AREAS OF NON-COMPLIANCE:</b>		
	<b>Issue</b>	<b>Reference</b>
1.	The failure of the Organization to devote its resources to charitable activities in accordance with the requirements of the Act	149.1(1), 168(1)(b)
2.	Providing an undue benefit	149.1(1), 168(1)(b)
3.	Failure to maintain adequate books and records	230(2), 168(1)(e)
4.	Failure to file an information return as required by the Act	149.1(14), 168(1)(c)

Vancouver Island Tax Services  
1415 Vancouver Street  
Victoria BC

**Mailing Address:**  
Vancouver Island Tax Services  
c/o 9755 King George Boulevard  
Surrey, BC V3T 5E1

Services fiscaux de l' île de Vancouver  
1415, rue Vancouver  
Victoria, C-B

**L'adresse postale :**  
Services fiscaux de l' île de Vancouver,  
A/S 9755 Aut. King George  
Surrey, C-B V3T 5E1

**Canada**

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 make additional representations or present additional information. Registered charities must comply with the law, failing which the Organization's registered status may be revoked in the manner described in section 168 of the Act.

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

**Charitable Purposes and Activities:**

In order for an organization to be recognized as a charity, it must be constituted exclusively for charitable purposes, and devote its resources to charitable activities in furtherance thereof.<sup>1</sup> In the Supreme Court decision of *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.* [1999] 1 S.C.R. 10, Iacobucci J. speaking for the majority, summarized the requirements for charitable registration at paragraph 159, as follows:

*"In conclusion, on the basis of the Canadian jurisprudence, the requirements for registration under s. 248(1) come down to two:*

- (1) the purposes of the organization must be charitable, and must define the scope of the activities engaged in by the organization; and*
- (2) all of the organization's resources must be devoted to these activities."*

As the term "charitable" is not defined in the Act, whether or not an organization qualifies as such is determined by reference to the common law; that is court decisions. The courts have recognized four general categories of charitable purposes: (1) the relief of poverty; (2) the advancement of religion; (3) the advancement of education; and (4) other purposes beneficial to the community as a whole (or a sufficient section thereof) in a way that the law regards as charitable. This last category identifies an additional group of purposes that have been held charitable at law rather than qualifying any and all purposes that provide a public benefit as charitable.

An organization with a mixture of charitable and non-charitable purposes and/or activities will not qualify for registration.

The Organization was registered as a charitable organization effective April 1, 2008. The registration was based on the information supplied by the Organization and on the understanding that it would be carrying out the activities listed

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<sup>1</sup> *Vancouver Society of Immigrant & Visible Minority Women v. Minister of National Revenue*, [1999] 1 S.C.R. 10, at page 110 (paragraph 152, 154, 156)

in its application. The purposes of the Organization as stated in its governing document are as follows:

- *To provide scholarships for the benefit of young adults diagnosed with cancer, receiving treatment for cancer or in remission, to give them a new purpose and meaning in life and to enable them to start and/or continue their college education;*
- *Counsel, provide emotional support, and motivate cancer survivors and channel their thoughts and dreams to a healthy and productive future.*

The Organization's intended activities as stated in its application for registration were to provide college scholarships by identifying cancer survivors and screening applicants. After evaluating needs and selecting potential awardees, funds would be distributed to successful recipients.

While the purpose can generally be considered charitable at law, the question of whether an organization is constituted exclusively for charitable purposes cannot be determined solely by reference to its stated purposes and intended activities. Our review and assessment must also take into account the activities that the Organization engaged in or is currently engaged in.<sup>2</sup>

We have serious concerns with regard to the activities undertaken by the Organization, which are described below.

#### **Identified Areas of Non-Compliance:**

##### **1. The Failure of the Organization to Devote its Resources to Charitable Activities in Accordance with the Requirements of the Act**

Under Subsection 149.1(1) of the Act, a charitable organization is required to devote all of its resources to its charitable activities. To meet this requirement, it may use its resources (funds, personnel and/or property) in only two ways, for charitable activities undertaken by the charity itself, and for gifting to "qualified donees" as defined in the Act.

Although the Organization's charitable purpose was the provision of scholarships to young cancer survivors, the audit found that the Organization was predominately involved in fundraising. We reviewed the fundraising activity to determine whether it is acceptable. *CRA's administrative policy on fundraising is found in 'Guidance CPS-028*

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<sup>2</sup> *Vancouver Society of Immigrant & Visible Minority Women v. Minister of National Revenue*, [1999] 1 S.C.R. 10, at p. 131 (paragraph 194)

*Fundraising by Registered Charities' and the accompanying 'Additional information on Guidance CPS-028, Fundraising by Registered Charities'.*

Factors that are considered are whether the Organization is involved in prohibited conduct which could result in the revocation of a registered charity status. These would include fundraising which is illegal or contrary to public policy; is a main and independent (collateral) purpose; conduct which confers a private undue benefit; or conduct that is deceptive.

We also look to see whether the Organization has followed any "Best Practices" which are considered to reduce the risk of unacceptable fundraising. These would include

- *Prudent planning processes*
- *Appropriate procurement processes*
- *Good staffing processes*
- *Ongoing management and supervision of fundraising practice*
- *Adequate evaluation processes*
- *Use made of volunteer time and volunteered services or resources*
- *Disclosure of fundraising costs, revenue and practice*

We also review whether there are any "Areas of Concern" such as

- *Sole-source fundraising contracts without proof of fair market value*
- *Non-arm's length fundraising contracts without proof of fair market value*
- *Fundraising initiatives or arrangements that are not well-documented*
- *Fundraising merchandise purchases that are not at arm's length, not at fair market value, or not purchased to increase fundraising revenue*
- *Activities where most of the gross revenues go to contracted non-charitable parties*
- *Commission-based fundraiser remuneration or payment of fundraisers based on amount or number of donations*
- *Total resources devoted to fundraising exceeding total resources devoted to program activities*
- *Misrepresentations in fundraising solicitations or in disclosures about fundraising or financial performance*

The following represents the Organization's revenue and expenditures as reported on the T3010A filings and adjusted amounts as determined at the time of audit, which is outlined in more detail at section 4 of this letter.

<u>Per T3010A:</u>	line #	FYE: 2009		FYE: 2010		Total	
		\$		\$		\$	
<b>Revenue:</b>							
Fundraising	4630	<u>369,512</u>		<u>769,610</u>		<u>1,139,122</u>	
<b>Expenditures:</b>							
<u>Per T3010A:</u>	line #	FYE: 2009	% of total expenditures	FYE: 2010	% of total expenditures	Total	% of total expenditures
		\$		\$		\$	
Charitable Management & admin	5000	3,000	1%	34,521	5%	37,521	3%
	5010	2,284	1%	25,173	3%	27,457	3%
Fundraising	5020	<u>335,089</u>	<b>98%</b>	<u>698,620</u>	<b>92%</b>	<u>1,033,709</u>	<b>94%</b>
Total	5100	<u>340,373</u>	100%	<u>758,314</u>	100%	<u>1,098,688</u>	100%

CRA recognizes that a charity may incur other costs such as management and administrative costs, and/or fundraising costs, in order to accomplish its charitable goals. This is permitted as long as the amounts are reasonable.

If a significant amount of a charity's resources are devoted to administration or fundraising, it may raise concerns that these activities have become collateral purposes, in other words, a main and independent purpose on their own. If this is the case, the charity would not be considered to be devoting all of its resources to its own charitable activities / purposes.

In 2009, the Organization gave out a \$3,000 scholarship to one student. In 2010, a total of \$34,521 in scholarships was awarded to twelve students. The activity of providing advice and guidance to students was accomplished by posting information on the website. The information was general in nature and did not actively provide advice or guidance to students. The passive provision of information on a website, whereby a student may or may not avail themselves of the advice or guidance, does not constitute actively carrying out a program.

The majority of the Organization's resources were devoted to fundraising, with a minimal amount devoted to the provision of scholarships and guidance/advice to

students. In operating in this manner, it is our view that fundraising was a collateral purpose of the Organization, in that it was a main and independent purpose on its own.

The Organization entered into a fundraising arrangement with Millennium Teleservices of Canada (herein after "MTC"). MTC's sole fundraising activity on behalf of the Organization was a telemarketing campaign. The Organization was guaranteed 10% of the gross receipts with the balance paid to MTC. Mr. Yonter stated that ten percent was the industry standard, however, no documentation was provided to support this claim.

A registered charity may use a third party fundraiser to raise funds on its behalf. Regardless, the charity still remains accountable for all funds collected on its behalf. The Courts<sup>3</sup> have held that directors have a fiduciary obligation for all funds collected from the public as donations, including the gross amount of funds received by the fundraiser.

As well, the Courts<sup>4</sup> have held that if donors were not advised that a significant portion of the donations would be deducted for fundraising expenses, the fundraising contracts could be voided as being contrary to public policy as well as for misrepresentation to donors concerning the amount of monies actually going to fulfil charitable purposes.

Furthermore, in cases where the fundraising costs are unreasonable, the Organization and each director, as well as the fundraising companies, may be liable, jointly and severally, for any unreasonable disbursements.<sup>5</sup>

It is our position that the Organization engaged in prohibitive fundraising practices because fundraising was a main and independent purpose of the Organization. Moreover, the fundraising arrangement could be considered contrary to public policy because it misrepresented to the public the amount available for use by the charity. Prospective donors were told that "fundraising costs may exceed fifty percent of the donations", when in fact, the agreement guaranteed MTC ninety percent of gross receipts. As well, the fundraising activity resulted in more than an incidental or proportionate private benefit to MTC.

Additionally, we reviewed whether the Organization engaged in any best practices that would have decreased the risk of unacceptable fundraising. In the planning phase, the Organization did not appear to carry on prudent planning. No documentation was provided to show that:

<sup>3</sup> The Ontario Court of Justice (The Public Guardian and Trustee) v. The AIDS Society for Children (Ontario) 105 A.C.W.S. (3<sup>rd</sup>) 1044

<sup>4</sup> See footnote 1.

<sup>5</sup> The AIDS Society for Children (Ontario) v. Public Guardian and Trustee (9 May 2002), Ontario Supreme Court

- the Organization researched costs and expected returns of various types of fundraising
- other potential fundraising methods were considered
- the best fundraising approach was selected

Secondly, the Organization did not follow appropriate procurement processes. No other fundraisers were contacted and there were no competitive bidding or tendering process. No documentation was provided to show procurement, negotiation and approval of contracts. During our telephone interview, Mr. Yonter could not recall the name of the person whom he dealt with at MTC.

There was no set budget to raise a pre-determined amount for the scholarship program. On the contrary, scholarships were issued based on the amounts of funds available. Mr. Yonter stated that the Organization was able to award scholarships to all applicants, with the exception of a few individuals, whom he stated sounded questionable.

There was no ongoing management and supervision of fundraising practices or evaluation of the results or performance of MTC. The Organization did not establish any fundraising policies. The Organization did not exercise its contractual rights to review or audit the financial and other records of the work done by the third party fundraiser. Mr. Yonter stated that he was not interested in receiving this information, including names of donors and donation amounts. The Organization was complacent about the minimal amount it received.

The Organization did not provide complete disclosure of its fundraising costs, revenue and practices.

It is our view that the Organization did not employ any best practices that would have reduced the risk of unacceptable fundraising. On the contrary, our review found that the Organization was involved in fundraising practices that were areas of concern.

For instance, the Organization entered into a sole-source fundraising contract without proof of fair market value. The majority of the funds raised went to the fundraiser, which misrepresented to donors the total amount that the Organization would receive. Finally, the total resources devoted to fundraising far exceeded those devoted to the Organization's charitable program activities. As discussed above, it is our conclusion that fundraising is a collateral purpose of the Organization. Therefore, the Organization has failed to devote its resources to its charitable activities and purposes, in contravention of the Act.

Subsequent to the audit period

Mr. Yonter has represented that MTC is no longer operating, and the Organization has also ceased operations. Once MTC ceased to operate, the Organization did not undertake any other methods to raise funds nor did it engage any other third party fundraisers to raise fund on its behalf.

Mr. Yonter has also stated that he does not intend to fundraise in Canada or in the United States under the Organization's name, and that the recent registration of the name "Cancer Survivors' Fund of Canada" as an entity in the State of Texas was done to protect the name from being used.

**2. Undue Benefit:**

At common law, and by statute<sup>6</sup>, a registered charity cannot be established to confer a private benefit on non-charitable beneficiaries or non-qualified donees. Private benefits that occur during the normal operations of a charity - when a charity pursues activities that further its charitable purposes, such as fees for services, are acceptable provided they:

- arise directly through the pursuit of the charity's purposes (e.g., relief of poverty) or are incidental and ancillary to the achievement of those purposes;
- are unavoidable and necessary to the achievement of the charity's purposes (e.g., as in the case of programs pursued by community economic development organizations); and

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<sup>5</sup> The statutory scheme contained in ss. 188.1(4) and (5) of the Act deals expressly with benefits conferred on persons (which includes corporations and entities) who are not at arm's length to the charity, which will be considered to be undue except:  
i) where conferred by a charitable act in the ordinary course of the charitable activities of a charity, unless it can reasonably be considered that the eligibility of the beneficiary relates solely to the relationship of that person to the charity; or  
ii) where the benefit is reasonable consideration or remuneration for property acquired by the charity or for services it receives.  
(4) A registered charity that, at a particular time in a taxation year, confers on a person an undue benefit is liable to a penalty under this Part for the taxation year equal to  
(a) 105% of the amount of the benefit, except if the charity is liable under paragraph (b) for a penalty in respect of the benefit; or  
(b) if the Minister has, less than five years before the particular time, assessed a liability under paragraph (a) or this paragraph for a preceding taxation year of the charity and the undue benefit was conferred after that assessment, 110% of the amount of the benefit.  
(5) For the purposes of this Part, an undue benefit conferred on a person (referred to in this Part as the "beneficiary") by a registered charity includes a disbursement by way of a gift or the amount of any part of the income, rights, property or resources of the charity that is paid, payable, assigned or otherwise made available for the personal benefit of any person who is a proprietor, member, shareholder, trustee or settlor of the charity, who has contributed or otherwise paid into the charity more than 50% of the capital of the charity, or who deals not at arm's length with such a person or with the charity, as well as any benefit conferred on a beneficiary by another person, at the direction or with the consent of the charity, that would, if it were not conferred on the beneficiary, be an amount in respect of which the charity would have a right, but does not include a disbursement or benefit to the extent that it is  
(a) an amount that is reasonable consideration or remuneration for property acquired by or services rendered to the charity;  
(b) a gift made, or a benefit conferred, in the course of a charitable act in the ordinary course of the charitable activities carried on by the charity, unless it can reasonably be considered that the eligibility of the beneficiary for the benefit relates solely to the relationship of the beneficiary to the charity; or  
(c) a gift to a qualified donee.

- are reasonable or not disproportionate compared to the public benefit achieved in all circumstances.<sup>7</sup>

If the activities that a registered charity conducts confer a private benefit that does not meet these criteria, it will be considered to be undue. A charity that delivers an undue private benefit is not using all of its resources for charitable purposes, and may be denied registration, be liable to a penalty under the Act, or have its registered status revoked.

#### Fundraising Fees

The audit revealed that the Organization entered into an agreement with a third party fundraiser, Millennium Teleservices of Canada, whereby the fundraiser received more than 90% of the funds raised from donors. The fundraising fees did not arise directly through the pursuit of the Organization's purposes, and were not incidental and ancillary.

On the contrary, the Organization's pursuit of its charitable purpose of providing scholarships was minor and disproportionate in comparison. There was no proof that the excessive fees were unavoidable and necessary to the provision of the scholarships. Furthermore, no documentation was provided to support that the Organization had established the fair market value of the services it had received and that the amounts it paid for such services were reasonable.

	2009	2010
Fundraising revenue	\$ 369,512	\$ 769,610
Fundraising expenditures	\$ 335,089	\$ 698,620
% paid to fundraiser	91%	91%

It is CRA's view that the payments to the third party fundraiser were excessive and not in furtherance of the Organization's charitable purposes, and that the Organization conferred an undue benefit on Millennium Teleservices of Canada, which was not incidental.

<sup>6</sup> Refer to *Incorporated Council of Law Reporting for England and Wales v. Attorney General and Others* [1972] Ch 73 [1971] 3 All E.R. 1029 at 1035 c and f. As Rowlatt J. observed: "... the question which emerges in all these cases is: Is there so much personal benefit (...) as to be incapable of being disregarded? (...) It is a question of degree and a question of fact", (*The Midland Counties Institution of Engineers v. I.R.C.* (1928) 14 T.C. 285 (C.A.) 293).

Consulting Fees

The audit also revealed that the Organization made the following bank wire transfers to SMY Advisors LLC: \$10,000 (10/28/2009); \$5,000 (1/4/2010); \$4,500 (1/26/2010); and \$5,000 (3/1/2010) for a total of \$24,500 during the 2010 fiscal year.

In support of the payments, the Organization provided two statements:

1. \$19,500 issued October 1, 2009 which covered a 24 month period from September 1, 2007 to August 31, 2009; and
2. \$5,010 issued February 1, 2010 which covered a 3 month period from September 1, 2009 to December 31, 2009.

According to the statements, SMY Advisors LLC provided the following services:

- *Provide assistance to registering and setting up the Organization*
- *Maintain the Organization's website*
- *Perform all required accounting and bookkeeping services*
- *Prepare annual filing of Registered Charity Information Return*
- *Prepare documentation for annual audit*
- *Maintain correspondence with students*
- *Prepare and email weekly motivational messages to students*
- *Provide advice and guidance to students*
- *Screen scholarship applications for completeness of required documentation*
- *Authenticate all documents (eg. Physician reports, reference letters, college acceptance letters, and financial information)*
- *Conduct personal interviews with potential award recipients*

The statements cover a broad and general range of duties. Based on these duties, it appears that the operation of the Organization was carried on by a private company. This is in contradiction to representations made by Mr. Yonter who stated that he operated the Organization and performed most of the duties entailed in its operation.

Mr. Yonter also represented that SMY Advisors LLC was an arm's length entity and was not related to Mr. Yonter or any director of the Organization. However, the address of SMY Advisors LLC in Marshfield, Missouri is shown as belonging to [REDACTED] [REDACTED], and appears to be a non-arm's length entity.

Further, the Organization did not provide adequate documentation to support that SMY Advisors LLC had rendered any services to the Organization for the consulting fees it received, and that the amounts paid were fair market value.

The use of the Organization's resources to pay for excessive and unsubstantiated expenses, that were not incurred for the purposes of carrying out the Organization's charitable purposes, confers an undue benefit to those individuals or entities, which is in contravention of the Act.

### **3. Failure to Maintain Adequate Books and Records:**

Pursuant to subsection 230(2) of the Act, every registered charity shall keep records and books of account at an address in Canada recorded with the Minister or designated by the Minister containing:

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

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

- (a) The records and books of account referred to in this section in respect of which a period is prescribed, together with every account and voucher necessary to verify the information contained therein, for such a period as is prescribed; 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 end of the last taxation year to which the records and books of account relate."

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

- it is the responsibility of the registered charity to prove that its charitable status should not be revoked<sup>8</sup>;
- a registered charity must maintain, and make available to the CRA at the time of an audit, meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required documentation and records

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<sup>8</sup> *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*, 2002 FCA 72 (FCA)

subsequent thereto<sup>9</sup>; and

- the failure to maintain proper books, records and records of account in accordance with the requirements of the Act is itself sufficient reason to revoke an organization's charitable status<sup>10</sup>.

In the course of the audit, the following deficiencies were found with regard to the Organization's books and records:

Corporate filings

At the time of this letter, the Organization's corporate annual filing was overdue for the 2011 fiscal period. Failure to maintain the Organization's corporate status could result in the Organization being dissolved, and consequently, losing its registered charity status.

Location of Books and Records

The Act requires that the books and records of a charity be kept at an address in Canada recorded with the Minister. At the time of the Organization's application for registration, Mr. Yonter was queried on whether the Organization was a "resident" in Canada and if it had a presence in Canada. Mr. Yonter assured the CRA that the Organization maintained a permanent office in Canada. These concerns were also raised with Ms. Lawson, who gave assurances that she would exercise due diligence in this regards.

In its application for incorporation, the directors attested that the head office of the Organization would be situated in Vancouver, British Columbia. and the CRA was led to believe that the Organization shared an office with another organization.

Contrary to these assurances, the Organization used the address of a mail drop business that provides private mailbox rentals, mail forwarding and re-mailing services. The Organization's books and records are, and have been, in the custody of Mr. Yonter, who resides in the U.S.A. The records were never maintained in Canada at an address registered with the Minister, in contravention of the Act.

Board of Directors

The Board of Directors has a fiduciary responsibility to ensure that a charity is operated in the public interest. Directors and life officials should not be passive. They

<sup>9</sup> Supra, footnote 3; *The Lord's Evangelical Church of Deliverance and Prayer of Toronto v. Canada*, (2004) FCA 397

<sup>10</sup> *(College Rabbinique de Montreal Oir Hachaim D'Tash v. Canada (Minister of the Customs and Revenue Agency*, (2004) FCA 101; ITA section 168(1)

have a duty of diligence that requires them to be knowledgeable about the workings of the charity and ensure that the charity and its assets are safeguarded.

One aspect of a board's duty of diligence is that directors must ensure that the board meets regularly. The Organization's Board did not hold regular meetings to discuss and make decisions relating to the activities of the Organization. The meeting minutes maintained were minimal and inadequate.

Insufficient knowledge due to a lack of such meetings or poor attendance does not absolve directors of legal responsibility. Director Brenda Lawson, who is the Organization's sole Canadian director, stated that she was not involved in the operations of the Organization or any decision making. She did not have any knowledge regarding the Organization, where the books and records were maintained, or where the bank account was. Ms. Lawson was recommended to Mr. Yonter by the third party fundraiser, Millennium Teleservices of Canada Company.

The other directors, Ms. Gantt and Mr. Yonter, reside in Texas, U.S.A.. There was no indication that Ms. Gantt was involved in the Organization in her capacity of a director. All duties were performed by Mr. Yonter. There was no segregation of duties. All transactions were authorized at the sole discretion and authority of Mr. Yonter. Mr. Yonter had sole signing authority of the bank accounts and for bank transactions, and only one signature was required for payments.

Operating in such a manner does not demonstrate that the Board exercised due diligence, and that the directors acted independently in the Organization's best interest.

#### Fundraising revenue and expenditures

The Organization failed to provide adequate documentation to show the source of its funds. The fundraising arrangement with Millennium Teleservices of Canada did not include a condition that the Organization receive any donor information. Mr. Yonter further stated that the Organization did not have any need for this information and that it was the property of the fundraiser.

Detailed documentation regarding the fundraiser's fees and expenses were also not provided. As such, we are unable to verify the amounts reported for fundraising revenue and expenditures, which raises serious concerns regarding the operations of the Organization.

#### Bank Records

It was represented that all funds raised for the Organization were deposited into a lockbox bank account with the [REDACTED] in Toronto, Ontario. According to Mr. Yonter, a processing agent, [REDACTED] in Oakhurst, New

Jersey automatically transferred 90% of all funds deposited to the fundraiser, with a mere 10% being transferred to the Organization's [REDACTED] Bank account in Toronto, Ontario. No documentation was provided regarding the lockbox account to enable us to verify the gross revenue of the Organization.

Official donation receipts

The Organization reported that it has not issued any official donation receipts. Mr. Yonter represented that the policy was to not issue receipts for amounts less than \$250. However, a review of the Organization's website and donation form does not state this.

On the contrary, potential donors are informed that their donations are tax-deductible and that a receipt will be issued to them, with no indication that the donation must be over \$250 in order to receive an official donation receipt. As well, the telephone solicitation scripts also states that donors are told that receipts will be mailed out with their pledge forms. Prospective donors are also not informed that an official donation receipts will not be issued for donations of less than \$250.

We have reviewed the official donation receipt template which would have been used had the Organization issued any official donation receipts. The official donation receipts would not have been compliant, had the Organization issued any donation receipts, using the template.

The receipts would not have contained:

- statement that it is an 'official receipt for income tax purposes'
- the registration number as recorded with CRA
- the name, Canada Revenue Agency, and the website address, [www.cra-arc.gc.ca/charities](http://www.cra-arc.gc.ca/charities)
- the place or locality where the receipt was issued
- a unique serial number

The Organization also did not maintain a listing of its donors and amounts received. Therefore, the Organization would not have been aware, had there been a donation receipt over \$250. Mr. Yonter's explanation of the Organization's receipting policy was not plausible.

During the telephone interview, Mr. Yonter stated that he told donors to use their cancelled cheques as proof of the donation. Cancelled cheques would not be sufficient to claim a donation tax credit for income tax purposes, and a registered charity should not instruct donors to do so.

Internet website

As part of the audit, we reviewed the Organization's website at [www.csfcana.org](http://www.csfcana.org). The website states that students are selected by a committee based on the applicant's personal hardship and financial need. According to the Organization's website, the applicant must:

- be a cancer survivor or currently diagnosed with cancer
- be enrolled in or accepted for enrollment in an accredited undergraduate school.
- submit a copy of an acceptance letter from the college/university or a letter of good standing from the registrar
- complete an online scholarship application form
- submit two letters of recommendation from two different academic teachers
- provide a letter from an attending physician verifying the applicant's history and current medical situation
- submit an essay
- agree to do volunteer work
- sign a release (or have their parents sign if they are minors) that they agree to have their name and photo published

Contrary to the information shown on the website, the sole documentation provided to CRA regarding the scholarships were the online Scholarship Applications. There was no documentation provided to show that the Organization evaluated whether the applicant met specified criteria or whether their financial need was verified.

Our review also found that the website contained information regarding the U.S.A. entity, including links for donations and names of U.S. A. scholarship recipients, U.S.A.contact info, financial information and fundraising events.

Issuance of T4A slips

The Organization provided scholarships to students either by payments to the post-secondary institutions or directly to the students. Regulation 200(2) of the Act requires that every person who makes a payment as or on account of, or who confers a benefit or allocates an amount that is for a scholarship, fellowship or bursary, make an information return in prescribed form. The Organization failed to prepare and file the T4A slips and summary as required. A copy of the T4A slips should also have been issued to the students. (*Additional information may be found in publication IT-75R4 dated June 18, 2003 – Scholarships, Fellowships, Bursaries, Prizes, Research Grants and Financial Assistance.*)

Based on the audit findings discussed above, the Organization failed to maintain adequate books and records as required under section 230 of the Act.

#### **4. Registered Charity Information Return (Information Return):**

Pursuant to subsection 149.1(14) of the Act, every registered charity must, within six months from the end of the charity's fiscal year end, file an Information Return with the applicable schedules.

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

The audit revealed that the Organization made the following errors and omissions on its T3010 filings.

- The Organization reported that it had deferred revenue of \$29,406 in 2009 and 2010, which was not the case. This amount was the bank account balance at the end of the 2009 fiscal year.
- For 2009, the Organization reported that it had expended \$340,373 on other expenditures on line 5040, which was not the case. This amount represents the total expenditures which were already reported on lines 5000 to 5020.
- For 2010, the Organization did not complete line 5020. It omitted reporting \$698,620 in fundraising expenditures and incorrectly included amounts paid to consultants as charitable expenditures.
- For 2010, the Director/Trustee worksheet Form 1235 was completely falsely. The home addresses for the directors were shown as #207, 1425 Marine Drive, West Vancouver, B.C., which is not the case. This address is the mailing address of the Organization. The directors reside in Ontario and Texas.
- The Organization's physical address and location of its books and records were shown as #207 – 1425 Marine Drive, West Vancouver, B.C. Canada, which was not the case.

The errors and omissions are material, and of a nature that the directors ought to have known were erroneous. As a result, the Organization failed to exercise due care with respect to ensuring the accuracy of its T3010A Information Returns.

#### **The Organization's Options:**

##### **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 Act.

**b) Response**

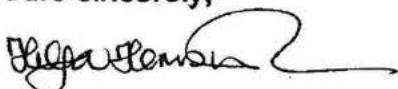
Should you choose to respond, please provide your written representations and any additional information regarding the findings outlined above within **30 days** from the date of this letter. After considering the representations submitted by the Organization, the Director General of the Charities Directorate 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
- 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 Act.

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,



Helga Hemsworth, CGA  
Audit Division

Facsimile: (250) 363-3862

*c.c. Ms. Brenda Lawson*

## ITR APPENDIX "A"

### **Section 149.1: [Charities]**

#### **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; or
- (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.

#### **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;
- (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 (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;
- (c) since June 1, 1950, acquired control of any corporation; or
- (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 the registered charity has made a gift to another registered charity and it can reasonably be considered that one of the main purposes of making the gift was to unduly delay the expenditure of amounts on charitable activities;
- (b) of the other charity referred to in paragraph (a), if it can reasonably be considered that, by accepting the gift, it acted in concert with the registered charity to which paragraph (a) applies; and
- (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.

#### **Section 168: Notice of intention to revoke registration**

168(1) Where a registered charity or a registered Canadian amateur athletic association

- (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 as such,
- (c) fails to file an information return as and when required under this Act or a regulation,
- (d) issues a receipt for a gift or donation 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 or donation the granting of which was expressly or impliedly conditional on the association making a gift or donation to another person, club, society or association, the Minister may, by registered mail, give notice to the registered charity or registered Canadian amateur athletic association that the Minister proposes to revoke its registration.

#### **168(2) Revocation of Registration**

Where the Minister gives notice under subsection (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 that is or was registered as a registered charity or is an applicant for registration as a registered charity that objects to a notice under subsection (1) or any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) 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.

#### **Section 172: Appeal from refusal to register, revocation of registration, etc.**

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

Where the Minister

- (a) refuses to register an applicant for registration as a Canadian amateur athletic association,
- (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,
- (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) refuses to issue a certificate of exemption under subsection 212(14),
- (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, or
- (g) refuses to accept for registration for the purposes of this Act any retirement income fund, the applicant or the organization, foundation, association or registered charity, as the case may be, in a case described in paragraph (a) or (a.1), the applicant in a case described in paragraph (b), (d), (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), or the administrator of the plan or an employer who participates in the plan, in a case described in paragraph (f) or (f.1), may appeal from the Minister's decision, or from the giving of the notice by the Minister, to the Federal Court of Appeal.

## **Section 180: Appeals to 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) the mailing of notice to a registered Canadian amateur athletic association under subsection 168(1),
- (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), or
- (c) the time the decision of the Minister to refuse the application for acceptance of the amendment to the 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
- (d) 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) applies.

**188(4) Idem**

Where 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 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”

“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”

“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.

**Section 189****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 mailed 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 registered charity in respect of the charity'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 charity after the day on which the Minister first assessed that liability and before the particular time 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 total of

- (a) the consideration given by the 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, 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.