



July 3, 2019

REGISTERED MAIL

Timothy Sellan
President
Italian Genealogy and Heraldry Society of Canada
[REDACTED]

BN: 14101 9505 RR0001
File #: 0936856

Dear Timothy Sellan:

**Subject: Notice of intention to revoke
Italian Genealogy and Heraldry Society of Canada**

We are writing with respect to our letter dated March 20, 2018 (copy enclosed), in which Italian Genealogy and Heraldry Society of Canada (the Organization) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from January 1, 2011, to December 31, 2015, and explain why the registration of the Organization should not be revoked in accordance with subsection 168(1) of the Income Tax Act.

We have reviewed and considered your written response, which was undated but received by the CRA on April 19, 2018. Your reply has not alleviated our concerns with respect to the Organization's failure to devote resources to charitable activities by devoting resources to non-charitable activities and by providing undue benefits, failure to maintain adequate books and records, failure to issue donation receipts in accordance with the Act and/or its Regulations and failure to file an accurate T3010, Registered Charity Information Return. Our concerns are explained below.

In response to our Administrative Fairness Letter (AFL) dated March 20, 2018, the Organization raises the following points regarding our proposal to revoke its charitable status:

1. The audit report is highly personally biased and wholly inaccurate. The Organization rejects the findings of the AFL;
2. The Organization has been filing tax returns on time since 1992 and has not previously been contacted by CRA regarding issues or irregularities;
3. The audit began in 2014 when two CRA representatives viewed the research library and left satisfied that all was in order. No concerns have been raised since then; and,

4. The Organization requests to be contacted regarding any additional questions.

Our responses to these points are as follows:

1. Our AFL outlines numerous specific examples of non-compliance identified during our review. While the Organization has indicated that it disagrees in general with our findings, it has not provided any reasons for its disagreement, nor has it provided any documentation to support its disagreement with any of the specific issues outlined in our AFL.
2. The timeliness of T3010 filing was a concern but not our primary concern among the areas of non-compliance identified in our AFL. We remain of the position that all T3010s filed for the audit period were received after the June 30 deadline for filing. We cannot comment on the accuracy of the Organization's filing of T3010s prior to the audit period, as these returns were not reviewed as part of this audit.
3. Our initial contact with the Organization was on July 8, 2015¹, and the initial meeting between the CRA and the Organization was scheduled for, and held on, August 26, 2015. This meeting included an initial interview and a tour of the premises. Books and records were collected during this meeting, but were not reviewed for completeness or accuracy while at the premises.

While we recognize that there were delays during the audit process, and apologized for these delays², the delays did not impact the audit findings identified in our AFL.

4. On April 24, 2018 we contacted the President of the Organization to verify that its response to our AFL, received on April 19, 2018, was the entirety of its response and that further explanations and/or documentation were not forthcoming. The President confirmed that the Organization was not intending to provide any further response at this time. We also confirmed that the President had read the AFL in detail, and highlighted some of the more serious areas of non-compliance including activities relating to the provision of immigration services, the issuance of official donation receipts for the provision of those services, and the provision of undue benefits. The President again confirmed that he had read our AFL in detail.

While the Organization has clearly stated its disagreement with the findings outlined in our AFL, it did not provide an adequate explanation or documentation regarding the non-compliance identified during the audit. Given our analysis of what we found in the course of the audit and the response from the Organization (as described above), it is our position that the non-compliance identified during the course of our audit warrants revocation of the charitable status of the Organization.

¹ Not in 2014 as stated in the Organization's April 19, 2018 representations.

² The auditor apologized for the audit delays to the current president of the Organization in a conversation on March 20, 2018.

Conclusion

The audit by the CRA found that the Organization is not complying with the requirements set out in the Act. In particular, it was found that the Organization failed to devote resources to charitable activities by devoting resources to non-charitable activities and providing undue benefits, failed to maintain adequate books and records, failed to issue donation receipts in accordance with the Act and/or its Regulations and failed to file an accurate T3010, Registered Charity Information Return. For all of these reasons, and for each reason alone, it is the position of the CRA that the Organization no longer meets the requirements for charitable registration and should be revoked in the manner described in subsection 168(1) of the Act.

For each of the reasons mentioned in our letter dated March 20, 2018, pursuant to subsections 168(1) and 149.1(2) 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(2), of the Income Tax Act, that I propose to revoke the registration of the charity listed below and that by virtue of paragraph 168(2)(b) thereof, the revocation of registration is effective on the date of publication of this notice in the Canada Gazette.

Business number
141019505RR0001

Name
Italian Genealogy and Heraldry Society
of Canada
Kingsville ON

Should the Organization choose 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, with 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. As such, 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 intention to revoke registration, can be found in Appendix A, 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) and 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 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 A. Form T2046 and the related Guide RC4424, Completing the Tax Return Where Registration of a Charity is Revoked, are available on our website at **canada.ca/charities-giving**;
- 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 advise that subsection 150(1) of the Act requires that every corporation (other than a corporation that was a registered charity throughout the year) file a return of income with the Minister in the prescribed form, containing prescribed information, for each taxation year. The return of income must be filed without notice or demand.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Tony Manconi', with a stylized flourish at the end.

Tony Manconi
Director General
Charities Directorate

Enclosures

- CRA letter dated March 20, 2018
- Organization's response letter received April 19, 2018
- Appendix A, Relevant provisions of the Act

c.c.: Vince Delduca



Mr. Timothy Sellan
President
Italian Genealogy and Heraldry Society of Canada
[REDACTED]

BN : 14101 9505 RR 0001
File # : 0936856

March 20, 2018

Subject: Audit of Italian Genealogy and Heraldry Society of Canada

Dear Mr. Andreatta:

This letter results from the audit of the Italian Genealogy and Heraldry Society of Canada (the Organization) Registered Charity Information Returns 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, 2015.

Based on the audit review the CRA has identified specific areas of non-compliance with the provisions of the *Income Tax Act* and its *Regulations* in the following areas.

AREAS OF NON-COMPLIANCE		
	Issue	Reference
1.	Failure to devote resources to charitable activities a.) Conducting non-charitable activities b.) Undue Benefits	149.1(2), 149.1(1)(b), 168(1)(b), 188.1(4)
2.	Failure to maintain adequate books and records as required by the Act	149.1(2), 230(2), 168(1)(b), 168(1)(e)
3.	Failure to issue donation receipts in accordance with the Act and/or its Regulations	118.1, R. 3501, 168(1)(d)
4.	Failure to file an accurate T3010, Registered Charity Information Return	149.1(14), 168(1)(c)

This letter describes the areas of non-compliance identified by the CRA relating to the legislative and common law requirements that apply to registered charities, and offers the Organization an opportunity to respond and present additional information. The Organization must comply with the law; if it does not, its 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 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,

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 MNR*, [1999] 1 SCR 10 at paras 155-159 [*Vancouver Society*]. 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] AC 531 (PC) [*Pemsel*]. The classification approach was explicitly approved of by the Supreme Court of Canada in *Guaranty Trust Co of Canada v MNR*, [1967] SCR 133, and confirmed in *Vancouver Society*, supra note 4.

³ See generally *Vancouver Society*, supra note 4 at para 41, Gonthier J, dissenting; *Gilmour v Coats et al*, [1949] 1 All ER 848 [*Gilmour*]; *National Anti-Vivisection Society v IRC*, [1947] 2 All ER 217 at 224 (HL), Wright LJ [*National Anti-Vivisection Society*].

⁴ See for example *In re Grove-Grady*, [1929] 1 Ch 557 at 573-574; *Plowden v Lawrence*, [1929] 1 Ch 557 at 588, Russell LJ; *National Anti-Vivisection*, supra note 6 at 49, Wright LJ; *IRC v Oldham Training and Enterprise Council*, [1996] BTC 539 [*Oldham*]; *Pemsel*, supra note 5 at 583.

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 registered 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 MNR*, 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 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?"⁷

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. 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.

⁵ See *National Anti-Vivisection Society*, *supra* note 6 at 49, Wright L.J.; *In re Shaw docd.*, [1957] 1 WLR 729; *Gilmour*, *supra* note 6, Simonds L.J. at 446-447.

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

⁷ *Vancouver Society*, *supra* note 4 at para 194. See also *AYSA Amateur Youth Soccer Association v Canada (Revenue Agency)*, 2007 SCC 42 at para 42, [2007] 3 SCR 217.

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

The CRA must be satisfied that an organization's activities directly further 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 current audit encompassed an enquiry into all aspects of the Organization's operations. The fact that some of the areas of non-compliance identified in this letter may, or may not, have been evaluated in preceding audits does not preclude the need for compliance with existing legal requirements. Furthermore, the CRA may take a position that differs from that reached previously based on reconsideration of the pertinent facts and law.¹⁰

Background of the Organization

The Organization submitted an application for registration on September 4, 1992.

The Notification of Registration letter, issued on November 27, 1992 by the CRA granted an effective registration date of August 4, 1992. The letter also included a paragraph that stated the reason for registration was based on the information supplied, and assuming that the activities will be as stated in the application, the Organization qualifies for tax exempt status under paragraph 149(1)(f) of the ITA. It was further determined that the Organization is a charitable organization based on the requirements of paragraph 149.1(1)(b) of the ITA.

⁸ A "qualified donee" means a donee described in subsection 149.1(1) of the Act.

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*.

¹⁰ See for example *Canadian Magen David Adom for Israel v MNR*, 2002 FCA 323 at para 69, [2002] FCJ no 1260, Sharlow JA.

The Organization's formal objects as per paragraph 1.01 of its Constitution are:

1. To promote and preserve Italian genealogy and heraldry and related sciences in Canada through educational methods.
2. The society is a non-profit cultural and educational organization consisting of persons interested in tracing their ancestors, locating missing relatives, finding the origin and meaning of their surnames, locating an ancestors' coat-of-arms and gaining an overall knowledge of Italian genealogy, heraldry, culture, ethnicity, history and geography.

The list of the activities of the organization as per paragraph 1.02 under "Objectives" of the Constitution at the time of registration are as follows:

1. To provide lectures, guidance, assistance and instructions free of charge to its members, and for non-members for a fee.
2. To undertake research in the fields of Italian genealogy and heraldry and upon completion of such research, make it known to the public.
3. To assemble, keep up-to-date and maintain a library of Italian genealogy, heraldry and related sciences publications.
4. To publish books, essays, journals, manuals, newsletters, research guides and other papers about Italian genealogy, heraldry and related sciences.
5. To accept and preserve Italian family histories, genealogies and coat-of-arms donated by individuals or institutions in an archival safe environment.
6. To maintain an archival system to contain and preserve oral histories, documents, photographs, memorabilia and other related historical objects in an archival safe environment.
7. To maintain a rapport with genealogy, heraldry, and related sciences organizations, both public and private.
8. To promote interest among young Canadians of Italian ancestry of their cultural roots.
9. To provide scholarships and prizes to Canadians who are pursuing post-secondary education in Italian studies.
10. To teach courses in Italian genealogy and heraldry in secondary school Italian programs and post-secondary school Italian programs.

Identified areas of non-compliance

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

a) Conducting non-charitable activities

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 Act permits charitable organizations to either make gifts to other organizations that are qualified donees or to carry on their own activities. In the case of making a gift, paragraph 149.1(2)(c) provides that a charitable organization may be revoked if it makes a gift other than to a qualified donee or in the course of charitable activities carried on by it. In summary, a charitable organization may carry on its own charitable activities, it may make gifts to qualified donees or, it may make a gift in the course of charitable activities carried on by it.

Audit Findings

It appears that the Organization was involved in four main activities during the audit period as follows:

- i. Providing immigration services;
- ii. Purchasing reference material;
- iii. Holding monthly meetings; and
- iv. Organizing fundraising events.

The reasons why each of these activities do not qualify as charitable are detailed below.

i. Immigration Services

As shown on the internet sites of the Organization during the audit period which are included in Appendix A, and as confirmed during the initial interview, Flavio Andreatta [REDACTED] considered himself to be an expert in the immigration field. Canada's Immigration and Refugee Protection Act as well as the Citizenship Act require that anyone who provides immigration or citizenship advice for a fee or other consideration, must be a member in

good standing of the Immigration Consultants of Canada Regulatory Council (ICCRC)¹¹. As shown in Appendix B Flavio Andreatta [REDACTED].

Email correspondence written by Flavio Andreatta on behalf of the Organization was reviewed where he clearly lists his fees for immigration services, and that they will be tax deductible based on the official donation receipts issued by the Organization. Copies of the emails are included in Appendix C.

Further, Flavio Andreatta prepared additional correspondence to the Canadian consulate on behalf of his immigration clients where he clearly presents himself as an "unpaid representative" as shown in Appendix D. He misrepresented himself to the immigration officials as being an unpaid representative and he was not operating within the requirements of the law because he also charged fees for his services. [REDACTED]

The minutes of the board of Directors prepared by the Organization clearly show that immigration services were offered during the 2011 and 2012 years. There were limited minutes for 2013, and no minutes provided for the 2014 and 2015 years. As a result it was not possible to determine when the immigration services ceased.

Offering immigration services does not further the registered objects of the Organization, and as noted above, offering immigration services for a fee [REDACTED] is contrary to Canada's Immigration and Refugee Protection Act as well as the Citizenship Act. As per CG-017 General requirements for charitable registration, purposes and activities that are illegal in Canada or contrary to Canadian public policy are prohibited.

ii. Purchasing reference material

A detailed review of all of the purchases of the Organization was completed for each year under audit. The review showed that the Organization paid for very few of its own expenses, rather Flavio Andreatta paid for items personally, and then issued himself an expense reimbursement cheque from the Organization. Documents provided to support the expenses were not adequate, and we could not reconcile the expense reimbursements to the receipts.

The following are some examples to demonstrate our inability to reconcile the expense reimbursements:

- In 2011 one cheque could be reconciled to supporting documents for the Organization's fundraising event at the [REDACTED]. All other cheques were

¹¹ <http://icrc-crcic.info/>

made payable to Flavio Andreatta with no way to reconcile what expenses were being reimbursed. There were multiple entries in the ledger that referenced the reimbursement of the purchase of desks and bookcases totalling \$10,500, with no supporting receipts.

- For the 2012 year in addition to the lack of documentation to support general expense reimbursements further concerns were noted, including that Flavio Andreatta made a donation to the Organization for \$3,500 on November 5, 2012 and issued himself official donation receipt # 0214. On December 24, 2012 Flavio Andreatta issued himself cheque # 395 from the Organization for \$3,500 with "IGHSC Display Cabinet" recorded on the memo line. There was no receipt provided to show that and display cabinet was purchased. In the Organization's records the transaction was recorded as "covering research costs".
- In 2013 there were four separate donations of \$1,750 received from the employer of Helga Beaul, [REDACTED]. In each case, within a few days on the donation being received, a cheque for the same amount was issued to Helga Beaul by Flavio Andreatta for "Research Services or Books". There were no details or supporting documentation for any work done by Helga [REDACTED].
- No detailed analysis could be completed for the 2014 year as the Organization did not provide any books and records for review.
- In the 2015 year there were further issues in reconciling the reimbursement cheques made payable to Flavio Andreatta. There were invoices provided to support a portion of the computer invoices claimed, [REDACTED]
[REDACTED]
- Various documents for [REDACTED] transfers were submitted for review, which were recorded in the records as purchases of books and materials. However no further details were provided to indicate what was purchased, or show how the purchases were used to further the Organization's registered objects. Due to the lack of documents there was no way to determine what purchases were made, or how any purchases were used to further the approved objects of the Organization.

iii. Holding monthly meetings

As noted in the general legal principles section above, a charitable Organization is required to have charitable purposes and a public benefit must be delivered. The Organization provided minutes for the 2011-2013 years, however the minutes primarily

discussed research of individual families for the members of the Organization, or general Italian history. The information discussed in the meetings does not appear to qualify as promoting Italian genealogy and heraldry and it did not appear that any aspect of research discussed met the public benefit test as detailed in CPS-024, Guidelines for registering a charity: Meeting the public benefit test. As noted in the Guidance the Organization should be able to clearly demonstrate that there is a sufficient general benefit to the community, directly or indirectly, from the existence of the service, which the Organization failed to do. The balance of the minutes related to discussions on fundraising events and the immigration services being offered by the Society is, neither of which are activities that are charitable or that further their charitable purpose. As the Organization did not provide any minutes or any documents for the 2014 and 2015 years it was not possible to determine what was discussed at boards meetings, or if any meetings occurred during those years.

iv. Organizing fundraising events

In 2011 the Organization ran a fundraising event called "Festa Dei Nonni". As per CG-013, Fundraising by registered charities, fundraising is not a charitable activity.

Based on the review of the books and records provided, and a review of the activities of the Organization, it does not appear that the Organization had any activities that would be considered to be charitable during the audit period.

b) Undue Benefits

The meaning of "undue benefit" with respect to charities is clarified in subsection 188.1(5) of the Act:

"an undue benefit conferred on a person (referred to in this Part as the "beneficiary") by a registered charity or registered Canadian amateur athletic association includes a disbursement by way of a gift or the amount of any part of the income, rights, property or resources of the charity or association that is paid, payable, assigned or otherwise made available for the personal benefit of any person who is a proprietor, member, shareholder, trustee or settlor of the charity or association, who has contributed or otherwise paid into the charity or association more than 50% of the capital of the charity or association, or who deals not at arm's length with such a person or with the charity or association, as well as any benefit conferred on a beneficiary by another person, at the direction or with the consent of the charity or association, that would, if it were not conferred on the beneficiary, be an amount in respect of which the charity or association would have a right, but does not include a disbursement or benefit to the extent that it is

- (a) an amount that is reasonable consideration or remuneration for property acquired by or services rendered to the charity or association;
- (b) a gift made, or a benefit conferred,
 - (i) in the case of a registered charity, in the course of a charitable act in the ordinary course of the charitable activities carried on by the charity, unless it can reasonably be considered that the eligibility of the beneficiary for the benefit relates solely to the relationship of the beneficiary to the charity, and
 - (ii) in the case of a registered Canadian amateur athletic association, in the ordinary course of promoting amateur athletics in Canada on a nationwide basis; or
- (c) a gift to a non-qualified donee."

An undue benefit is conferred on an individual by a charity when the recipient, being a member of that charity, receives a personal benefit as a result of any transaction that is deemed to not be conducted at arm's length. The term "arm's length" is clarified in subsection 251(1) of the Act and identifies who qualifies as being such:

- (a) related persons shall be deemed not to deal with each other at arm's length;
- (b) a taxpayer and a personal trust (other than a trust described in any of paragraphs (a) to (e.1) of the definition "trust" in subsection 108(1)) are deemed not to deal with each other at arm's length if the taxpayer, or any person not dealing at arm's length with the taxpayer, would be beneficially interested in the trust if subsection 248(25) were read without reference to sub clauses 248(25)(b)(iii)(A)(II) to (IV); and
- (c) in any other case, it is a question of fact whether persons not related to each other are, at a particular time, dealing with each other at arm's length.

The CRA provides further clarification of its interpretation of "arm's length" and transactions deemed as being arm's length in its publication IT419R2 – Meaning of Arm's Length. Paragraphs 22 through 26 of this document discuss circumstances and criteria that are applicable to unrelated persons who may be deemed to be dealing with each other at arm's length or not. The following criteria have generally been used by the courts in determining whether parties to a transaction are not dealing at "arm's length":

- was there a common mind which directs the bargaining for both parties to a transaction;
- were the parties to a transaction acting in concert without separate interests; and
- was there "de facto" control.

Audit Findings

Based on our review of the Organization's activities, it is our position that the Organization is providing the following undue benefits:

Flavio Andreatta

Expenses for the audit period were almost exclusively paid personally by Flavio Andreatta, who then issued himself an expense reimbursement cheque from the Organization's bank account. None of the expense reimbursements could be reconciled to any source documents. Also during the audit period the Organization recorded multiple purchases of capital assets such as filing cabinets and desks, none of which were supported by receipts, and all of which were stored at the residence of Flavio Andreatta. Based on the review of the minutes of the board of directors of the Organization, it did not appear that any meetings or events of the Organization were ever held at Flavio Andreatta's residence, and it does not appear that anyone other than Flavio Andreatta, or [REDACTED] Helga Beaul, had access to any of the purported assets of the Organization.

As noted above in section 1A, Conducting non-charitable activities, there are serious concerns that the Organization did not have any charitable activities during the audit period, and based on the limited records maintained by the Organization for the 2015 year, it appears that Flavio Andreatta may have been the only donor in 2015. It appears that any assets purchased or expenses incurred did not further any charitable purposes of the Organization, instead resulted in a personal benefit to Flavio Andreatta.

In total, Flavio Andreatta issued himself cheques from the Organization's bank account totaling \$18,712 in 2011, \$10,600 in 2012, \$2,400 in 2013 and \$3,574 in 2015. Amounts for 2014 could be not calculated as the Organization did not submit any books and records for review.

Based on the audit findings it is our opinion Flavio Andreatta received undue benefits totaling \$35,286 from the Organization during the audit period.

Helga Beaul

In 2013 there were four separate donations of \$1,750 received from [REDACTED] who at the time, [REDACTED] of Helga Beaul. Within a few days of the donation being received, a cheque for the same amount was issued to Helga Beaul by Flavio Andreatta for "Research Services or Books". In total, Flavio Andreatta issued cheques totaling \$8,750 to Helga Beaul in 2013 from the Organization. While it was noted in the records as being related to books and research fees, there are no details as to what research was completed, no invoices charged to the Organization for research services, and the Organization did not issue a T4 or T4A for fees paid for services rendered. Further, the fact that Helga Beaul was paid for research services appears to be in contradiction to what Flavio Andreatta stated in the initial interview, when he said that he is the only individual in the Organization who has the knowledge and skill to conduct the activity of genealogy and heraldry research. For these reasons it appears that this was an appropriation of funds, rather than a payment for research services.

Based on the audit findings it is our opinion Helga Beaul received an undue benefit totaling \$8,750 from the Organization during the audit period.

In cases where a registered charity is involved in serious non-compliance, or for repeat or multiple infractions, the Canada Revenue Agency (CRA) may impose intermediate sanctions (that is, financial penalties or suspensions) as outlined in sections 188.1 and 188.2 of the Act. The penalty applicable to a registered charity that provides an undue benefit to any person or entity, on first offense, is 105% on the amount of the undue benefit. The Organization has provided the undue benefits detailed above which may result in the following sanctions being applied under paragraph 188.1(4) of the Act:

Flavio Andreatta			
Year	Undue Benefit	Sanction %	Penalty Amount
2011	\$18,711.76	105	\$19,647.35
2012	\$10,600.42	105	\$11,130.44
2013	\$ 2,400.00	105	\$ 2,520.00
2015	\$ 3,574.33	105	\$ 3,753.05
Total Subsection 188.1(4) Penalty			\$37,050.84

Helga Beaul			
Year	Undue Benefit	Sanction %	Penalty Amount
2013	\$ 8,750.00	105	\$ 9,187.50
Total Subsection 188.1(4) Penalty			\$ 9,187.50

However, it is our position that the Organization has failed to meet the requirements of subsection 149.1(1) of the Act as it does not devote its resources to charitable activities carried on by the Organization itself. It is also our position that the Organization has transferred charitable assets for the private gain of a member and therefore has failed to demonstrate that it meets the test for continued registration under subsection 149.1(1) as a charitable organization that "no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof". For these reasons it appears there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

2. Failure to maintain adequate books and records as required by the Act

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."

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

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

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

- i. it is the responsibility of the registered charity to prove that its charitable status should not be revoked;¹²

¹² See *Canadian Committee for the Tel Aviv Foundation*, 2002 FCA 72 at paras 26-27, [2002] 2 CTC 93.

- ii. 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;¹³ and
- iii. 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 in the case of material or repeated non-compliance.¹⁴

Audit Findings

Based on the audit findings the Organization has failed to meet the requirements for books and records under the Act for the following reasons:

a. Internal Controls

The internal controls of the Organization were inadequate. Flavio Andreatta was the only individual responsible for all daily bookkeeping, receiving and depositing donations, issuing official donation receipts, and paying expenses. The Organization paid very few of its own expenses, rather expenses are paid personally by Flavio Andreatta, who then issued himself expense reimbursement cheques, which were not adequately supported by source documents.

b) Control of Receipts

The Organization does not have adequate controls over their receipting for the following reasons:

- Flavio Andreatta is the only individual responsible for issuing the receipts. He is also the only individual responsible for receiving donations, making bank deposits and issuing cheques to himself for expense reimbursements. This is the same individual that was offering illegal immigration services and providing a donation receipt for all fees paid.
- Receipts are not issued in a reasonable serial manner. For example, in 2013, Official Donation Receipts # 101-109, 199, 208, 209, 211, 218, 221 and 222 were issued. They were not issued in numerical order, even when multiple receipts were issued on the same day.

¹³ Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at para 39, [2002] 2 CTC 93. Furthermore, failing to comply with the requirements of section 230 of the Act by refusing to make documents available can lead to a fine and imprisonment, in addition to the penalty otherwise provided. See subsection 238(1) of the Act.

¹⁴ See *Prescient Foundation v MNR*, 2013 FCA 120 at para 51, [2013] FCJ no 512.

- The Organization does not keep track of receipts issued, and cannot provide a listing of all donors.
- It is not known how many receipts are missing for the years under audit due to poor record keeping. Only one copy of a donation receipt was included for review for the 2014 and 2015 years, and no donor summaries were provided.
- The Organization does not retain a copy of all Official Donation Receipts as required.
- All receipts in a series are not accounted for. In addition to some missing single receipts, there are some large gaps where receipts are not accounted for. For example, Receipts # 110-156, 163-188 and any receipt after # 224 were not available for review.
- The \$280 deposit recorded on February 13, 2012 was entered into the Organization's records as a miscellaneous donation \$180, and two donations of \$50 each from two members, with official donation receipts # 215 and 216 being issued. Based on the information detailed on the cancelled cheque the deposit of \$280 was actually a payment for a fundraising event, and was not received from either of the individuals that received official donation receipts.

c. Revenue

It was not possible to reconcile revenue reported on the T3010, Registered Charity Information Returns with the documentation submitted by the Organization for the audit. The Organization provided no supporting documentation for the 2014 year, and limited documentation for the 2015 year. Based on deposit slips provided it appears that Flavio Andreatta may have been the only donor in 2015.

d. Expenses

It was not possible to reconcile expenses reported on the T3010, Registered Charity Information Returns with the documentation submitted by the Organization for the audit. The Organization didn't provide any documentation relating to the 2014 year and only a limited amount of supporting documentation for the 2015 year.

Furthermore, the Organization paid very few of its own expenses. Rather, Flavio Andreatta paid the majority of the expenses personally, and then prepared expense reimbursement cheques to himself. In most cases, however, he did not provide adequate receipts to support the reimbursement of the expenses.

The following table displays the total expenses and capital purchases claimed by the Organization on the T3010, Registered Charity Information Returns and the total amount of the expenses that were not supported by adequate source documentation:

Year	Total Expenses & Capital Purchases	Total Unsupported Expenses
2011	\$23,854	\$18,712
2012	\$13,277	\$10,600
2013	\$11,386	\$11,150
2015	\$7,350	\$3,574

The Organization did not provide any books and records for the 2014 year for review, as a result a detailed review could not be completed. Although it was not recorded in the disbursement summary from Organization, cheque # 55 was issued to Flavio Andreatta for \$850 for payment of 2015 expenses, the cheque cleared the Organization's bank account in January 2016.

The Organization did transfer funds through [REDACTED] and provided a [REDACTED] summary for review. However, the summary only supported that funds were paid to other individuals, and did not provide any details regarding what was purchased nor did it provide any details to allow a review of the expense and determine if it furthered the Organization's registered objects.

e. Meeting Minutes

The minutes for January 2011 to November 2013 included discussions on fundraising events, obtaining a coat of arms for the Organization, immigration services offered, and a small write up on research relating to a member's family, last name, or on general Italian genealogy. Unfortunately, this information does not meet the Organization's requirement to maintain board minutes that detail the activities of the Organization, and include sufficient details to show that the board of directors are maintaining direction and control over the Organization's activities and assets. Additionally, no minutes were maintained by the Organization for the period of November 2013 to December 2015.

f) Donor Listing

A registered charity should be able to provide a donor listing that includes the official donation receipt numbers, a list of all donation receipts in a serial number order, the name and address of the donor, the date of the donation, the date of the receipt, the type of gift and the amount of the donation. The Organization maintains no such listing and therefore has no record of the donation receipts that it has issued to donors.

Under subsection 188.2(2) of the Act, an Organization may receive a notice of suspension of delivering official receipts if it contravenes to subsection 230(2) of the

Act. 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, it is our position that the present case consists of material non-compliance and that there are grounds for revocation of the charitable status of the Organization under paragraphs 168(1)(b) and 168(1)(e) of the Act.

3. Failure to issue donation receipts in accordance with the Act

Pursuant to subsection 118.1(2) of the ITA, a registered charity can issue tax receipts for income tax purposes for donations that legally qualify as gifts. The ITA requires the registered charity to ensure the information on its official donation receipts 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 official donation receipt 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.

Audit Findings

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 as detailed below:

a) Issuing Receipts When a Gift Was Not Received

A charity may only issue receipts for gifts made to it, which it is responsible for using to further its own charitable purposes. At law, a gift is a voluntary transfer of property without consideration. An essential element of a gift is that there be intent to donate by the donor. It must be clear that the donor intends to enrich the donee, by giving away property, and to grow poorer as a result of making the gift.

A registered charity may only issue official receipts for donations that legally qualify as gifts. Generally, the purchase of goods or services from a qualified donee do not qualify as gifts, and an official donation receipt should not be issued.

As detailed in above in Section 1A, Conducting non-charitable activities, and in Appendices A-D. Flavio Andreatta was providing immigration services through the

Organization and issuing receipts for the full amount of fees paid. Included in Appendix E are copies of the official donation receipts issued. An email was written by Flavio Andreatta to the bookkeeper of the Organization stating that all donations over \$1,000 are for immigration services, which is included in Appendix F.

In the minutes of the Organization immigration services were discussed on more than one occasion, including on December 11, 2011 where Flavio Andreatta stated he had three upcoming immigration cases that will generate income for the society. Based on these facts, it appears that immigration services were a regular and ongoing activity of the Organization. Revenue was reviewed each year under review, and it appears that the Organization received \$16,500 in 2011, \$7,500 in 2012 and \$8,250 in 2013 for immigration services, and issued official donation receipts for the funds received.

On July 14, 2012 donation receipt # 207 was issued for \$1,000. The minutes from the meeting on August 8, 2012 state that \$1,000 was loaned to the Organization in July for the purchase of manuscripts, however this amount is required to be paid back. As the funds provided were never intended to be a gift no official donation receipt should have been issued.

b) Split Receipting

As previously noted, the first registered activity of the Organization is "To provide lectures, guidance, assistance and instructions free of charge to its members, and for non-members for a fee". As per summary policy CSP-M05, Membership Fees, an Organization can issue an official donation receipt for the eligible amount of a payment for membership fees. To determine the eligible amount, the donee must determine the advantage received by the member in return for the payment.

Where the advantage is not more than \$75 or 10% of the amount paid for the membership fees (whichever is less), a receipt can be issued for the full amount. Where the advantage is more than \$75 or 10%, the amount of the advantage must be deducted from the amount paid for the membership fees to determine the eligible amount of the receipt. Where the advantage is more than 80% of the amount paid for the membership fees, it is generally considered that there is no true intention to make a gift, and a receipt cannot be issued.

Based on a review of the minutes it appears that a small number of members may have received free genealogy research. The Organization did not provide any documentation to show that the advantage received by the member was calculated, and instead issued the official donation receipt for the entire amount of the membership fees paid.

In cases where a registered charity is involved in serious non-compliance, or for repeat or multiple infractions, the Canada Revenue Agency (CRA) may impose intermediate sanctions (that is, financial penalties or suspensions) as outlined in sections 188.1 and

188.2 of the Act. Under subsection 188.1(7) of the Act the penalty applicable to a registered charity that issues an official donation receipt that includes incorrect information is liable to a penalty equal to 5% of the amount reported on the receipt as representing the amount in respect of which a taxpayer may claim a deduction under subsection 110.1(1) or a credit under subsection 118.1(3).

The Organization issued official donation receipts containing incorrect information for amounts received for immigration services which may result in the following sanctions being applied under subsection 188.1(7) of the Act:

	2011	2012	2013
Total amount of revenue where ODR was issued:	\$16,500.00	\$ 8,500.00	\$ 8,250.00
Sanction %	5%	5%	5%
Total Sanction under paragraph 188.1(7) of the Act:	\$ 825.00	\$ 425.00	\$ 412.50

However, it is our position that for each of the reasons outlined above, the Organization did not issue receipts according to the Act and its Regulations, and it appears there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(d) of the Act.

4. Failure to file an accurate T3010, Registered Charity Information Return

Subsection 149.1(14) of the Act states that:

Every registered charity and registered Canadian amateur athletic association shall, within six months from the end of each taxation year of the charity or association and without notice or demand, file with the Minister both an information return and a public information return for the year in prescribed form and containing prescribed information.

It is the responsibility of the Organization to ensure that the information provided in its T3010 returns, schedules and statements, is factual and complete in every respect. A charity is not meeting its requirements to file an information return in prescribed form if it fails to exercise due care with respect to ensuring the accuracy thereof. The Federal Court of Appeal has confirmed that major inaccuracies in a T3010 are a sufficient basis for revocation.¹⁵

¹⁵ *Opportunities for the Disabled Foundation v MNR*, 2016 FCA 94 at paras 48-51.

Audit Findings

a. Reconciliations for Lines 5000 – 5050

The Organization failed to complete these lines of the T3010 Information Return for the 2014 and 2015 years. Further, they do not maintain any records regarding this expense reconciliation as required.

b. Form T1235, Directors/Trustees and Like Officials

The term for all directors is incorrect, each year the term references the fiscal year, rather than the actual start of the director's term. For 2014 and 2015 none of the dates of birth are completed, and in 2015 the phone number is missing for two of the directors.

c. Filing of the T3010, Registered Charity Information Return

The T3010, Registered Charity Information Returns are due within 6 months of the fiscal year end of the Organization. For this Organization that would be June 30th. As shown below, the returns were not significantly late, however none were filed within the six months as required:

<u>Fiscal Period</u>	<u>Return Received</u>
2011-12-31	2012-07-06
2012-12-31	2013-07-05
2013-12-31	2014-07-07
2014-12-31	2015-07-07
2015-12-31	2016-07-11

Under subsection 168(1)(c) of the Act, the registration of a charity may be revoked if it fails to file a charity information return when required under the Act. It is our position the Organization has failed to comply with the Act by failing to file an accurate T3010, Registered Charity Information Return based on the issues identified above. For this reason, there are grounds to revoke the registered status of the Organization under paragraph 168(1)(c) of the Act.

The Organization's options:

a) **No response**

The Organization may choose not to respond. In that case, the Director General of the Charities Directorate may issue a notice of intention to revoke the registration of the Organization in the manner described in subsection 168(1) of the Act.

b) Response

If the Organization chooses to respond, send written representations and any additional information regarding the findings outlined above **within 30 days** from the date of this letter to the address below. After considering the response, the Director General of the Charities Directorate will decide on the appropriate course of action. The possible actions include:

- no compliance action;
- issuing an educational letter;
- resolving the issues through a Compliance Agreement;
- issuing a notice of intention to revoke the registration of the Organization in the manner described in subsection 168(1) of the Act.

If the Organization appoints a third party to represent it in this matter, send us a written request with the individual's name, the individual's contact information, and explicit authorization that the individual can discuss the file with us.

If you have any questions or require further information or clarification, do not hesitate to contact me at the numbers indicated below. My team leader, Maria Grieco, may also be reached at 519-584-3974.

Yours sincerely,


Luke Jantzi
Audit Division
Kitchener Tax Services Office
Telephone: (226) 989-3061
Facsimile: (519) 585-2803
Address: 166 Frederick Street
Kitchener ON N2H 0A9

Enclosures (6)

c.c.: Helga Beaul, Treasurer, 



Italian Genealogy and Heraldry Society of Canada

Società di Genealogia e Araldica Italiana del Canada

Société G  n  alogique et H  raldique Italienne du Canada

A Non Profit, Registered Canadian Cultural Charity

BN/registration number 141019505 RR 0001

Casa Italia, 86 Hazel Crescent, Kingsville, Ontario N9Y 0B2 Canada
Phone: (519) 733-0949 Email: ighsc-sgaic@sympatico.ca Web: ighsc.org

Luke Jantzi
Audit Division
Kitchener Tax Services Office
166 Frederick Street
Kitchener ON N2H 0A9

Dear Mr. Jantzi,

Further to our last telephone conversation, in consultation with our past President, Mr. Flavio Andreatta, I have carefully reviewed the audit report documents you sent me. It is our opinion that the audit report is highly personally biased and wholly inaccurate.

The Italian Genealogy and Heraldry Society of Canada have filed tax returns on time every year since 1992. We have never been contacted by the CRA regarding any issues or irregularities regarding our returns prior to the audit.

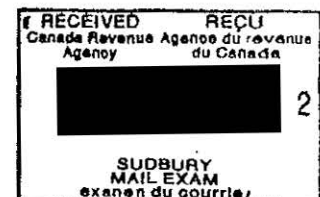
The CRA audit began in 2014 and involved several auditors. Two CRA representatives came to our office in Kingsville to see our research library. They left satisfied that all was in order and we never heard of any concerns since then.

The Italian Genealogy and Heraldry Society of Canada reject the findings of this audit report. The Society will continue to vigorously defend the accuracy and integrity of our tax returns and financial records.

Feel free to contact me at any time if you have any more questions.

Regards,

Tim Sellan
President



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.