



REGISTERED MAIL

Hindu Institute of Learning
2411 Dundas St W.
Toronto ON M6P 1X3

JUN - 6 2017

BN: 890078462RR0001

Attention: Mr. Mohan Sookdeo

File #:1014851

**Subject: Notice of Intention to Revoke
Hindu Institute of Learning**

Dear Mr. Sookdeo:

We are writing further to our letter dated August 3, 2016 (copy enclosed), in which you were invited to submit representations as to why the registration of the Hindu Institute of Learning (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 October 3, 2016. However, notwithstanding your reply, our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity have not been alleviated. Our position is fully described in Appendix "A" attached.

Conclusion

The audit by the Canada Revenue Agency (CRA) has revealed that the Organization is not complying with the requirements set out in the Income Tax Act. In particular, it was found that the Organization failed to devote resources to charitable activities, failed to operate for exclusively charitable purposes - unstated collateral non-charitable purpose, failed to issue official donation receipts in accordance with the Act and/or its Regulations, failed to file an accurate T3010, Registered Charity Information Return, failed to maintain adequate books and records and failed to accurately report remuneration and benefits paid. For all of these reasons, and for each reason alone, it is the position of the CRA that the Organization no longer meets the requirements necessary for charitable registration and should be revoked in the manner described in subsection 168(1) of the Act.

Consequently, for each of the reasons mentioned in our letter dated August 3, 2016, we wish to advise you that, pursuant to subsection 168(1) and 149.1(1) of the Act, we propose to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the Canada Gazette:

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

Business number	Name
890078462RR0001	Hindu Institute of Learning Toronto ON

Should you wish to object to this notice of intention to revoke the Organization's registration in accordance with subsection 168(4) of the Act, a written notice of objection, which includes the reasons for objection and all relevant facts, must be filed within **90 days** from the day this letter was mailed. The notice of objection should be sent to:

Tax and Charities Appeals Directorate
Appeals Branch
Canada Revenue Agency
250 Albert Street
Ottawa ON K1A 0L5

A copy of the revocation notice, described above, will be published in the *Canada Gazette* after the expiration of 90 days from the date this letter was mailed. The Organization's registration will be revoked on the date of publication, unless the CRA receives an objection to this notice of intention to revoke within this timeframe.

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

Consequences of revocation

As of the effective date of revocation:

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

corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the Act, respectively;

- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the notice of intention to revoke. This revocation tax is calculated on prescribed Form T2046, *Tax Return Where Registration of a Charity is Revoked* (the Return). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the notice of intention to revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix "B". Form T2046 and the related Guide RC4424, Completing the Tax Return Where Registration of a Charity is Revoked, are available on our Web site at cra.gc.ca/charities;
- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the Excise Tax Act. As a result, the Organization may be subject to obligations and entitlements under the Excise Tax Act that apply to organizations other than charities. If you have any questions about your Goods and Services Tax/Harmonized Sales Tax (GST/HST) obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

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

Yours sincerely,



Tony Manconi
Director General
Charities Directorate

Attachments:

- CRA letter dated August 3, 2016
- Appendix "A", Comments on Representations of October 3, 2016
- Appendix "B", Relevant provisions of the Act

c.c.: [REDACTED]

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CANADA REVENUE AGENCY AGENCIE DU REVENU DU CANADA

Hindu Institute of Learning
2411 Dundas St W.
Toronto ON M6P 1X3

Registered Mail

Attention: Mr. Mohan Sookdeo

BN: 89007 8462 RR 0001

File #:1014851

August 3, 2016

Subject: Audit of Hindu Institute of Learning

Dear Mr. Sookdeo:

This letter is further to the audit of the books and records of the Hindu Institute of Learning (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from January 1, 2011 to December 31, 2014.

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

AREAS OF NON-COMPLIANCE		
	Issue	Reference
1.	Failure to Devote Resources to Charitable Activities Carried on by the Organization Itself	149.1(1), 149.1(2)(c), 168(1)(b)
2.	Failure to Operate for Exclusively Charitable Purposes - Unstated collateral non-charitable purpose	149.1(1), 168(1)(b)
3.	Failure to Issue Official Donation Receipts in Accordance with the Act and/or its Regulations	118.1(2), Reg. 3501, 168(1)(d)
4.	Failure to File an Accurate T3010, Registered Charity Information Return	149.1(14), 168(1)(c)
5.	Failure to Maintain Adequate Books and Records	168(1)(e), 230(2)
6.	Remuneration and Benefits	Regulation 200(1), 6(1)(a)

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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.

General legal principles

In order to maintain charitable registration under the Act, Canadian law requires that an organization demonstrate that it is constituted exclusively for charitable purposes (or objects), and that it devotes its resources to charitable activities carried on by the organization itself in furtherance thereof.¹ To be exclusively charitable, a purpose must fall within one or more of the following four categories (also known as "heads") of charity² and deliver a public benefit:

- relief of poverty (first category);
- advancement of education (second category);
- advancement of religion (third category); or
- certain other purposes beneficial to the community in a way the law regards as charitable (fourth category).

The public benefit requirement involves a two-part test:

- The first part of the test requires the delivery of a benefit that is recognizable and capable of being proved, and socially useful. To be recognizable and capable of being proved, a benefit must generally be tangible or objectively measurable. Benefits that are not tangible or objectively measurable must be shown to be valuable or approved by "the common understanding of

¹ See subsection 149.1(1) of the Act, which requires that a charitable organization devote all of its resources to "charitable activities carried on by the organization itself" except to the extent that an activity falls within the specific exemptions of subsections 149.1(6.1) or (6.2) of the Act relating to political activities, and *Vancouver Society of Immigrant and Visible Minority Women v. Minister of National Revenue*, [1999] 1 S.C.R. 10 (Vancouver Society) at paras. 155-159. A registered charity may also devote resources to activities that, while not charitable in and of themselves, are necessary to accomplish their charitable objectives (such as expenditures on fundraising and administration). However, any resources so devoted must be within acceptable legal parameters and the associated activities must not become ends in and of themselves.

² The Act does not define charity or what is charitable. The exception is subsection 149.1(1) which defines charitable purposes/objects as including "the disbursement of funds to qualified donees." The CRA must therefore rely on the common law definition, which sets out four broad categories of charity. The four broad charitable purpose/object categories, also known as the four heads of charity, were outlined by Lord Macnaghten in *Commissioners for Special Purposes of the Income Tax v. Pemsel*, [1891] A.C. 531 (PC) (Pemsel). The classification approach was explicitly approved of by the Supreme Court of Canada in *Guaranty Trust Co. of Canada v. Minister of National Revenue*, [1967] S.C.R. 133, and confirmed in *Vancouver Society*, *supra* note 2.

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enlightened opinion for the time being.³ In most cases, the benefit should be a necessary and reasonably direct result of how the purpose will be achieved and of the activities that will be conducted to further the purpose, and reasonably achievable in the circumstances.⁴ An "assumed prospect or possibility of gain" that is vague, indescribable or uncertain, or incapable of proof, cannot be said to provide a charitable benefit.⁵

- The second part of the test requires the benefit be directed to the public or a sufficient section of the public. This means a charity cannot:
 - have an eligible beneficiary group that is negligible in size, or restricted based on criteria that are not justified based on the charitable purpose(s); or
 - provide an unacceptable private benefit. Typically, a private benefit is a benefit provided to a person or organization that is not a charitable beneficiary, or to a charitable beneficiary that exceeds the bounds of charity. A private benefit will usually be acceptable if it is incidental, meaning it is necessary, reasonable, and not disproportionate to the resulting public benefit.⁶

The question of whether an organization is constituted exclusively for charitable purposes cannot be determined solely by reference to its stated purposes, but must take into account the activities in which the organization currently engages. In *Vancouver Society of Immigrant and Visible Minority Women v. Minister of National Revenue*,⁷ the Supreme Court of Canada stated as follows:

"But the inquiry cannot stop there. In *Guaranty Trust*, *supra* at p.144, this Court expressed the view that the question of whether an organization was constituted exclusively for charitable purposes cannot be determined solely by reference to the objects and

³ See, generally, *Vancouver Society*, *supra* note 2 at para. 41 per Mr. Justice Gonthier (dissenting in the result); *Gilmour v. Coats et al.*, [1949] 1 All ER 848 (*Gilmour*); and *National Anti-Vivisection Society v. I.R.C.*, [1947] 2 All ER 217 (HL) (*National Anti-Vivisection Society*) per Lord Wright at p. 224.

⁴ See, for example, *In re Grove-Grady, Plowden v. Lawrence*, [1929] 1 Ch. 557 per Russell L.J. at p.588; *National Anti-Vivisection*, *supra* note 4 per Lord Wright at p. 49; *I.R.C. v. Oldham Training and Enterprise Council*, [1996] B.T.C. 539 (*Oldham*); and *Pemsel*, *supra* note 3 at p.583.

⁵ *National Anti-Vivisection Society*, *supra* note 4 per Lord Wright at p.49. See also, for example, *In re Shaw decd.*, [1957] 1 WLR 729; and *Gilmour*, *supra* note 4 per Lord Simonds at pp. 446-447.

⁶ See CRA Policy Statement CPS-024, *Guidelines for Registering a Charity: Meeting the Public Benefit Test* for more information about public benefit.

⁷ *Vancouver Society*, *supra* note 2 at para. 194. See also *A.Y.S.A. Amateur Youth Soccer Association v. Canada (Revenue Agency)* [2007] 3 S.C.R. 217 at para. 42.

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purposes for which it was originally established. It is also necessary to consider the nature of the activities presently carried on by the organization as a potential indicator of whether it has since adopted other purposes. In other words, as Lord Denning put it in *Institution of Mechanical Engineers v. Cane*, [1961] A.C. 696 (H.L.), at p. 723, the real question is, "for what purpose is the Society *at present* instituted?"

A charitable activity is one that directly furthers a charitable purpose, which requires a clear relationship and link between the activity and the purpose. If an activity is, or becomes, a substantial focus of an organization, it may no longer be in furtherance of a stated purpose. Instead, the activity may further, or even form, a separate or collateral purpose. An organization with a collateral non-charitable purpose is ineligible for registration under the Act.

To comply with the requirement that it devote all of its resources to charitable activities carried on by the organization itself, a registered charity may only use its resources (funds, personnel and/or property) in two ways:

- for its own *charitable activities* - undertaken by the charity itself under its continued supervision, direction and control; and
- for gifting to "qualified donees" as defined in the Act.⁸

A charity's own charitable activities may be carried out by its directors, employees or volunteers, or through intermediaries (a person or non-qualified donee that is separate from the charity, but that the charity works with or through, such as an agent, contractor or partner). If acting through an intermediary, the charity must establish that the activity to be conducted will further its charitable purposes, and that it maintains continued direction and control over the activity and over the use of the resources it provides to the intermediary to carry out the activity on its behalf.⁹

To summarize, the CRA must be satisfied that the Organization's purposes are exclusively charitable in law, and that its activities directly further these charitable purposes in a manner permitted under the Act. In making a determination, we are obliged to take into account all relevant information. Accordingly, the audit inquired into all aspects of the Organization's operations.

⁸ A "qualified donee" means a donee described in subsection 149.1(1) of the Act. As per subsection 149.1(6)(b), a charitable organization shall be considered to be devolving its resources to charitable activities carried on by it to the extent that, in any taxation year, it disburses not more than 50% of its income for that year to qualified donees.

⁹ For more information, see CRA Guidance CG-002, *Canadian Registered Charities Carrying Out Activities Outside Canada* and Guidance CG-004, *Using an Intermediary to Carry Out Activities Within Canada*.

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Background of the Organization

The Organization was registered as a charitable organization under the Act, effective May 4, 1994, with the following purpose:

To establish and operate a charitable educational society for the purpose of conducting classes for instruction in;

1. East Indian heritage languages including Sanskrit; Hindi; Gujarati; Punjabi; Bengali, Tamil and other regional languages of India from time to time;
2. Fine arts such as music (both vocal and instrumental); classical dancing and painting of India;
3. Yoga; Hindu culture and philosophy;

at three stages, i.e. beginners, intermediate and advanced but in any event not so as to imply that it is a post-secondary teaching institution.

At the time of registration, the Organization's stated activities to further its formal purpose were;

1. Formal teaching classes for the purpose of providing instructions in East Indian heritage languages including; Sanskrit; Hindi; Gujarati; Punjabi; Bengali; Tamil and other regional languages of India.
2. Teaching of fine arts - vocal and instrumental music; classical dancing and painting of India.
3. Teaching of Yoga and Hindu culture and philosophy.

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

Identified areas of non-compliance

1. Failure to devote resources to charitable activities carried on by the Organization itself

Under subsection 149.1(1) of the Act, a "charitable organization" is defined as "an organization...all the resources of which are devoted to charitable activities carried on by the organization itself, no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settler thereof..."

Based on the information disclosed during the audit, the Organization's activities illustrate a significant expansion in scope and nature since the date of registration. It is our opinion that the Organization is not substantially focused on charitable activities that further its charitable purpose.

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A charitable activity is one that directly furthers a charitable purpose - which requires a clear relationship and link between the activity and the purpose it purports to further.

The stated purpose of the Organization relates to the advancement of education. As such, we considered whether the Organization could potentially qualify under the charitable category of advancement of education. The courts, through various decisions, have defined the advancement of education in the charitable sense as the training of the mind; advancing the knowledge or abilities of the recipient; raising the artistic taste of the community; or improving a useful branch of human knowledge through research.

In addition to this definition, the Supreme Court of Canada set out a number of criteria to determine whether a purpose or activity is charitable¹⁰:

- There must be structure and a genuinely educational purpose
- There must be a teaching or learning component
- There must be a legitimate, targeted attempt to educate others (simply providing an opportunity for people to educate themselves, such as by making available materials with which this might be accomplished but need not be, is not enough)

It is our view that the Organization's activities fail to satisfy the legal requirements applicable to educational advancement. The Organization failed to provide documentary evidence to establish that it is an educational institution; namely, any information in regards to the courses it purportedly offers, such as course curriculums and schedules, fees charged per student and a fee schedule. The only document provided was a partial listing of 16 student names, six with only a single name. No details were provided to show what these students were being taught, when they were taught, nor what fees were collected. Further, when asked for a fee schedule for the courses the 16 students were purportedly pursuing, the Organization's treasurer stated that one did not exist.

With no educational content available, lack of structure and no legitimate, targeted attempt to educate others, the Organization does not meet the definition of the advancement of education in a charitable sense. There is no evidence of knowledge being disbursed so that it may be a learning component for others. It is essential that the Organization make the educational content available to be used as a learning resource to educate others.

¹⁰ Policy Commentary CPC-027 – Publishing a Magazine; <http://www.cra-arc.gc.ca/chrts-qvng/chrts/plcy/cpc/cpc-027-eng.html>

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a) Payments made to individuals categorized as "Assistants"

Substantial payments were made to various individuals who purportedly made phone calls to former students and helped current students to understand the lessons and philosophy. No documentary evidence was provided to substantiate that the Assistants were working for the Organization in this capacity. What is more, when the treasurer was questioned about the exact duties of these individuals, he could not provide a definitive answer. The board of directors should have full knowledge of the jobs they are paying people to conduct.

Further, the charts below show that the Organization paid substantially more to these individuals than it received as revenue for tuition.

Payments to Assistants vs. Tuition Revenue per the Books & Records:

Tax Year	Tuition Revenue	Payments to Assistants
2014	500	4,677
2013	180	3,469
2012	534	6,085
2011	1,610	5,113
	<u>\$ 2,824</u>	<u>\$ 19,344</u> 685%

Payments to Assistants vs. Tuition Revenue per Financial Statements:

Tax Year	Tuition Revenue	Payments to Assistants
2014	-	4,677
2013	330	3,469
2012	694	6,085
2011	120	5,113
	<u>\$ 1,144</u>	<u>\$ 19,344</u> 1691%

The fact that the Organization was unable to provide documentation to support that these Assistants conducted charitable activities on its behalf (under its direction and control), or delivered services of equivalent value to the Organization in return for the funds received demonstrates a failure by the Organization to devote its resources to charitable purposes and charitable activities in a manner permitted by the Act.

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b) Gifted funds to [REDACTED]

The audit revealed that the Organization provided the following amounts to [REDACTED]: \$2,118 in 2014, \$2,000 in 2013 and \$4,000 in 2011. The Organization claims it purchased [REDACTED] language books as a teaching tool in its language courses. However, considering the fact that the Organization was unable to provide documentary evidence to substantiate that it is indeed conducting language courses, it is highly unlikely that the Organization purchased [REDACTED] language books for use in its language courses.

Further, a review of the Organization's website illustrates that the only links that work are the ones pertaining to the sale of [REDACTED] books. The Organization's treasurer confirmed that [REDACTED] created and manages the website. It appears that [REDACTED] is using the Organization's website to promote his books. Consequently, the Organization is failing to use its resources for charitable activities as required by the Act.

c) Accumulation of Funds

Under subsection 149.1(8) of the Act, a registered charity may, with the approval in writing of the Minister, accumulate property for a particular purpose (such as the purchase of a building or costly equipment, which cannot be financed out of current revenue), on terms and conditions and over any period of time that the Minister specifies in the approval.

The Organization states that it is accumulating funds to purchase a centre. Although the Organization previously did receive permission from the CRA to accumulate funds, the request expired in December 31, 2001. No request for an extension to the duration of the Organization's permission to accumulate property was submitted by the Organization. The purchasing of a centre has often been discussed at board meetings dating back to 2011; however, nothing has evolved beyond the meeting discussions.

d) Meeting Minutes

During the review of the meeting minutes it was noted that various activities were discussed by the board of directors; however, the activities were not related to the charitable purpose of the Organization. Activities discussed were a senior's dinner, blood donation, promote Ghagwad Gita's teachings, conduct a workshop on women's issues, the importance of a will and activities of Indian origin. The main goal was to help build the Organization's image and goodwill in the community. Although outside of the audit period, we noted the Organization raised funds to support the Nepal earthquake victims in 2015. The meeting minutes stated that the Organization would issue tax receipts for all donations over \$20.

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e) Devotion of Resources

Pursuant to subsection 149.1(1) of the Act, "charitable organization" means an organization "all the resources of which are devoted to charitable activities carried on by the organization itself." At law, a registered charity may devote some of its resources to activities that are necessary to accomplish its charitable objectives (such as expenditures on management and administration) provided the resources so devoted remain ancillary and incidental to the achievement of the charity's charitable purpose. The CRA generally interprets ancillary and incidental to mean subordinate or secondary to, and supporting of, the charity's purposes, and of relatively modest size.

Based on our analysis of the Organization's Registered Charity Information Returns (see chart below), it is clear that the management and administration expenditures are not ancillary and incidental to the Organization's purpose.

The Organization has failed to demonstrate that it meets the test for continued registration under subsection 149.1(1) of the Act as a charitable organization "...all the resources of which are devoted to charitable activities". For this reason, it appears to us that there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

2. Failure to operate for exclusively charitable purposes - unstated collateral non-charitable purpose

Although the formal purposes of a registered charity are the obvious source of reference as to whether or not a charity is constituted exclusively for charitable purposes, it is not the sole indicator. The CRA also examines an organization's activities to determine whether it may be pursuing an unstated purpose.

That said, based on the audit findings; it is our view that the Organization is pursuing an unstated collateral non-charitable purpose; namely, fundraising.

All charities registered under the Act are required by law to devote their resources to exclusively charitable purposes and activities. Although a charity can use some of its resources for fundraising to support the charitable activities that further its charitable purposes, it is the CRA's position that fundraising is not a charitable purpose in itself or a charitable activity that directly furthers a charitable purpose.¹¹

Fundraising by registered charities must be conducted within legal parameters. Fundraising is acceptable provided it is not:

- a purpose of the charity (a collateral, non-charitable purpose); and

¹¹ For more information, see CRA Guidance CG-013, Fundraising by Registered Charities.

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- delivering a more than incidental private benefit (a benefit that is not necessary, reasonable, or proportionate in relation to the resulting public benefit);
- illegal or contrary to public policy;
- deceptive; or
- an unrelated business.

Where the resources devoted to fundraising exceed the resources devoted to charitable activities, this is a strong indicator that fundraising has become a collateral non-charitable purpose or that the charity is delivering a more than incidental private benefit. This may happen whether fundraising is done internally through staff or externally through a contractual arrangement.

A registered charity that engages in fundraising as a primary activity, or that devotes a substantial portion of its revenue to fundraising activities, is putting its registered status in jeopardy.

That said; we analyzed the Organization's T3010 Returns for fiscal periods ending December 31, 2011, 2012, 2013 and 2014 to determine if there was a trend of high fundraising costs. Our analysis revealed that for the period 2011 to 2014; the Organization incurred the following expenditures:

T3010 Description	2014	2013	2012	2011
Line 5000 - Total Charitable Expenses	-	-	-	-
Line 5010 - Total Management & Admin.	7,228	7,313	9,264	14,279
Line 5020 - Total Fundraising	-	5,220	5,855	6,600
Line 5050 - Gifts to Qualified Donees	-	10,000	-	-
Total Expenses	<u>\$7,228</u>	<u>\$22,533</u>	<u>\$15,119</u>	<u>\$20,879</u>

Based on the above chart, the Organization's fundraising costs associated with the fundraising dinner, greatly exceeds total expenditures on charitable activities.

Accordingly, it is our position that the Organization has failed to meet the requirement that it be constituted and operated for exclusively charitable purposes. For these reasons, and each of these reasons, it appears there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

3. Failure to Issue Official Donation Receipts in Accordance with the Act

Pursuant to subsection 118.1(2) of the Act, a registered charity can issue tax receipts for income tax purposes for donations that legally qualify as gifts. The Act requires the

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registered charity to ensure the information on its official donation receipts (ODR) is accurate. The requirements for the content of the receipts are listed in Regulation 3501 of the Act. A registered charity could have its registered status revoked under paragraph 168(1)(d) of the Act for issuing tax receipts that contain false information.

Additionally, we would like to inform you that certain amendments to the Act were introduced as part of Bill C-33 tabled in Parliament on March 23, 2004, that came into force May 13, 2005. As part of the amendments, a registered charity that issues an ODR that includes incorrect information is liable to a penalty equal to 5% of the eligible amount stated on the receipt. This penalty increases to 10% for a repeat infraction within 5 years. A registered charity that issues an ODR that includes false information is liable to a penalty equal to 125% of the eligible amount stated on the receipt, where the total does not exceed \$25,000. Where the total exceeds \$25,000, the charity is liable to a penalty equal to 125% and the suspension of tax-receipting privileges.

Given the serious nature of non-compliance issues described in this letter, it is our view that the revocation of the Organization's charitable status is warranted. The audit revealed that the donation receipts issued by the Organization did not comply with the requirements of Regulation 3501 of the Act and IT-110R3, *Gifts and Official Donation Receipts*. The deficiencies are detailed below:

a) Donation receipt content issues

- The donor's address was not present on all ODR reviewed.
- The donor's name was not correct on all ODR reviewed. A few of the ODR did not include the first name and initial of the donor as required.
- The place or locality where the receipt was issued was not present on the ODR.
- The name, Canada Revenue Agency, and the website address www.cra-arc.gc.ca/charities does not appear on the ODR.
- The charity's registration number as recorded with CRA, 89007 8462 RR 0001, is not recorded on the ODR.
- The signature of an authorized person does not appear on all of the ODR reviewed. Some of the ODR books have multiple signatures authorizing them, when the treasurer and the president are the only authorized individuals.

b) Official Donation Receipt Security

- Blank pre-printed official donation receipts are not afforded appropriate physical security with due regard to the content of the pre-printed information contained on those receipts. Official donation receipts are not kept locked up during off hours and are accessible to others not issuing receipts. The blank pre-printed ODR are kept at the treasurer's home in an unlocked filing cabinet.
- The Organization does not maintain an up-to-date log system that accounts for the number of official donation receipts purchased against those that are officially issued and/or voided.

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- The Organization does not keep track of which ODR have been issued and which blank ODR are still available.
- The Organization is missing the following blank ODR booklets: 401 – 450, 551 – 700 and 751 – 800.

c) Receipts Issued for Fundraising Dinner

A transfer of property for which some advantage (or consideration) is received does not in and by itself disqualify the transfer from being considered a gift provided the fair market value (FMV) of the advantage does not exceed 80% of the value of the transferred property and the transfer was made with the *intention to make a gift* (donative intent).¹²

Split receipting is the method used to calculate the eligible amount of a gift for receipting purposes when the donor has received an advantage (consideration) in return for his or her donation. To figure out the eligible amount of the gift, a charity has to subtract the FMV of the advantage from the FMV of the gift. Some examples of an advantage are: cost of the meal, cost of the entertainment and door prizes. Where the advantage does not exceed \$75 or 10%, the full amount paid for the gift may be receipted. However, where advantages have a combined FMV that is more than \$75 or 10% of the FMV of the gift, a charity has to subtract these advantages from the FMV of the gift when issuing receipts. Where the advantage is more than 80% of the FMV of the gift, the CRA generally considers that there is no true intention to make a gift. Therefore, a charity cannot issue a receipt.

That said, based on our audit review, it appears that the Organization issued ODR for table tickets purchased for the fundraising dinner. During the initial interview the treasurer stated that the Organization did not do this; however, notations of "tickets", "dinner" or "dinner tables" were observed on many cheque copies. Where the advantage exceeded \$75 or 10% of the FMV of the gift, the Organization failed to subtract the advantages from the value of the gift when issuing the receipts.

d) Receipts Issued for Tuition Fees

Tuition fees paid to an educational institution in Canada are deductible by the student in accordance with subsection 60(f) of the Act. Such fees are not considered charitable donations and official receipts designed for charitable donations may not be issued for such tuition fees even though the educational institution may be a registered Canadian charitable organization as defined in paragraph 110(8)(c) of the Act.¹³

¹² See subsections 248(30) - (32) of the Act

¹³ CRA Information Circular IC75-23, Tuition Fees and Charitable Donations Paid to Privately Supported Secular and Religious Schools

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The provisions of the Act do not permit a deduction, as a charitable donation, of an amount paid to a school for academic tuition, whether the amount was paid for set fees or was a voluntary contribution. A gift, to be allowable within the concept of paragraph 110(1)(a) of the Act, must be a voluntary transference of property without consideration. The consideration here is the academic training received by the students attending the school.

The audit revealed that the Organization issued ODR for tuition fees as follows:

2014 – \$	500
2013 – \$	180
2012 – \$	534
2011 – \$	1,610

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

4. Failure to File an Accurate T3010, Registered Charity 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 period (taxation year), without notice or demand, file a Registered Charity Information Return (T3010) with the applicable schedules. It is the responsibility of the Organization to ensure that the information that is provided in its return, schedules and statements, is factual and complete in every respect. A charity is not meeting its requirement to file an Information Return if it fails to exercise due care with respect to ensuring the accuracy thereof.

Our audit findings noted the following inaccuracies:

a) Undeposited Revenues

The Organization does not deposit all of the revenues received into its bank account. A portion of cash is kept out to pay for expenses, such as the fundraising dinner. As a result, the revenues reported on the T3010 return are not accurate. Further, evidence was not provided to show that the Organization kept detailed track of both the revenue received and deposited versus not deposited.

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b) Line 4500, gifts for which a tax receipt was issued

Line 4500 of the T3010 return should only represent donations for which an ODR was issued. The Organization was including all revenues on this line rather than placing them on the applicable revenue line numbers.

c) Line 4510, amounts received from other registered charities

In 2013 and 2011, the Organization received funds from other charitable organizations; however it failed to report this revenue on Line 4510 of the T3010 return.

2013 - \$ 2,750

2011 - \$ 1,200

d) Line 4530, gifts for which a tax receipt was not issued

The Organization maintained donation boxes at its events where people could just place their donation in the box. The donations were usually unidentified cash donations. These funds were not deposited into the Organization's bank account, were not brought into revenue, nor were they recorded on line 4530 of the T3010 return. The Organization used these funds to pay for items pertaining to its events.

e) Line 4950, total expenditures

Line 4950 was not filled out on the 2014, 2013 and 2012 T3010 returns.

f) Lines 5000 - 5050, expense reconciliation

The audit revealed that the Organization was not accurately filling out the totals on Lines 5000 to 5050. Further, it did not maintain an expense reconciliation.

g) Line 4200, total assets and Line 4350, total liabilities

The Organization failed to fill out these lines on all years under audit.

h) T1235, Directors/Trustees and Like Officials Worksheet

The Organization failed to accurately fill out the T1235 in 2014, 2013 and 2012.

Omissions and errors include: no start / end dates, no arm's length information was filled out, missing postal codes, missing birth dates, two dates of birth were incorrect and one address was incorrect.

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i) T1236, Qualified Donees Worksheet

The audit revealed that in 2013, a \$10,000 donation was made to a qualified donee, SEWA Canada. The Organization failed to fill out a T1236 as well as record this figure on Line 5050, gifts to qualified donees of the T3010 return.

j) Section C: Programs and General Information

The audit revealed that the Organization incorrectly answered the following questions on its T3010 returns;

- Question C1 - Was the charity active during the fiscal period?
The Organization answered "no" in 2011, yet it was active.
- Question C3 - Did the charity make gifts or transfer funds to qualified donees or other organizations?
The Organization answered "no", yet the financial statements showed the following:
 - o The Organization gave \$12,000 in "donations" in 2013 and \$4,000 in 2011; and
 - o The Organization gave \$10,000 to a qualified donee, SEWA Canada in 2013.
- Question C6 - If the charity carried on fundraising activities, tick all fundraising methods that it used during the fiscal period.
The Organization failed to answer this question, yet it reported fundraising expenses on its financial statements; \$4,713 in 2013, \$5,055 in 2012 and \$5,200 in 2011.

Under paragraph 168(1)(c) of the Act, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because the charity fails to file Form T3010, Registered Charity Information Return as and when required under the Act and/or Regulations. For this reason, there may be grounds for revocation of the charitable status of the Organization.

5. 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;
- 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 this Act."

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In addition to retaining copies of donation receipts, as explicitly required by subsection 230(2), subsection 230(4) provides that "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 period as prescribed; and
- (b) all other records and books of account referred to in this section, together with every account and voucher necessary to verify the information contained therein, until the expiration of six years from the date of the last taxation year to which the records and books of account relate."

The policy of 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;¹⁴
- a registered charity must maintain, and make available to the CRA at the time of an audit, meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required documentation and records subsequent thereto;¹⁵ 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.¹⁶

Our audit findings noted the following deficiencies:

a) Meeting Minutes

The Organization was unable to provide the meeting minutes for 2012 or 2014. Further, it was unclear whether all of the meeting minutes were provided for 2011 and 2013. The main topic discussed in many of the meeting minutes was the fundraising dinner.

b) Internal Controls

Reliance cannot be placed on the internal controls of the accounting system. There is no reliable recordkeeping to account for the funds received or funds paid out. The following are some examples of our internal control concerns;

¹⁴ The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen, 2002 FCA 72 (FCA)

¹⁵ Supra, footnote 3; The Lord's Evangelical Church of Deliverance and Prayer of Toronto v. Canada (2004) FCA 397

¹⁶ (College Rabbinique de Montreal Oir Hachaim D'Tash v. Canada (Minister of the Customs and Revenue Agency, (2004) FCA 101; Act section 168(1)

- Internal controls are not present to ensure the books and records are being reported accurately. The treasurer takes care of the books and records, completes the financial statements and prepares the T3010 returns. The expenses of the Organization are mainly from monthly reports prepared by a director. It does not appear that any of the expenses on these monthly reports are being questioned. There was no evidence that any procedures are in place for any kind of verification.
- Inadequate verification methods are present as nobody appears to authenticate the expenses being claimed and the supporting documentation is insufficient to verify expenses. For example, the treasurer cuts a cheque to pay a director his monthly expense amounts without any question. In this case, multiple people are getting paid to assist the director, however specific details as to what they are being paid for could not be answered during the audit.
- At the fundraising dinner, the Organization has a box where people can deposit unidentified cash donations. This cash as well as other cash received at the event is not fully deposited into the Organization's bank account and the revenue is not recorded. A portion of this cash is kept out to pay for the event as well as other expenses. The full amount of cash collected and expenses paid are not documented.
- There is only one signature required to withdraw or write a cheque from the bank account.
- According to the initial interview, only the treasurer and the president are authorized to sign the official donation receipts. However, upon review, multiple signatures were vouched. Further, the Organization cannot account for all of the pre-printed ODR books, both issued and unissued.

c) Payments to Individuals Categorized as "Assistants"

As described above, substantial payments were made to various individuals who purportedly made phone calls to former students and helped current student to understand the lessons and philosophy. No documentation was provided to support that these individuals were working for the Organization in this capacity. The following outlines the additional concerns we have:

- The expenses paid well exceed any revenues received from language classes (see charts above).
- It appears the director decides how much to pay these individuals as the hourly rates vary. The treasurer then pays the director for the purported expenses, with no verification.
- The Organization is paying these individuals cash, it does not have a payroll account through Canada Revenue Agency and is not issuing these individuals T4s or T4As for the income they have earned (see section six below).

It should be noted that under paragraph 188.2(2)(a), an Organization may receive a notice of suspension of delivering official receipts if it contravenes to subsection 230(2).

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It is our position the Organization has failed to comply with the Act by failing to maintain adequate books and records. For this reason, there may be grounds to suspend the Organization's authority to issue official receipts under paragraph 188.2(2)(a) of the Act; however, due to the serious nature of non-compliance, we are not proposing suspension at this time.

It is our view that the Organization failed to maintain adequate books and records. Under paragraph 168(1)(e) of the Act, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because it fails to comply with or contravenes section 230 of the Act dealing with books and records. It is our position the Organization has failed to comply with and has contravened section 230 of the Act. For this reason alone there may be grounds to revoke the registered status of the Organization.

6. Remuneration and Benefits

Where salaries or wages are paid, the Act requires annual T4 Summaries and T4 Statements of Remuneration Paid be prepared by the employer [Regulation 200(1)]. In addition to the salaries and wages actually paid, the T4 Summaries and T4 Statements of Remuneration Paid must also include the value of all taxable benefits conferred on employees in the year [paragraph 6(1)(a)]. T4 Summaries of remuneration paid must always be based on the calendar year.

Pursuant to Section 153(1) of the Act, every person paying a salary, wages or other remuneration shall deduct or withhold from the payment the amount determined in accordance with prescribed rules and shall at the prescribed time, remit that amount to the Receiver General of Canada. Regulation 200(1) further requires that the person prepare information returns such as T4's and T4 summary returns at the end of the calendar year.

Regulation 200(2) of the Act states that a T4A slip must be issued if you are a payer, such as an employer, a trustee, an estate executor (or liquidator), an administrator, or a corporate director, and you paid any of the following types of income:

- pension or superannuation;
- lump-sum payments;
- self-employed commissions;
- annuities;
- retiring allowances;
- patronage allocations;
- RESP accumulated income payments;
- RESP educational assistance payments;
- fees or other amounts for services;

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- or other income such as research grants, certain payments under a wage-loss replacement plan, death benefits, and certain benefits paid to partnerships or shareholders.

Regulation 200(2) requires that T4A slips and summaries be prepared for contract payments to individuals exceeding \$500 in the calendar year. You must complete a T4A slip, *Statement of Pension, Retirement, Annuity and Other Income*, if you made any of the payments listed above and:

- the total of all payments in the calendar year was more than \$500; or
- you deducted tax from any payment.

You must file the T4A Information Return and provide the T4A slips to the recipient(s) on or before the **last day of February following the calendar year to which the information return applies**. If the last day of February is a Saturday or Sunday, your information return is due the next business day.

Effective January 1, 2010, the penalty for failing to file the T4A information return by the due date or for distributing T4A slips to recipients late is the greater of \$100 or a penalty determined as follows:

Number of information returns(slips) by type	Penalty (per day)	Maximum penalty
50 or less	\$10	\$1,000
51 - 500	\$15	\$1,500
501 - 2,500	\$25	\$2,500
2,501 - 10,000	\$50	\$5,000
10,001 or more	\$75	\$7,500

Based on the audit findings, no T4 / T4A slips were issued for remuneration paid or for benefits conveyed to "Assistants" (see charts above).

Under paragraph 168(1)(b) of the Act, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because it fails to comply with or contravenes Regulation 200(2) in respect of proper documentation for payments made for contracts. It is our position the Organization has failed to comply with and has contravened the Act. For this reason alone there may be grounds to revoke the registered status of the Organization.

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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;
- the application of penalties and/or suspensions provided for in sections 188.1 and/or 188.2 of the Act; or
- giving notice of its intention to revoke the registration of the Organization by issuing a notice of intention to revoke 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 me at the numbers indicated below. My team leader, Gary Huenemoeder, may also be reached at [REDACTED]

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Yours sincerely,

[REDACTED]

Dawn Brasil
Audit Division
Kitchener Waterloo Tax Services Office

Telephone: [REDACTED]
Facsimile: 519-585-2803
Address: 166 Frederick St, Kitchener ON N2H 0A9

c.c.: Rajkumar Sharma, President,
Jagdish Sharda, Director, [REDACTED]

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**Hindu Institute of Learning
Comments on Representations of October 3, 2016**

According to the Hindu Institute of Learning's (the Organization) representations dated October 3, 2016, it is willing to comply with all legal requirements relating to charitable registration under the Income Tax Act (the Act), and has provided a proposed action plan in an effort to resolve the areas of non-compliance identified in our letter dated August 3, 2016. The Organization is requesting that the CRA issue an education letter.

It is our position that the identified areas of non-compliance with the provisions of the Act and/or its *Regulations* described in our letter dated August 3, 2016, are sufficiently serious to warrant revocation. As set out below, the Organization's non-compliance involved a failure to devote its resources to charitable activities, failure to operate for exclusively charitable purposes – unstated collateral non-charitable purpose and failure to maintain adequate books and records.

As such, while we have considered the Organization's proposed action plan, we are not prepared to issue an education letter. We maintain our position that the non-compliance issues identified during the audit represent a serious breach of the requirements of the Act. Accordingly, the Organization's registration should be revoked.

The basis for our position is described in further detail below, including our responses to the Organization's representations.

We would first like to address the Organization's statement "that responses to some of your questions raised should not have been answered solely by the Treasurer. But input should have been obtained from other members of the Board." Efforts were in fact made to obtain input from board members. During a meeting with the treasurer, Mr. Mohan Sookdeo, on December 10, 2015, an audit query sheet was presented with a series of questions from the auditor. Mr. Sookdeo was not able to answer all of the questions and informed the auditor that he would forward the queries he could not answer to the board of directors for them to complete. Mr. Sookdeo was informed by the auditor that once the audit query responses were received they would be reviewed to verify if any of our concerns discussed during the December meeting were satisfactorily addressed.

On January 17, 2016, the auditor spoke with Mr. Sookdeo regarding the outstanding audit query sheet. The auditor was told by Mr. Sookdeo that he was waiting to obtain information. Since Mr. Sookdeo had stated during the December meeting that he was forwarding the audit queries he could not answer to the board and mentioned it again during the phone conversation with the auditor; it was understood that the completed audit query sheet received from the Organization on January 21, 2016, included the board members' input. The information provided was minimal and did not alleviate any of our concerns. As such, a second meeting was not arranged.

The failure of the Organization to devote its resources to charitable activities

As indicated in our previous correspondence, the courts, through various decisions, have defined the advancement of education in the charitable sense as the training of the mind; advancing the knowledge or abilities of the recipient; raising the artistic taste of the community; or improving a useful branch of human knowledge through research.

In addition to this definition, the Supreme Court of Canada set out a number of criteria to determine whether a purpose or activity is charitable¹:

- There must be structure and a genuinely educational purpose
- There must be a teaching or learning component
- There must be a legitimate, targeted attempt to educate others (simply providing an opportunity for people to educate themselves, such as by making available materials with which this might be accomplished but need not be, is not enough)

In its representations dated October 3, 2016, the Organization described its activities as follows:

- a) Courses taught by teachers and books were used. A sample of the course books were provided for review.
- b) Teachers were qualified to teach East Indian languages and they developed courses and curriculum based on the standing of the students. These teachers were volunteers and there was no cost or revenue from the teaching.
- c) There was no set schedule of fees, the fees were minimal and often free classes were conducted.
- d) Any fees received were shared among the teachers and the Organization. Payments made to the teachers were to cover their expenses and they were treated as honorarium payments.

The Organization does not have a physical location, it claims that classes are being conducted in a director's living room. As documentary evidence the Organization provided Indian language books and a partial listing of teachers and students. It is our position that the mere provision of books and partial listings of teachers and students do not establish that any type of educational language courses were actually conducted.

Further, according to the Organization's representations, the teachers developed courses and curriculum based on the standing of the students; however, no course curriculums and schedules purportedly developed by the teachers were provided.

Moreover, no details were provided to indicate what courses were taken, when they were taken, the outcome of the course, or amounts paid by the students for the courses. The Organization claims that there were no set fees for the courses and the fees were

¹ Policy Commentary CPC-027 – Publishing a Magazine; <http://www.cra-arc.gc.ca/chrts-qvng/chrts/plcy/cpc/cpc-027-eng.html>

treated as honorariums to the teachers. The Organization failed to provide documentary evidence to substantiate what honorariums were paid out, or how the honorarium amounts were determined.

Absent documentation to support the existence and content of the Organization's courses, the Organization's claim that it provides languages classes remains unsubstantiated. With minimal educational content available, lack of structure and no means to substantiate a legitimate, targeted attempt to educate others, the Organization does not meet the definition of the advancement of education in a charitable sense. There is no evidence of knowledge being dispersed so it may be a learning component for others. The Organization has not shown that it made its educational content available to be used as a learning resource to educate others. As outlined above, the mere provision of books does not establish that language courses were conducted. As such, the representations did not alleviate our concerns.

Payments made to individuals categorized as "Assistants"

Based on the Organization's representations, these individuals are volunteers and the activities conducted by these individuals were: telephone and email contact with students and donors, writing letters to students and donors, fundraising activity preparation, and providing assistance at the fundraising events. The Organization claims that the amounts paid were used to defray the volunteers' travel, and out of pocket expenses and were insignificant. While a charity may reimburse individuals for expenses incurred performing the duties of the charity, these expenses must be reasonable in the circumstances and must be shown to be necessary for the operations of the charity.

The onus is on the Organization to demonstrate, through documentary evidence maintained with its books and records, that these expenses are reasonable and necessary for the operations of the Organization (i.e., reflecting actual out-of-pocket disbursements).

That said, no documentary evidence was provided to substantiate that the individuals actually conducted the functions outlined above on the Organization's behalf and the amounts paid were to defray the volunteers' travel and out of pocket expenses. Given the absence of supporting documentation, it could not be ascertained that these expenses were reasonable and incurred to advance the Organization's charitable activities. As such, the representations did not alleviate our concerns.

a) Gifted funds to [REDACTED]

Based on the Organization's representations an incorrect explanation was provided during the audit to account for the payments to [REDACTED]. The Organization claims that the payments of \$2,000 in each year (2011, 2013, and 2014) were for scholarships it awarded to [REDACTED] and provided a copy of a certificate of citation. The Organization

expressed that the amounts paid were not to assist [REDACTED] in the printing or publication of his books.

Scholarships, bursaries, awards, and prizes are often awarded to assist in the education of deserving individuals and are usually charitable under advancement of education. To ensure that the necessary element of public benefit is met, a charity must describe:

- the eligibility and selection criteria it uses in distributing such prizes;
- the composition of the selection committee;
- how and where the award is advertised;
- the amounts that will be awarded; and
- how the funds will be distributed.

In most cases, a scholarship fund set up to assist any of the following will not qualify as charitable:

- a named individual or individuals;
- employees of a company;
- relatives; or
- members of a private club, trade union, or cooperative.

Absent the criteria used to select the recipients of scholarships, we must conclude that the purported scholarships were to assist a named individual which is not charitable at law. Our conclusion is further substantiated by the Organization's April 7, 2013, board of director's meeting minutes, the twelfth item which refers to [REDACTED] books as follows:

"[REDACTED] books are in good demand and help raise [the] image of HIL and [REDACTED]. A fund of \$2,000 should be approved to support this activity. Core committee should decide and approve to offer this fund from 2013 onward."

b) Devotion of Resources

As outlined in our letter dated August 3, 2016, the management and administration expenditures were not ancillary and incidental to the Organization's purposes. Although the Organization's representations stated that it understood this information and that going forward it would comply with the requirements, it failed to address our concerns and provide the corrective measures. As such, the representations did not alleviate our concerns.

Based on the limited information that has been provided, it remains our position that the Organization has failed to meet the requirements of subsection 149.1(1) of the Act. For this reason, there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

Failure to operate for exclusively charitable purposes – unstated collateral non-charitable purpose

The Organization's representations states that "the Board was of the understanding that it was proper for the Organization to raise funds to purchase its own premises." Please note that the CRA does not take issue with raising funds to purchase premises. However, where the resources devoted to fundraising exceed the resources devoted to charitable activities, this is a strong indicator that fundraising has become a collateral non-charitable purpose or that the charity is delivering a more than incidental private benefit.

This may happen whether fundraising is done internally through staff or externally through a contractual arrangement.

A registered charity that engages in fundraising² as a primary activity, or that devotes a substantial portion of its revenue to fundraising activities, is putting its registered status in jeopardy.

As outlined in our letter dated August 3, 2016; we analyzed the Organization's T3010 Returns for fiscal periods ending December 31, 2011, 2012, 2013 and 2014 to determine if there was a trend of high fundraising costs. Our analysis revealed that for the period 2011 to 2014; the Organization incurred the following expenditures:

T3010:	2014	2013	2012	2011
<u>Revenues</u>				
Line 4700 - Total Revenue	1,340	16,271	34,169	20,792
<u>Expenses</u>				
Line 5000 - Total Charitable Expenses	-	-	-	-
Line 5010 - Total Management & Admin.	7,228	7,313	9,264	14,279
Line 5020 - Total Fundraising	-	5,220	5,855	6,600
Line 5050 - Gifts to Qualified Donees	-	10,000	-	-
Total Expenses	\$7,228	\$22,533	\$15,119	\$20,879

Based on the above chart, the Organization's fundraising costs associated with the fundraising dinner greatly exceeds total expenditures on charitable activities. The Organization's representations of October 6, 2016, provided minimal information and no documentation to explain the fundraising costs. As such, our concerns about high fundraising ratio and fundraising being a collateral non-charitable purpose remains.

Accordingly, it is our position that the Organization has failed to meet the requirement that it be constituted and operated for exclusively charitable purposes. For this reason there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

² For more information, see CRA Guidance CG-013, Fundraising by Registered Charities.

Failure to issue official donation receipts in accordance with the Act

As described in our letter dated August 3, 2016, the audit revealed that the donation receipts issued by the Organization did not comply with the requirements of Regulation 3501 of the Act.

Based on the Organization's representations, new receipts have already been printed that comply with the requirements of the Act. The receipt books will be kept under lock and key, and a proper log of all the receipt books will be maintained.

While the CRA recognizes that the Organization has since taken measures to correct the issues, this is not a determining factor in our decision to revoke the Organization's charitable registration.

Other points raised in the audit report

- Failure to File an Accurate T3010, Registered Charity Information Return
- Failure to Maintain Adequate Books and Records
- Remuneration and Benefits

The Organization's representations states that "the three points are noted and corrective action will be taken" and the Organization will appoint a qualified accountant to do bookkeeping and prepare the Organization's Registered Charity Information Returns and hire the services of an experienced legal firm specializing in Charities work.

The possible hiring of an accountant and lawyer does not address our concerns described in our letter dated August 3, 2016. The representations did not provide any information or documentation to demonstrate how the Organization intends to remedy the deficiencies. As such, the representations did not alleviate our concerns.

In conclusion, the Organization has failed to demonstrate that it meets the requirements for continued registration as a charitable organization under subsection 149.1(1) of the Act. Under paragraph 168(1)(b) of the Act, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because it fails to comply with the requirements of this Act for registration. The Organization has failed to comply with and has contravened paragraph 168(1)(b) of the Act, which are grounds to revoke the registered status of the Organization.

Section 149.1 Qualified Donees

149.1(2) Revocation of registration of charitable organization

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

- (a) carries on a business that is not a related business of that charity;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the organization's disbursement quota for that year; or
- (c) makes a disbursement by way of a gift, other than a gift made
 - (i) in the course of charitable activities carried on by it, or
 - (ii) to a donee that is a qualified donee at the time of the gift.

149.1(3) Revocation of registration of public foundation

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

- (a) carries on a business that is not a related business of that charity;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;
- (b.1) makes a disbursement by way of a gift, other than a gift made
 - (i) in the course of charitable activities carried on by it, or
 - (ii) to a donee that is a qualified donee at the time of the gift;
- (c) since June 1, 1950, acquired control of any corporation;
- (d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities; or
- (e) at any time within the 24 month period preceding the day on which notice is given to the foundation by the Minister pursuant to subsection 168(1) and at a time when the foundation was a private foundation, took any action or failed to expend amounts such that the Minister was entitled, pursuant to subsection 149.1(4), to revoke its registration as a private foundation.

149.1(4) Revocation of registration of private foundation

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

- (a) carries on any business;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;
- (b.1) makes a disbursement by way of a gift, other than a gift made
 - (i) in the course of charitable activities carried on by it, or
 - (ii) to a donee that is a qualified donee at the time of the gift;
- (c) has, in respect of a class of shares of the capital stock of a corporation, a divestment obligation percentage at the end of any taxation year;
- (d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities.

149.1(4.1) Revocation of registration of registered charity

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

- (a) of a registered charity, if it has entered into a transaction (including a gift to another registered charity) and it may reasonably be considered that a purpose of the transaction was to avoid or unduly delay the expenditure of amounts on charitable activities;
- (b) of a registered charity, if it may reasonably be considered that a purpose of entering into a transaction (including the acceptance of a gift) with another registered charity to which paragraph (a) applies was to assist the other registered charity in avoiding or unduly delaying the expenditure of amounts on charitable activities;
- (c) of a registered charity, if a false statement, within the meaning assigned by subsection 163.2(1), was made in circumstances amounting to culpable conduct, within the meaning assigned by that subsection, in the furnishing of information for the purpose of obtaining registration of the charity;
- (d) of a registered charity, if it has in a taxation year received a gift of property (other than a designated gift) from another registered charity with which it does not deal at arm's length and it has expended, before the end of the next taxation year, in addition to its disbursement quota for each of those taxation years, an amount that is less than the fair market value of the property, on charitable activities carried on by it or by way of gifts made to qualified donees with which it deals at arm's length; and

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

Section 168:

Revocation of Registration of Certain Organizations and Associations

168(1) Notice of intention to revoke registration

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

- (a) applies to the Minister in writing for revocation of its registration;
- (b) ceases to comply with the requirements of this Act for its registration;
- (c) in the case of a registered charity or registered Canadian amateur athletic association, fails to file an information return as and when required under this Act or a regulation;
- (d) issues a receipt for a gift otherwise than in accordance with this Act and the regulations or that contains false information;
- (e) fails to comply with or contravenes any of sections 230 to 231.5; or
- (f) in the case of a registered Canadian amateur athletic association, accepts a gift the granting of which was expressly or implicitly conditional on the association making a gift to another person, club, society or association.

168(2) Revocation of Registration

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

- (a) if the charity or association has applied to the Minister in writing for the revocation of its registration, the Minister shall, forthwith after the mailing of the notice, publish a copy of the notice in the Canada Gazette, and
- (b) in any other case, the Minister may, after the expiration of 30 days from the day of mailing of the notice, or after the expiration of such extended period from the day of mailing of the notice as the Federal Court of Appeal or a judge of that Court, on application made at any time before the determination of any appeal pursuant to subsection 172(3) from the giving of the notice, may fix or allow, publish a copy of the notice in the Canada Gazette,

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

168(4) Objection to proposal or designation

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

- (a) in the case of a person that is or was registered as a registered charity or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(2) to (4.1), (6.3), (22) and (23);
- (b) in the case of a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.2) and (22); or
- (c) in the case of a person described in any of subparagraphs (a)(i) to (v) of the definition "qualified donee" in subsection 149.1(1), that is or was registered by the Minister as a qualified donee or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.3) and (22).

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

Where the Minister

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

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

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

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

- (c) refuses to accept for registration for the purposes of this Act any profit sharing plan or revokes the registration of such a plan,
- (d) [Repealed, 2011, c. 24, s. 54]
- (e) refuses to accept for registration for the purposes of this Act an education savings plan,
- (e.1) sends notice under subsection 146.1(12.1) to a promoter that the Minister proposes to revoke the registration of an education savings plan,
- (f) refuses to register for the purposes of this Act any pension plan or gives notice under subsection 147.1(11) to the administrator of a registered pension plan that the Minister proposes to revoke its registration,
- (f.1) refuses to accept an amendment to a registered pension plan,
- (g) refuses to accept for registration for the purposes of this Act any retirement income fund,
- (h) refuses to accept for registration for the purposes of this Act any pooled pension plan or gives notice under subsection 147.5(24) to the administrator of a pooled registered pension plan that the Minister proposes to revoke its registration, or
- (i) refuses to accept an amendment to a pooled registered pension plan,

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

180(1) Appeals to Federal Court of Appeal

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

- (a) the day on which the Minister notifies a person under subsection 165(3) of the Minister's action in respect of a notice of objection filed under subsection 168(4),
- (b) [Repealed, 2011, c. 24, s. 55]
- (c) the mailing of notice to the administrator of the registered pension plan under subsection 147.1(11),
 - (c.1) the sending of a notice to a promoter of a registered education savings plan under subsection 146.1(12.1),
 - (c.2) the mailing of notice to the administrator of the pooled registered pension plan under subsection 147.5(24), or

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

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

Section 188: Revocation tax

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

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

- (a) the taxation year of the charity that would otherwise have included that day is deemed to end at the end of that day;
- (b) a new taxation year of the charity is deemed to begin immediately after that day; and
- (c) for the purpose of determining the charity's fiscal period after that day, the charity is deemed not to have established a fiscal period before that day.

188(1.1) Revocation tax

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

$$A - B$$

where

A

is the total of all amounts, each of which is

- (a) the fair market value of a property of the charity at the end of that taxation year,
- (b) the amount of an appropriation (within the meaning assigned by subsection (2)) in respect of a property transferred to another person in the 120-day period that ended at the end of that taxation year, or
- (c) the income of the charity for its winding-up period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 as if that period were a taxation year; and

B

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

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

188(1.2) Winding-up period

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

- (a) the day, if any, on which the charity files a return under subsection 189(6.1) for the taxation year deemed by subsection (1) to have ended, but not later than the day on which the charity is required to file that return,
- (b) the day on which the Minister last issues a notice of assessment of tax payable under subsection (1.1) for that taxation year by the charity, and
- (c) if the charity has filed a notice of objection or appeal in respect of that assessment, the day on which the Minister may take a collection action under section 225.1 in respect of that tax payable.

188(1.3) Eligible donee

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

- (a) of which more than 50% of the members of the board of directors or trustees of the registered charity deal at arm's length with each member of the board of directors or trustees of the particular charity;
- (b) that is not the subject of a suspension under subsection 188.2(1);
- (c) that has no unpaid liabilities under this Act or under the *Excise Tax Act*;

- (d) that has filed all information returns required by subsection 149.1(14); and
- (e) that is not the subject of a certificate under subsection 5(1) of the *Charities Registration (Security Information) Act* or, if it is the subject of such a certificate, the certificate has been determined under subsection 7(1) of that Act not to be reasonable.

188(2) Shared liability — revocation tax

A person who, after the time that is 120 days before the end of the taxation year of a charity that is deemed by subsection (1) to have ended, receives property from the charity, is jointly and severally, or solidarily, liable with the charity for the tax payable under subsection (1.1) by the charity for that taxation year for an amount not exceeding the total of all appropriations, each of which is the amount by which the fair market value of such a property at the time it was so received by the person exceeds the consideration given by the person in respect of the property.

188(2.1) Non-application of revocation tax

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

- (a) within the one-year period that begins immediately after the taxation year of the charity otherwise deemed by subsection (1) to have ended, the Minister has registered the charity as a charitable organization, private foundation or public foundation; and
- (b) the charity has, before the time that the Minister has so registered the charity,
 - (i) paid all amounts, each of which is an amount for which the charity is liable under this Act (other than subsection (1.1)) or the *Excise Tax Act* in respect of taxes, penalties and interest, and
 - (ii) filed all information returns required by or under this Act to be filed on or before that time.

188(3) Transfer of property tax

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

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

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

188(4) Transfer of property tax

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

188(5) Definitions

In this section,

“net asset amount”

« *montant de l'actif net* »

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

$$A - B$$

where

A

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

B

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

“net value”

« *valeur nette* »

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

$$A - B$$

where

A

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

B

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

189(6) Taxpayer to file return and pay tax

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

- (a) file with the Minister a return for the year in prescribed form and containing prescribed information, without notice or demand therefor;
- (b) estimate in the return the amount of tax payable by the taxpayer under this Part for the year; and
- (c) pay to the Receiver General the amount of tax payable by the taxpayer under this Part for the year.

189(6.1) Revoked charity to file returns

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

- (a) file with the Minister
 - (i) a return for the taxation year, in prescribed form and containing prescribed information, and
 - (ii) both an information return and a public information return for the taxation year, each in the form prescribed for the purpose of subsection 149.1(14); and
- (b) estimate in the return referred to in subparagraph (a)(i) the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year; and
- (c) pay to the Receiver General the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year.

189 (6.2) Reduction of revocation tax liability

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

(a) the amount, if any, by which

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

exceeds

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

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

189(6.3) Reduction of liability for penalties

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

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

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

189 (7) Minister may assess

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