

ATTACHMENT TO NOTICE OF INTENTION TO REVOKE OF DECEMBER 6, 1995.

BY REGISTERED MAIL

Greenpeace Canada Charitable Foundation
185 Spadina Avenue
Toronto, Ontario
M5T 2C6

81924

Tel: (613) 954-1362

Attention: Ms. Vicki Slemin
Operations Director

August 16, 1994

Dear Ms. Slemin:

Re: Charity Audit

This letter is further to an audit of the books and records and activities of Greenpeace Canada Charitable Foundation (the "Charity") which was conducted by a representative of the Department for the period January 1, 1990 to December 31, 1993.

The audit has raised serious concerns about the Charity's compliance with certain provisions of the Income Tax Act (the "Act"). For a registered charity to retain its registration, it must comply with the provisions of the Act. If a particular registered charity does not comply with these provisions, the Minister may revoke that charity's registration in the manner described in subsection 168(2) of the Act. The balance of this letter describes the Department's concerns.

CHARITABLE ACTIVITIES

The Charity is registered as a charitable organization. To satisfy the definition of a charitable organization pursuant to subsection 149.1(1) of the Act, a charity must devote its resources exclusively to charitable activities carried on by the organization itself, or to other ancillary and incidental activities such as political activities which meet the requirements of subsection 149.1(6.2) of the Act. The term "charitable" is not defined in the Act and we must therefore refer to

the principles of common law to determine whether a particular purpose or activity is charitable.

The Charity was registered with the following object:

The object of the Corporation is to further the advancement of education and for the purpose of furthering such object and to the extent that such activities are not inconsistent with such object:

- a) to educate the public on environmental issues,
- b) to support environmental preservation through education means,
- c) to conduct research on environmental issues, and
- d) to make available to the public the results of such research.

To be charitable, an educational activity must either train the mind, prepare a person for a career or broaden the sphere of human knowledge (as in scientific research). Research, as a particular area of education, must be directed to gaining more knowledge about a particular question, and the research procedures and its results must be explained to the public fully and fairly. The courts consider that simply providing selected information and opinions on a subject is not educational, in that it does not present a full and fair examination of the subject and it lacks the necessary degree of training or instruction.

In summary, for an organization's over-all activities to meet the requirements of the Act the following criteria must be met:

- the activities must meet the legal definition of charitable activities as defined by the Courts;
- a registered charity must carry out its own charitable activities directly or give funds to qualified donees; and,
- political activities must be ancillary and incidental to the charitable activities.

The expenditures you identified as charitable on your *T3010 Charity Information Return* for the years 1990 to 1993 inclusive consisted of the publication of the newsletter *Greenlink* and pledges to *Stichting Greenpeace Council ("International")*. Based on the audit results, we do not perceive any of these expenditures to be charitable expenditures. The basis for this conclusion is as follows:

Greenlink

Our review of this publication has concluded that its content is not advancing education in the charitable sense. The publication principally consists of environmental news stories and supports the advocacy activities of Greenpeace Canada.

In addition, it is not your activity. The audit results show that the publication is an activity of Greenpeace Canada and that the Charity is charged for the related expenditures at year end through the intercompany account.

Pledges to Stichting Greenpeace Council

Basically the Act permits a registered charity to carry out its charitable purposes, both inside and outside Canada in two ways:

- First, it can make grants to other organizations which are qualified donees as described in the Act.
- Second, it can carry on its own charitable activities. In contrast to the relatively passive transfer of money or other resources involved in making grants to qualified donees, carrying on one's own activities implies active participation on the part of the Canadian charity in a program or project that directly achieves a charitable purpose. The Act clearly does not allow a Canadian charity to carry out its mandate by handing over its resources to another organization (unless that organization is a qualified donee).

The Department has no objection to a Canadian charity arranging to accomplish its own educational or other charitable activities through contractual agreements with organizations outside Canada. However, the requirement to be satisfied here is that the charity is devoting its resources to activities for which it is responsible as a co-participant or principal. What is important in such cases is that the arrangement provide for sufficient direction and control by the Charity over the use of its resources to satisfy the requirement of the Act that these resources be devoted to charitable activities carried on by the Charity itself.

The Department accepts that charities can, in fact, fulfil the requirements of the Act as outlined above, through agency relationships with other organizations or individuals operating abroad wherein the charity retains a presence in the field. The Department's acceptance of such an agency relationship between a charity and another organization or individual as a means of ensuring the charity's compliance with the Act would be subject to certain minimum standards for departmental purposes.

However, once an agency agreement has been executed, the Canadian charity must in fact show a reasonable degree of on-going interest and control in the project carried out by the agent. The agent should report back to the Canadian charity on a reasonable and regular basis on the progress of the project(s). Documentation relating to the carrying out of the project by the agent should be part of the charity's records, available in Canada. The charity's continuing eligibility for charitable registration will depend on whether or not it is in fact maintaining a sufficient degree of ongoing control as required by the Act and provided for in the agreement.

We note that an agency agreement was signed between the Charity and International on October 1st, 1990. The agency agreement provided that "the Charity Funds shall be applied by SGC only in such manner as the Charity directs in writing and solely in satisfaction of the Charity's charitable objects". The Charity reported the following expenditures on its T3010 Charity Information Return as charitable expenditures made under the agency agreement which were intended to establish a World Park in Antarctica:

1990 - \$700,000
1991 - \$350,000
1992 - \$350,000

The 1990 expenditure was paid to International by the Charity on June 14, 1991. In response to your April 12, 1991 letter, the Department did not object to the payment of the funds to your agent, which were to have been disbursed on your behalf pursuant to your direction, for the year 1990 even though a separate bank account was not maintained by the agent. It was our understanding that the agent did maintain a separate accounting for these funds and it would be able to provide you with vouchers and cancelled cheques. The agent was to have maintained a separate bank account for future years.

The 1991 and 1992 expenditures consisted of pledges which were made by the Charity to International. The audit results indicate that the pledge amounts were added to the amount owing from Greenpeace Canada to International. International subsequently forgave the pledge amount owing to it by Greenpeace Canada.

Based on the facts which were provided during the audit, we believe that these resources were actually used by Greenpeace Canada in its operations:

- The Charity did not advise International that it approved the 1990 activities or draft budget until after the expenditures had been incurred; namely by facsimile dated February 11, 1991. It would therefore appear that the 1990 expenditures were not incurred by International pursuant to the Charity's direction.

- The 1991 payment of \$700,000 from the Charity to International was made on the understanding that International would provide a loan to Greenpeace Canada. International did provide a loan of \$700,000 to Greenpeace Canada. Greenpeace Canada subsequently reduced its loan payable to the Charity by \$500,000.
- The Charity's pledges to International for 1991 and 1992 in the amount of \$350,000 each were not paid. Due to the fact that International treated Greenpeace Canada and the Charity as one entity, Greenpeace Canada was able to add the pledge amounts to its balance owing to International. Greenpeace Canada was subsequently forgiven the \$700,000 in pledges, except for a balance of \$70,202 which was allocated to the Charity.

You have indicated that although the pledge amounts were not actually paid to International, Greenpeace Canada paid for International campaigns carried out in Canada in order to offset the payment of the pledges. However, the audit results indicate that International advanced funds to Greenpeace Canada in the form of grant revenue in order to pay for these International campaigns.

- The Charity has not exercised sufficient control over its resources. We note that you were able to provide the *Greenpeace Annual Report 1990-1991*, which does make reference to the Antarctica campaign. However, the report does not detail how the Charity's resources were actually spent. You did subsequently obtain a general breakdown of the allocation of the expenditures for 1990; these expenditures detail the amount of \$350,000 rather than the \$700,000 that was actually sent to International for expenditures incurred during the 1990 year.
- We were also advised during the audit that International is just now completing its 1992 audited statements and for this reason you have not received subsequent annual reports respecting the funds allocated.

It therefore appears that the activities and related expenditures respecting the Antarctica World Park are not those activities of the Charity.

As a result, it appears that the Charity has failed to devote all its resources to charitable activities, and therefore does not meet the definition of a charitable organization pursuant to subsection 149.1(1) of the Act.

Paragraph 168(1)(b) of the Act provides that for a registered charity to be entitled to retain its registered status, it is required to comply with the requirements of the Act relating to its registration as such. If a registered charity ceases to comply with these requirements, the Minister may give notice to the charity that he proposes to revoke its registration.

USE OF RESOURCES BY NON-QUALIFIED DONEES

We refer you to your undertaking given on registration (copy attached) which states that the Charity "will not make its resources (including human resources) available to any organization which is not a "qualified donee"".

Should a charity wish to loan funds to an organization which is not a qualified donee, in order to be acceptable to Revenue Canada, the transaction would have to be properly characterized as an investment. We would expect the loan to be for a reasonable term, be adequately secured and be made on terms similar to an arm's length transaction (the interest charged and received by the charity would be similar to that charged in the open market between two entities acting independently of each other).

The audit results indicate that the Charity's loan receivable from Greenpeace Canada is non-interest bearing, has no specific terms of repayment, and is unsecured.

In addition, the following factors cumulatively indicate that the Charity does not operate as a separate entity which is distinct from the operations of Greenpeace Canada:

- Greenpeace Canada has a Sublicensing Agreement with the Charity respecting the use of the name "Greenpeace". The pledge amounts for both organizations are reported to International jointly.
- The forgiveness of the 1991 and 1992 pledge amounts, except for the \$70,202 balance from 1990 in the Charity's records, was recorded in the books of Greenpeace Canada and was not reflected in the records of the Charity.
- The fundraising activities which fall under the name *Partners in Action* do not distinguish the activities of the Charity from those of Greenpeace Canada.
- The payment in 1991 by Greenpeace Canada against the Loan Receivable in the amount of \$500,000 was actually a circulation of the Charity's funds that were sent to International.
- The Charity and Greenpeace Canada had a joint general ledger and joint board meetings up until December 31, 1992. We do note that you have provided separate Board Minutes for the 1993 year and that the Charity now has its own general ledger. However, the Charity continues to transfer funds from its account to Greenpeace Canada on a regular basis.
- Greenpeace Canada executed a Loan Agreement with International on February 18, 1994. This Agreement provided that Greenpeace Canada would make no material changes to the budget (defined as amounts greater than \$25,000) without the approval of International. The

budget includes the revenues of the Charity, which strongly suggests that the Charity is seen as being part of Greenpeace Canada.

- Pre-authorized payments from donors to the Charity continue to be made directly to the bank account of Greenpeace Canada.

As a result, it appears that the Charity has failed to devote all its resources to charitable activities, and therefore does not meet the definition of a charitable organization pursuant to subsection 149.1(1) of the Act.

Paragraph 168(1)(b) of the Act provides that for a registered charity to be entitled to retain its registered status, it is required to comply with the requirements of the Act relating to its registration as such. If a registered charity ceases to comply with these requirements, the Minister may give notice to the charity that he proposes to revoke its registration.

POLITICAL ACTIVITIES IN EXCESS OF THOSE ALLOWED IN THE ACT.

Subsection 149.1(6.2) of the Act permits a charitable organization to devote some of its resources to non-partisan political activities provided that such political activities are ancillary and incidental to its charitable activities and that substantially all of its resources are dedicated to charitable activities carried on by it. The Department accepts the test that substantially all of a charitable organization's resources be devoted to charitable activities is met where ninety percent thereof are so devoted. Accordingly, a charitable organization may devote up to ten percent of its resources to ancillary and incidental political activities of a non-partisan nature.

The courts have established that activities which are designed essentially to sway public opinion on political issues or matters of public policy are political in the sense understood at law. These types of activities include the following:

1. presenting publications, conferences, workshops;
2. placing advertisements in newspapers, magazines or on television or radio designed to attract interest in, or gain support for, a charity's position on political issues and matters of public policy;
3. public meetings or lawful demonstrations that are organized to publicize and gain support for a charity's point of view on matters of public policy and political issues; and,
4. organizing mailing campaigns where a charity asks its members

or the public to write to the media and government expressing support for the charity's views on political issues and matters of public policy.

The fact that such activities are carried out by an organization with charitable objectives does not make the nature of the activity less political. We refer you to the enclosed Information Circular 87-1 entitled *Registered Charities - Ancillary and Incidental Political Activities*.

On the contrary, it appears that the Charity is devoting substantial financial, material and human resources to political activities which are not incidental and ancillary to charitable objects.

That is, purposes and activities that are directed at legislative change or change in public policy or attitudes are considered political in nature, and not charitable at law. For example, these activities and related expenditures include your fundraising letter campaigns and various articles in the *Greenlink* publication. You have also made your resources available to an organization which carries out political activities; more specifically the non-interest bearing loan to Greenpeace Canada discussed below.

Based on the above analysis, it appears that the Charity has not devoted substantially all of its resources to charitable activities, and therefore has failed to meet the prerequisite of subsection 149.1(6.2) of the Act.

Once again, pursuant to paragraph 168(1)(b) of the Act, failure to comply with the provisions of the Act relating to a charity's registration may cause the Minister to propose revocation.

DISBURSEMENT QUOTA

Registered charities are required in each year of operation to meet or exceed a disbursement quota. This quota relates to expenditures that must be made during the year and that are of a charitable nature. In the case of a charitable organization, the Act stipulates that this minimum annual disbursement quota is equal to eighty percent of the prior year's officially received donations less certain types of gifts received.

As discussed above, it would appear that the Charity has not made the required amount of expenditures on charitable activities. This has resulted in a disbursement quota shortfall as follows:

	<u>Shortfall</u>
Disbursement Quota for 1990 - 80% of 1989 Receipts: $(410,387 \times .80)$ \$328,310	
Less claimed 1989 charitable expenditures	<u>(154,851)</u>
	\$173,459
Disbursement Quota for 1991 - 80% of 1990 Receipts $(306,920 \times .80)$	245,536
Disbursement Quota for 1992 - 80% of 1991 Receipts $(625,734 \times .80)$	500,587
Disbursement Quota for 1993 - 80% of 1992 Receipts $(637,900 \times .80)$	510,320

As a result, it appears that the Charity has failed to meet the requirements of paragraph 149.1(2)(b) of the Act.

Paragraphs 168(1)(b) and 149.1(2)(b) of the Act provide that for a registered charity to be entitled to retain its registered status, it is required to comply with the requirements of the Act relating to its registration as such. If a registered charity ceases to comply with these requirements, the Minister may give notice to the charity that he proposes to revoke its registration.

OFFICIAL DONATION RECEIPTS

The law provides various requirements in respect of official donation receipts issued by registered charities. These requirements are described in some detail in Interpretation Bulletin IT-110R2 entitled *Deductible Gifts and Official Donation Receipts*, a copy of which has been enclosed for your review. Official donation receipts shall be issued only in respect of gifts and donations (Regulation 3500). A gift or donation can only be considered to have been made when all three of the following conditions have been met:

- 1) property was transferred;
- 2) the transfer was voluntary; and,
- 3) the transfer was made without expectation of return.

The Spring 1994 publication entitled *News Update* states that Partners in Action members receive benefits in connection with access to the computerized bulletin board entitled *Alternative BBS*; the \$100 sign up fee is waived and members are given a free one-year subscription which costs \$79 to the public. Where a donor receives from a charity something of more than nominal value as an inducement for making a contribution, no official receipt may be issued. This is so even if the amount of the contribution exceeds the value of the inducement.

Paragraph 168(1)(d) of the Act provides that where a registered charity issues an official donation receipt for a gift or donation otherwise than in accordance with the Act and Regulations or issues a receipt that contains false information, the Minister may give notice to the registered charity that he proposes to revoke its registration.

CONCLUSION

The consequences to a registered charity of losing its registration include:

1. the loss of its tax exempt status as a registered charity which means that the Charity would become a taxable entity under Part I of the Income Tax Act unless, in the opinion of the Director of the applicable District Taxation Office, it qualifies as a non-profit organization as described under paragraph 149(1)(1) of the Act;
2. loss of the right to issue official donation receipts for income tax purposes which means that gifts made to the Charity would not be allowable as a tax credit to individual donors as provided by subsection 118.1(3) of the Act or as a deduction allowable to corporate donors under paragraph 110.1(1)(a) of the Act; and
3. the possibility of tax exigible under Part V, subsection 188(1) of the Act.

For your reference, we enclose a copy of Information Circular No. 80-10R entitled *Registered Charities: Operating a Registered Charity* and we bring to your attention Appendices C and D which describe the provisions of the Income Tax Act concerning revocation of registration, the tax applicable to revoked charities and the appeal provisions from the Minister's issuance of a notice of intention to revoke a registered charity's registration.

If you do not agree with the above, or if you wish to present your reasons as to why the Minister of National Revenue should not revoke the registration of the Charity in accordance with subsection 168(2) of the Act, you are invited to submit your representations to us within sixty days from the date of this letter. Subsequent to this date, the Director, Charities Division, will decide whether or not to proceed with the issuance of a notice of intention to revoke the registration of the Charity in the manner described in subsection 168(1) of the Act.

If you appoint a third party to represent you in this matter, please notify us in writing.

We attach as Appendix A our response to your queries respecting proposed activities for the future. However, our review of the Charity's current operations give us reason to believe that it does not qualify for continued registered status.

If you have any questions on these matters, please telephone me at
[REDACTED] or J. Shelvock at [REDACTED], or write to 400 Cumberland
Street, Room 5004C, Ottawa, Ontario, K1A 0L8.

Yours sincerely,



Richard Labelle, CGA
Assistant Director
Audit Section
Charities Division

Enclosures: IC 80-10R
IC 87-1
IT 110R2
Undertaking

BY REGISTERED MAIL

Greenpeace Canada Charitable Foundation
185 Spadina Avenue
Toronto, Ontario
M5T 2C6

Your file Votre référence

Our file Notre référence
81924

Tel: (613) 954-1362

Attention: Ms. Jeanne Moffat

DEC 6 1995

Dear Ms. Moffat:

RE: GREENPEACE CANADA CHARITABLE FOUNDATION

I refer to the Department's letter of August 16, 1994, copy attached, requesting your representations as to why the Minister of National Revenue should not revoke the registration of Greenpeace Canada Charitable Foundation (the "Charity") in accordance with subsection 168(2) of the Income Tax Act (the "Act").

We have reviewed representations made on your behalf by Chan & Co. in their letters dated November 29, 1994 and March 27, 1995, as well as representations made to our auditor when she attended at your accountant's office on August 24 and 25, 1995 to review additional documentation submitted by you (including the Charity's 1994 activities). We also refer to a meeting held at your request on October 10, 1995 at our office and attended by Mr. John Doherty, Mr. Chris Chan, Mr. Arthur Drache and yourself on behalf of the Charity.

We must advise that the submissions did not alleviate our concerns. As a result, we have determined that the Charity does not satisfy the definition of a charitable organization in accordance with subsection 149.1(1), has failed to meet the prerequisite of subsection 149.1(6.2), has failed to meet its disbursement quota in accordance with the requirements of paragraph 149.1(2)(b) of the Act and has issued official donation receipts which are not in compliance with Part XXXV of the Regulations to the Act.

Canada

CHARITABLE ACTIVITIES

Greenlink

In your November 29, 1994 letter, you state that the "publication of the newsletter is one of the functions of the Information Office and as such is not in and of itself the only charitable activity of the Charitable Foundation". Your letter also refers to a number of educational and research activities conducted by the Information Office. You have attached a list of meetings organized during 1993 and 1994 by the Charity, but state that no written formal documents or speeches are available.

Your representations do not convince us that the described activities under "Information Office" were conducted by the Charity and, even if such should be the case, the resources devoted to activities other than the newsletter are minimal. The predominant activity of the Information Office is the publication of the newsletter: *Greenlink* and the French *Réseau Vert*.

As stated in our attached letter, the courts consider that simply providing selected information and opinions on a subject is not educational in the charitable sense. A registered charity is permitted to publish a newsletter, but since this is not an activity which is charitable in and of itself, it must be clearly ancillary and incidental to the organization's strictly charitable purposes and activities.

The newsletter does not refer to activities of the Charity itself. A careful perusal of the newsletter indicates that the content is general information on the activities of Greenpeace Canada. You make reference to a circulation of the publication of each issue of between 150,000 and 200,000. However, the publication advertises that the newsletter is offered to members of Greenpeace Canada who pay a membership fee to Greenpeace Canada of \$30 per year.

You state that the Information Office was started by the Charity in May, 1993. However, the Charity's letter of November 12, 1993 to the Department refers to the Information Office and newsletter as proposed activities, nor did the Charity state that this was one of its activities during the audit conducted in May, 1994. We make the following additional comments:

- The predominant activity of the Information Office is the publication of the newsletter; the resources devoted to this activity in 1993 and 1994 as a percentage of total charitable expenditures (as indicated on the T3010 *Charity Information Returns*) were 100% and 78% respectively. In addition, the Charity was allocated 65% (\$70,643) of Greenpeace Canada's newsletter costs in 1992.
- You have also indicated that the Information Office commenced in May, 1993. However, expenditures charged to the Charity for the cost of newsletters commenced in 1992.

- On page 8 of your letter, you also submit that the Charity "inadvertently failed to include its charitable expenditures on the Information Office for the year of 1993". The inclusion of the salary of the Information Officer in 1993 of \$20,157 is not material in relation to total expenditures on the publication of the newsletter, which totalled \$236,071.
- You have stated that the related expenditures for the newsletter were charged at year end for ease in administration and that payments were made to Greenpeace Canada on account throughout the year. Our review of the records shows that the Charity regularly made advances to Greenpeace Canada under the loan receivable throughout the year and that the expenditures paid by Greenpeace Canada for the newsletter reduced the loan receivable subsequent to the year end. We were not provided with documentation showing that the Charity approved expenditures for the newsletter on a regular basis throughout the year.
- You have indicated that the Information Office distributes material from its publication list. However, in 1994 the revenue from the sale of this material was \$5228, with a production cost of \$3197. We do not find these amounts material in relation to the resources devoted to the newsletter.

As a result, we cannot accept your representations that the Charity's resources devoted to the Information Office support its charitable purpose.

Payments made under Agency Agreement

Your representations state that the Charity "had direction and control over the use of the fund. The direction was through correspondence and telephone calls administered by the officials of the Charitable Foundation." We disagree and are unable to accept your representations that the amount of \$1,400,000 was paid to Stichting Greenpeace Council (a division of Greenpeace International) under the agency agreement and is therefore a charitable activity of the Charity.

- Letters from the directors of the Charity attesting to their attendance at Greenpeace International's meetings are by individuals who were also on the board of directors of Greenpeace Canada. Attendance by some of Greenpeace Canada's directors or officers at International's meetings where the project was discussed are not proof of direction and control. In addition, the Charity did not have voting status at Greenpeace International's meetings and in fact, Greenpeace Canada itself lost its voting status at these meetings in 1991 for failure to make its pledge payments.

- The documentation submitted on the Antarctica World Park does not make reference to the Charity. In fact, the documentation refers interested parties to contact the Greenpeace Antarctica Campaign in the following countries: Greenpeace USA, Greenpeace International, and Greenpeace New Zealand. The Charity did not maintain any minutes of board meetings prior to January, 1993; reference to the Charity is found in the minutes of Greenpeace Canada. Absent from the minutes is reference to the activities in Antarctica.
- You have referred to weekly campaign reports from Greenpeace International on the Antarctica Campaign. These reports are to "Everyone" and appear to be e-mailed to all Greenpeace offices.
- You have stated that the February 11, 1991 facsimile from Mr. Brian Iler of the Charity to Greenpeace International is only a formal confirmation to the verbal agreements made in 1990. However, the evidence indicates that the agreement made in 1990 was for the Charity to receive future proposals from Greenpeace International, rather than to approve specific activities.
- There are inconsistencies in the reports from Greenpeace International that the Charity provided as evidence that it directed the use of its funds in the Antarctica campaign:
 - The Charity claimed to have disbursed the sum of \$700,000 during 1990 on the Antarctica campaign on its 1990 T3010 Charity Information Return.
 - At the Department's request, Greenpeace International submitted on June 1, 1994, confirmation that the Charity contributed \$350,000 for expenses incurred on its behalf during 1990.
 - You subsequently provided confirmation from Greenpeace International, faxed to the Charity on November 29, 1994, that the Charity contributed \$1,400,000 to the Antarctica Campaign; \$700,000 for 1990, and \$350,000 for each of 1991 and 1992. We do not accept this subsequent confirmation as evidence that the funds were actually applied to activities carried on by the Charity itself.
- The supporting reports provided do not show that the Charity directed or controlled the expenditure of funds, nor was a separate accounting provided as required under the agency agreement.
- The evidence shows that any funds advanced to Greenpeace International by the Charity were made on the understanding that Greenpeace International would return these funds to Greenpeace Canada.

- As discussed with you, the letter of April 8, 1991 from Greenpeace International to Mr. Brian Iler, and the March 31, 1992 memo to Ms. Vicki Slemin show that the Charity's 1991 payment of \$700,000 (which is reported in the Charity's records as an expenditure in 1990) was linked to a payment back from Greenpeace International to Greenpeace Canada and that Greenpeace Canada would use a substantial portion of this payment (\$500,000) to reduce its loan payable to the Charity.
- You have submitted that the 1991 and 1992 transactions between Greenpeace Canada and Greenpeace International "are in the ordinary course of non-profit activities carried out by Greenpeace Canada and these are completely different transactions from pledges to Greenpeace International by the Charity." The fact remains that the Charity did not pay any amounts to Greenpeace International under the agency agreement; the funds were paid directly to Greenpeace Canada.

Use of Resources by Non-Qualified Donees

We believe the facts cumulatively show that the Charity was allowing the majority of its resources to be used by Greenpeace Canada. We do not accept the reporting of the loan as unsecured and non-interest bearing as a clerical error. The financial statements were audited and reviewed. These actions are in direct contravention of the undertaking provided to the Department on registration that the Charity would not allow its resources to be used by a non-qualified donee.

The records show that the loan has been increasing yearly, repayment schedules have not been adhered to, and the interest for 1992 and 1993 was accrued, but not paid, only subsequent to our August 16, 1994 letter.

The working papers show that the loan increased during 1994 from a January 1, 1994 balance of \$830,074 to a balance owing on December 31, 1994 of \$1,324,670. In addition, the loan agreement subsequently provided, executed on August 25, 1995, shows that as of that date, the Charity had not received any payments on the loan during 1995 and that the first payment is not due until December 31, 1995. The loan receivable represents 85% of the Charity's total resources.

We do not consider the mailing list to be tangible security for the loan: there has been no valuation on the loan and the original mailing list purchased by Greenpeace Canada from the Charity has been written off the books. You indicated during our attendance in Toronto on August 25, 1995, that the \$800,000 loan between Greenpeace International and Greenpeace Canada, which also pledged the mailing list as security, did not actually occur. However, our review of the minutes of October 1-3, 1993 of Greenpeace Canada state "that the loan from Greenpeace International has been secured and transferred."

During your attendance at our office on October 10, 1995, you stated that the loan had now been reduced by \$125,000 on principal and \$94,000 on interest. We are unable to accept this payment, which still leaves an unpaid balance of \$1,105,670, as an acceptable solution to our concerns. In addition, we believe that the loan balance should be increased by an additional \$500,000, plus accrued interest, which amounts represent the circulation of funds from the Charity, to Greenpeace International, to Greenpeace Canada, and back to the Charity in 1991.

In our view, the Charity has been placing its assets at risk by advancing funds to Greenpeace Canada in a non-arm's length arrangement.

As a result, we believe that the Charity has failed to devote all its resources to charitable activities, and therefore does not meet the definition of a charitable organization pursuant to subsection 149.1(1) of the Act.

Paragraph 168(1)(b) of the Act provides that for a registered charity to be entitled to retain its registered status, it is required to comply with the requirements of the Act relating to its registration as such. If a registered charity ceases to comply with these requirements, the Minister may give notice to the charity that he proposes to revoke its registration.

POLITICAL ACTIVITIES

You make reference to Appendix B of Information Circular 87-1 titled *Registered Charities - Ancillary and Incidental Political Activities* which refers to a charity that asks "people to press for stricter legislative standards for environmental protection and this activity is deemed as subordinate to its charitable activity." Please note that although this activity is allowed, it is subject to the established expenditure limitations. We have determined that the Charity's resources devoted to political activities are in excess of ancillary and incidental activities.

We remain of the view that the Charity's political activities and related expenditures include its fundraising letter campaigns and various articles in the newsletter. It has also made its resources available to Greenpeace Canada, an organization which carries out political activities. These resources include the principal amount of the loan receivable and interest foregone on the debt.

Based on the above analysis, it appears that the Charity has not devoted substantially all of its resources to charitable activities, and therefore has failed to meet the prerequisite of subsection 149.1(6.2) of the Act.

Once again, pursuant to paragraph 168(1)(b) of the Act, failure to comply with the provisions of the Act relating to a charity's registration may cause the Minister to propose revocation.

DISBURSEMENT QUOTA

As discussed above, we are unable to accept your representations that the Charity failed to include charitable expenditures of \$20,157 in its expenditure on charitable activities due to a clerical error. Likewise, the Charity has not provided us with substantiating documentation to prove that gifts of capital received by way of bequest or inheritance for the years 1989 to 1992 should be removed from its disbursement quota calculation. As indicated above, we remain of the view that the Charity has failed to carry out charitable activities for the years under audit (1990 to 1993). In addition, your representations for the 1994 year indicate that the Charity has incurred an additional disbursement quota shortfall.

As a result, it appears that the Charity has failed to meet the requirements of paragraph 149.1(2)(b) of the Act.

Paragraphs 168(1)(b) and 149.1(2)(b) of the Act provide that for a registered charity to be entitled to retain its registered status, it is required to comply with the requirements of the Act relating to its registration as such. If a registered charity ceases to comply with these requirements, the Minister may give notice to the charity that he proposes to revoke its registration.

OFFICIAL DONATION RECEIPTS

You state on page 8 of your letter of November 29, 1994, that the inducements offered in connection with access to the computerized bulletin board have no real economic benefit to the donor as the membership is not transferrable and has no resale value. However, the fact that the membership is not transferrable is not an indication of the fair market value of the inducement, which the Charity puts at \$179 in its advertisements.

Paragraph 168(1)(d) of the Act provides that where a registered charity issues an official donation receipt for a gift or donation otherwise than in accordance with the Act and Regulations, or issues a receipt that contains false information, the Minister may give notice to the registered charity that he proposes to revoke its registration.

CONCLUSION

I wish to advise you that for the reasons outlined above and pursuant to the authority granted to the Minister in subsection 168(1) of the Act and delegated to me in subsection 900(8) of the Regulations to the Act, I propose to revoke the registration of Greenpeace Canada Charitable Foundation. By virtue of subsection 168(2) of the Act, the revocation will be effective on the date of publication in the *Canada Gazette* of the following notice:

Notice is hereby given, pursuant to paragraphs 168(1)(b), 149.1(2)(b), and 168(1)(d) of the *Income Tax Act*, that I propose to revoke the registration of the charity listed below and that the revocation of registration is effective on the date of publication of this notice.

0819243-23 Greenpeace Canada Charitable Foundation
 Toronto, Ontario

Should you wish to appeal this notice of intention to revoke the charity registration in accordance with subsections 172(3) and 180(1) of the Act, you are advised to file a notice of appeal with the Federal Court of Appeal within 30 days from the mailing of this letter. The address of the Federal Court of Appeal is:

Supreme Court Building
Wellington Street
Ottawa, Ontario
K1A 0H9

As of the date of revocation of the registration of the Charity, which is the date upon which the above-noted notice is published in the *Canada Gazette*, the Charity will no longer be exempt from Part 1 Tax as a registered charity and will no longer be permitted to issue official donation receipts.

Additionally, the Charity may be subject to tax exigible pursuant to Part V, section 188 of the Act. For your reference, I have attached a copy of the relevant provisions of the Act concerning revocation of registration and the tax applicable to revoked charities as well as appeals against revocation.

I wish to advise you that pursuant to subsection 150(1) of the Act, a return of income for each taxation year in the case of a corporation (other than a corporation that was a registered charity throughout the year) shall without notice or demand therefor, be filed with the Minister in prescribed form containing prescribed information. Also we

draw your attention to paragraph 149(1)(1) which states the definition of a non-profit organization and subsection 149(12) which states the filing requirements of a non-profit organization.

Yours truly,



R.A. Davis, CGA
Director
Charities Division

Attachments

c.c. Mr. Arthur Drache
Drache, Burke-Robertson & Buchmayer
184 Lisgar Street
Ottawa, Ontario
K2P 0C4