



March 3, 2022

REGISTERED MAIL

George Patterson
President
Tofino Botanical Gardens Foundation
PO Box 886
Tofino BC V0R 2Z0

BN: 872755202RR0001
File #: 3032235

Dear George Patterson:

**Subject: Notice of intention to revoke
Tofino Botanical Gardens Foundation**

We are writing with respect to our letter dated March 1, 2021 (copy enclosed), in which Tofino Botanical Gardens Foundation (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, 2016 to December 31, 2018. Specifically, the Organization was asked to explain why its registration should not be revoked in accordance with subsection 168(1) of the Income Tax Act.

We have reviewed and considered your written response dated April 19, 2021, submitted on your behalf by [REDACTED]. Your reply has not alleviated our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity. As such, we maintain our position that the Organization's charitable registration should be revoked.

The basis for our position is described below, including:

- a summary of the issues raised in our administrative fairness letter (AFL) dated March 1, 2021;
- the Organization's representations dated April 19, 2021; and,
- the CRA's response to the representations.

Repeated non-compliance

This is the Organization's second audit, in which we found that the same or similar issues of non-compliance remain present, in addition to new areas of non-compliance. The prior audit was conducted for the fiscal periods from January 1, 2011 to December 31, 2012, and identified areas of non-compliance, which included: private benefit, failure to maintain adequate books and records, issuing receipts not in accordance with the Act, and issuing gifts to non-qualified donees. During the previous audit, the CRA provided the Organization with the opportunity to address the identified areas of non-compliance by entering into a compliance agreement. The terms and corrective measures of the

compliance agreement were agreed to and signed on March 18, 2015, by George Patterson, the Organization's President. George Patterson was the President for both audits, as such, he and the Organization were aware of the issues of non-compliance and respective corrective measures that were required for the Organization to become compliant with the requirements of the Act.

As stated in our letter dated March 1, 2021, the current audit found that the Organization failed to carry out most of the corrective measures listed in the compliance agreement. With respect to the issue of private benefit, although it appears the Organization made an attempt to implement the corrective measure, it only did so during the fiscal period ending December 31, 2015, and failed to implement the corrective measure during subsequent fiscal periods, including the current audit period. As the audit found continuous and repeated non-compliance with the requirements of the Act and its Regulations, this constitutes grounds for the revocation of its charitable status.

1. Not constituted and operated exclusively for charitable purposes: Delivery of non- incidental private benefits

As stated in our AFL, the previous audit identified concerns with the Organization's ability to distinguish its charitable activities from the business activities of Coastwise Holdings Corp. (CHC) as CHC collected and retained the income generated from admission fees to the botanical gardens, and the Organization conferred a private benefit on CHC and on George Patterson as the sole shareholder of CHC.

CHC owns the two for profit businesses, Darwin's Café and the Ecolodge, both located on the grounds of the botanical gardens. The two for profit businesses have benefited, either directly or indirectly, as a result of their close proximity, business relationship and non-arm's length relationship with the Organization.

The current audit found that during the fiscal periods ending 2016, 2017 and 2018 Darwin's Café collected and retained the revenue generated by admission fees to the botanical gardens, thereby continuing to confer a private benefit on CHC and George Patterson as the sole shareholder of CHC. In addition, during the audit period, the two for profit businesses were advertised on the Organization's website, guests at the Ecolodge received free admission to the botanical gardens, Darwin's Café hosted wedding guests and other events for which it had use of the botanical gardens property at no charge. The audit further found that due to the director's ownership of the property on which the garden resides, the enhancements and improvements to the property, paid for by the Organization, would provide a financial benefit to the director.

Organization's representations

The Organization's representations dated April 19, 2021, confirmed that "all revenues from the admissions to the botanical garden were run through [CHC]". The Organization further stated that no benefit was conferred on the director and that the CRA had failed to

address that in addition to collecting and retaining the revenues from the garden admissions, CHC also paid the related expenses.

CRA's response

We acknowledge that during the course of the audit the Organization indicated to the auditor that CHC did pay a portion of the Organization's expenses. However, as stated in our letter dated March 1, 2021, the onus is on the registered charity to maintain its own books and records to allow the CRA to verify the charity's revenues and expenses in order to maintain its charitable status. Therefore, it is not acceptable for CHC to document the Organization's revenues and expenses in its corporate books and records.

Further, the Organization did not provide records to indicate the total income generated from the garden admission fees, the total value of the expenditures, and source documents indicating the amounts or nature of the expenses or documentation regarding how the payment of these expenses by CHC would be reimbursed by the Organization. As such, it is our position that the garden admission fees collected and retained by CHC equate to a private benefit being conferred on CHC and George Patterson as the sole shareholder.

In addition, our letter dated March 1, 2021 indicated additional concerns relating to a private benefit being conferred on the director as a result of the director's sole ownership of CHC. Darwin's Café and the Ecolodge both received a private benefit due to the nature of their business and non-arm's length relationship with the Organization and the director received a benefit as a result of the enhancements and improvements to the property.

In its representations, the Organization did not address our concerns with respect to additional private benefits conferred on CHC and George Patterson, such as Darwin's Café, the Ecolodge and the property enhancements and improvements.

For the reasons stated above, the Organization's representations have not alleviated our concerns regarding its continued delivery of unacceptable private benefits. As such, the Organization has failed to meet the requirements of subsection 149.1(1) of the Act, that it be constituted and operated exclusively for charitable purposes. Given the repeated and serious nature of the non-compliance, our position remains that there are grounds for the revocation of the Organization's charitable status under paragraph 168(1)(b) of the Act.

2. Failed to devote resources to a charitable purpose

In our letter dated March 1, 2021, we stated that during the audit period the Organization failed to devote its resources to a charitable purpose as it had an unstated collateral non-charitable purpose to conduct fundraising activities. The audit found that the Organization devoted between 64% and 79% of its income to host an annual event, the Tofino Food & Wine Festival.

Organization's representations

The Organization did not address this area of non-compliance in its representations.

CRA's response

The Organization's representations did not contain any additional information or documentation regarding this area of non-compliance.

When a charity's resources are not furthering exclusively charitable purposes, the charity is no longer meeting the requirements of subsection 149.1(1) of the Act. For this reason, it is our position that there are grounds for the revocation of the Organization's charitable status under paragraph 168(1)(b) of the Act.

3. Failed to maintain adequate books and records

As stated in our AFL, the previous audit identified concerns with the Organization's ability to maintain adequate books and records. The Organization had entered into a compliance agreement and agreed that going forward it would ensure that it maintained its books and records, specifically in reference to adequately demonstrating that it has not conferred a private benefit. The current audit found that the Organization did not maintain adequate books and records that contained information and documentation to allow the CRA to determine whether the Organization's activities were charitable at law.

Organization's representations

The Organization's representations dated April 19, 2021, stated that it "maintained complete and accurate books and records. However, since the revenue and expenses of the botanical gardens were run through the corporation, [the CRA] did not review these records. They were however, complete and accurate".

CRA's response

The Organization's representations confirmed that a significant portion of its income and expenses was not recorded in the Organization's books and records, but rather these transactions were included and reported in the books and records of CHC. As such, the Organization failed to provide an accurate accounting of its revenues and expenses.

Given the serious nature of the repeated non-compliance, our position remains that the Organization has failed to maintain adequate books and records in accordance with the requirements of subsection 230(2) of the Act. For the reasons indicated above, it is our position that there are grounds for revocation of the Organization's charitable status under paragraph 168(1)(e) of the Act.

4. Failed to issue donation receipts in accordance with the Act and/or its Regulations

As stated in our AFL, the previous audit identified concerns with the Organization's ability to issue donation receipts in accordance with the Act and/or its Regulations. The current audit found that the Organization did not comply with the terms of the compliance agreement as it did not cancel a specific official donation receipt nor obtain an appraisal for the property (i.e., sculpture) received.

Organization's representations

The Organization's representations dated April 19, 2021, advised that though the receipt had been issued, the artist of the sculpture agreed to forgo the tax deduction and therefore, the receipt was never completed nor used as a tax deduction. The Organization also stated that an agreement, signed by the artist, indicated the sculpture in question was on loan to the botanical gardens, and therefore, no receipt was required.

CRA's response

While we acknowledge the Organization's assertion that the donor had withdrawn the transfer of legal ownership of the property (i.e., sculpture) and that a loan agreement had been signed with the Organization for the use of the property, the Organization did not provide any documentation to corroborate its assertions, including documentation illustrating the official donation receipt in question was cancelled or a copy of the loan agreement.

Given the repeated nature of the non-compliance identified during the audit, our position remains that the Organization has failed to issue official donation receipts in accordance with the Act. For this reason there are grounds to revoke the Organization's charitable status under paragraph 168(1)(d) of the Act.

5. Failed to complete an accurate charity information return

In our letter dated March 1, 2021, we stated that the Organization had failed to file an accurate Form T3010, Registered Charity Information Return, such that it did not report the personal use property (i.e., sculpture) and was late in filing its 2017 and 2018 T3010 returns.

Organization's representations

The Organization's representations dated April 19, 2021, stated “[b]oth the [CHC] and the charity reported all revenues and expenses so [i]t is our position that the charity returns, along with the corporate returns were in fact accurate and have been filed to date”.

CRA's response

Our concerns stated in our letter dated March 1, 2021, have not been alleviated. As previously explained above, the onus is on the Organization to ensure that its books and records are complete and accurate in order to demonstrate that it is devoting its resources to activities carried out in furtherance of its charitable purposes. Therefore, by reporting the Organization's revenues and expenses in CHC's books and records, the Organization failed to complete accurate charity information returns.

In addition, the Organization's representations did not address the issues of failing to report the personal use property (i.e., sculpture) or that it was late in filing its T3010 returns for two of the three fiscal periods under the audit period.

Consequently, it remains our position that the Organization failed to file its charity information return as, and when required, as stated in subsection 149.1(14) of the Act. As such, it is our position that there are grounds for the revocation of the Organization's charitable status under paragraph 168(1)(c) of the Act.

Conclusion

The audit by the CRA found that the Organization has continued not to comply with the requirements set out in the Act. In particular, it was found that the Organization repeatedly provided a private benefit to a director/non-arm's length corporation, failed to devote resources to a charitable purpose, failed to maintain adequate books and records, failed to issue donation receipts in accordance with the Act and/or its Regulations, and failed to complete an accurate charity information return. For these reasons, it is our position that the Organization no longer meets the requirements for charitable registration.

Consequently, for the reasons mentioned in our letter dated March 1, 2021, and pursuant to subsection 168(1) of the Act, we hereby notify you of our intention to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, the 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), of the Income Tax Act, of our intention to revoke the registration of the charity listed below and that by virtue of paragraph 168(2)(b) thereof, the revocation of registration will be effective on the date of publication of this notice in the Canada Gazette.

Business number
872755202RR0001

Name
Tofino Botanical Gardens Foundation
Tofino BC

Should the Organization choose to object to this notice of intention to revoke its 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:

Assistant Commissioner
Appeals Intake Centre
Post Office Box 2006, Station Main
Newmarket ON L3Y 0E9

However, a copy of the revocation notice, described above, will be published in the Canada Gazette after the expiration of **30 days** from the date this letter was mailed. As such, the Organization's registration will be revoked on the date of publication, unless the CRA receives an order, **within the next 30 days**, from the Federal Court of Appeal issued under paragraph 168(2)(b) of the Act extending that period.

As noted above, even though the Organization may file a notice of objection with the CRA Appeals Branch within the 90 day time frame, in order to temporarily suspend the revocation process, the Organization must obtain an order from the Federal Court of Appeal.

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. Form T2046 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 entities 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,



Tony Manconi
Director General
Charities Directorate

Enclosures

- CRA letter dated March 1, 2021
- Organization's representations dated April 19, 2021
- Appendix A, Relevant provisions of the Act

c.c.: 



REGISTERED MAIL

March 1, 2021

George Patterson
President
Tofino Botanical Gardens Foundation
PO Box 886
Tofino BC V0R 2Z0

BN: 872755202 RR0001
File #: 3032235

Dear George Patterson:

Subject: Audit of Tofino Botanical Gardens Foundation

This letter results from the audit of the Tofino Botanical Gardens Foundation (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from January 1, 2016 to December 31, 2018.

Background

The Organization was registered as a charitable organization effective February 20, 2006, with the following purposes:

- To provide public educational programs and exhibits that promote awareness, enjoyment and understanding of the natural and cultural history of Clayquot Sound and other temperate coastal ecosystems;
- To carry on research regarding the conservation of temperate coastal ecosystems and to utilize such research in the Foundation's educational programs and exhibits;
- To participate in conservation activities within the global network of botanical gardens;
- To administer and distribute funds and property for the purposes of the Foundation; and
- To do all such other things as are incidental and ancillary to the attainment of the foregoing purposes and the exercise of the powers of the Foundation.

The Organization was previously audited for the period January 1, 2011 to December 31, 2012, and as a result of the non-compliance issues identified, a Compliance Agreement was proposed. The Compliance Agreement identified the specific areas of non-compliance with the Income Tax Act (the Act) and its Regulations, which included private benefit, failure to maintain adequate books and records, issuing receipts not in accordance with the Act, and issuing gifts to non-qualified donees. The Compliance Agreement also indicated that the Organization did not meet the legal

requirements as a charitable organization due to the make-up of its board of directors, which has since been satisfactorily addressed as more than 50% of the board members are at arm's length to each other at the end of the current audit period. The Compliance Agreement further indicated the corrective measures required to address each area of non-compliance. The Organization indicated its acceptance of the identified areas of non-compliance and the required corrective measures by signing the Compliance Agreement on March 18, 2015.

The current audit for the period from January 1, 2016 to December 31, 2018, has determined that the Organization has failed to carry out all the corrective measures as listed in the Compliance Agreement. This repeated non-compliance, as well as additional areas of non-compliance identified by the current audit are explained in detail in the remainder of this letter.

On February 19, 2021, the Organization was advised that the CRA 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. Not constituted and operated for exclusively charitable purposes a. Delivery of non- incidental private benefits	149.1(1), 168(1)(b)
2. Failed to devote resources to a charitable purpose a. Unstated collateral purpose	149.1(1), 168(1)(b)
3. Failed to maintain adequate books and records	230(2), 168(1)(e)
4. Failed to issue donation receipts in accordance with the Act and/or its Regulations	168(1)(d), Regulation 3501
5. Failed to complete an accurate 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 and explain why its registered status should not be revoked. 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 and operated 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:

- (1) the relief of poverty;
- (2) the advancement of religion;
- (3) the advancement of education; and
- (4) other purposes beneficial to the community as a whole in a way which the law regards as charitable.

An organization’s purposes must fall within one or more of these categories to be considered for registration as a charity. The formal purposes as set out in an organization’s governing document must be clear and precise so as to reflect exclusively charitable purposes.

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 may be measurable or intangible. Benefits that are not tangible or objectively measurable should 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.⁴ An assumed prospect or possibility 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” and *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10, 1999 CanLII 704 (SCC) at paras 156-159. A registered charity may also devote resources to activities that, while not charitable in and of themselves, are necessary to accomplish their charitable purposes (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 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 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). 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] SCR 133, and confirmed in *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10, 1999 CanLII 704 (SCC).

³ For more information about public benefit, see CRA Policy statement CPS-024, *Guidelines for registering a charity: Meeting the public benefit test*. See also generally *British Columbia (Assessor of Area #09 - Vancouver) v Arts Umbrella*, 2008 BCCA 103; and *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10, 1999 CanLII 704 (SCC).

⁴ For more information about public benefit, see CRA Policy statement CPS-024, *Guidelines for registering a charity: Meeting the public benefit test*, and CRA Guidance CG-019, *How to draft purposes for charitable registration*. See also; *Commissioners for Special Purposes of the Income Tax v Pemsel*, [1891] AC 531 (PC) at 583.

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 Can*, [1961] A.C. 696 (H.L.), at p. 723, the real question is, “for what purpose is the Society at present instituted? (emphasis in original).⁸

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.

a. Delivery of non-incidental private benefits

In order to satisfy the definition of a **charitable organization** pursuant to subsection 149.1(1) of the Act, charitable organization is, amongst other criteria, defined as, “an organization [...] no part of the income of which is payable to, or otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof.”

A registered charity must be established and operated for the purpose of delivering a charitable benefit to the public or a sufficient segment thereof. The public benefit requirement prevents a charitable from conferring an unacceptable private benefit in the course of pursuing charitable purposes.

At common law, a private benefit⁹ means a benefit provided to a person or organization that is not a charitable beneficiary, or a charitable beneficiary where a benefit goes beyond what is considered to be charitable. Private benefits can be conferred on a charity’s staff, directors, trustees, members, and/or volunteers while they are carrying out activities that support the charity, or to third parties who provide the charity with goods or services. Where it can be fairly considered that the eligibility of a recipient relates solely to the relationship of the recipient to an organization, any resulting benefit will not be acceptable.

Providing a private benefit is unacceptable unless it is incidental to accomplishing a charitable purpose. A private benefit will usually be incidental where it is necessary,

⁸ *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10, 1999 CanLII 704 (SCC) at para 194, Iacobucci J. See also *AYSA Amateur Youth Soccer Association v Canada (Revenue Agency)*, 2007 SCC 42 at para 42.

⁹ **Personal benefit** is also sometimes used instead of **benefit** in the common law private benefit context; See CRA Guidance product CG-019: How to draft purposes for charitable registration.

reasonable, and proportionate to the resulting public benefit.¹⁰ Examples of unacceptable (not incidental) private benefit might include:

- paying for excessive salaries/remuneration;
- paying for expenses, or providing benefits that are not justified or needed to perform required duties;
- providing excessive per diems;
- unjustified/unnecessary or excessive payments for services, facilities, supplies, or equipment;
- promoting the work, talent, services, or businesses of certain persons or entities without justification.

Audit findings

The Compliance Agreement, dated March 25, 2015, required as a corrective measure that the Organization distinguish its charitable activities from the business activities of Coastwise Holdings Corp. (CHC) and to not confer any private benefits through the use of its assets other than a benefit provided in the course of a charitable act. The Organization's president, George Patterson, owns the property occupied by the Organization and is also the sole shareholder of CHC, thereby resulting in a non-arm's length relationship between the Organization and CHC.

The Organization indicates in its Form T3010, Registered Charity Information Return (T3010) that its on-going program is to operate the botanical garden, however, it does not receive the income generated from the admission fees. Regarding the previous audit, for the fiscal periods ending 2011 and 2012, CHC collected and retained the income generated from the admission fees, rather than submitting them to the Organization, which provide a private benefit to CHC.

While outside the audit period, the Organization reported the income generated from admission fees for the fiscal period ending December 31, 2015,¹¹ however, the Organization did not report the income generated from admission fees for the 2016, 2017 and 2018 fiscal years. CHC collected and retained this income through the for-profit business, Darwin's Café, which it operates on the same property as the botanical garden. CHC provided the CRA with its general ledgers which listed the botanical garden admissions as being \$109,067 in 2016; \$109,884 in 2017; and \$130,009 in 2018. The books and records of the Organization do not indicate that these amounts were remitted to the Organization and therefore appear to have been retained by CHC.

In addition, CHC also operates for-profit businesses on the same property occupied by the Organization, Darwin's Café and the Ecolodge. These businesses are advertised on the Organization's website, guests at the Ecolodge receive free admission to the botanical

¹⁰ For more information, see CRA Policy statement CPS-024, Guidelines for registering a charity: Meeting the public benefit test.

¹¹ Registered Charity Information Return/Financial Statements for the YE December 31, 2015 reports garden admission income of \$85,521.

garden, Darwin's Café offers food services to guests of the botanical garden and hosts wedding and other events for which it makes use of the botanical gardens, therefore, CHC appears to receive a financial benefit as a result of its relationship with the Organization.

As during the previous audit, the current audit revealed that the Organization did not have a lease agreement with the owner of the property, George Patterson. Further, the Organization used its funds and resources to maintain and improve the property, thereby increasing the value of the property and providing a private benefit to George Patterson.

Conclusion

The Organization's President, George Patterson, as the owner of the property and as sole shareholder of CHC, has therefore received a private benefit as a result of his relationship with the Organization.

Accordingly, it is our view that the Organization provided a private benefit to a director, and therefore failed to meet the requirements of subsection 149.1(1) of the Act that it be constituted and operated for exclusively charitable purposes. An organization that delivers an unacceptable private benefit may have its registered status revoked. Given the repeated and serious nature of the non-compliance identified in the current audit, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

2. Failed to devote resources to a charitable purpose

a. Unstated collateral non-charitable purpose

Legislation and jurisprudence

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.

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 view that fundraising is not a charitable purpose in itself or a charitable activity that directly furthers a charitable purpose.¹² Fundraising activities must be merely incidental and ancillary to the charitable purposes of the charity, and not represent a separate non-charitable purpose in their own right.

¹² For more information, see CRA Guidance CG-013, Fundraising by registered charities.

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 revenues to fundraising activities, is putting its registered charity status in jeopardy.

Audit findings

The audit revealed that during the audit period, the Organization organized, hosted, and funded an annual fundraising event, the Tofino Food & Wine Festival, for which it devoted the majority of its funds and resources. Table 1 below lists the revenues and expenses reported by the Organization in regards to the Tofino Food & Wine Festival on its financial statements for the 2016, 2017, and 2018 fiscal periods.

**Table 1 - Tofino Botanical Gardens Foundation
Summary of Revenue and Expenses**

	YE Dec. 31, 2018		YE Dec. 31, 2017		YE Dec. 31, 2016	
Fundraising Revenue	118,716	94%	92,330	87%	88,812 ¹³	88%
Other Revenue	8,225	6%	13,626	13%	12,054	12%
Total Revenue	126,941		105,956		100,866	
Fundraising Expenses	89,655	64%	69,811	66%	56,362	79%
Other Expenses	49,501	36%	36,349	34%	14,642	21%
Total Expenses	139,156		106,160		71,004	

The CRA takes the position that the ratio of fundraising costs to revenue over a fiscal period is acceptable if the ratio is less than 35%. It is reasonable for a charity to devote up to 35% of its income as well as an equivalent share of its human and physical resources for fundraising activity as opposed to direct charitable activities. Under the CRA's fundraising guidance, CG-013, Fundraising by registered charities, the CRA can

¹³ Note: 2016 fundraising revenue incorrectly reported on Line 4640 of T3010.

revoke the registered status of any organization whose fundraising expenses seem disproportionately high.¹⁴

As noted in Table 1, in 2018, the Organization spent 76% (89,655/118,716) of its fundraising revenue on fundraising activities, in 2017, it spent 76% (69,811/92,330), and in 2016, it spent 63% (56,362/88,812) for fundraising activities. These levels of expenditure demonstrate that the Organization is engaged in an unacceptable level of fundraising.

Further, as the Organization is devoting an excessive portion of its current income and efforts to fundraising it appears that it is not devoting all of its resources to charitable activities as required by subsection 149.1(1). Therefore, the fundraising activities appear to have become an unstated collateral purpose.

Conclusion

Accordingly, it is our view that the Organization has failed to meet all the requirements of subsections 149.1(1) of the Act that it devote substantially all its resources to charitable activities carried on by the Organization itself. For 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. Failed to maintain adequate books and records

Legislation and jurisprudence

Subsection 230(2) of the Act requires that registered charities maintain adequate books and records¹⁵ of account, at an address in Canada registered with the CRA, containing information in such form as will enable the Minister to determine whether there are grounds for the revocation of its registration under the Act. Failure to maintain adequate books and records in accordance with the requirements of the Act is itself sufficient reason for the CRA to revoke an organization's charitable registration.¹⁶

In order to meet these requirements, a charity's books and records must allow the CRA to verify the charity's revenues and expenses, as well as any official donation receipts it may have issued. Further, the Act requires that a charity's records contain such information to allow the CRA to determine whether the charity's activities continue to be charitable at law.

¹⁴ For more information, see CRA Guidance CG-013, Fundraising by Registered Charities.

¹⁵ Subsection 248(1) of the Act defines a record in the following way: "record includes an account, an agreement, a book, a chart or table, a diagram, a form, an image, an invoice, a letter, a map, a memorandum, a plan, a return, a statement, a telegram, a voucher, and other thing containing information, whether in writing or in any other form."

¹⁶ Income Tax Act, RSC 1985 c I (5th supp) at s 168(1)(e); See also generally examples in *College Rabbinique de Montreal Oir Hachaim D'Tash v Canada* (Minister of Customs and Revenue Agency) 2004 FCA 101; *Ark Angel Foundation v. Canada* (National Revenue), 2019 FCA 21 at paras 37-39.

The requirement relating to the maintenance of books and records, and books of account, is based on several court decisions, which have held, among other things, that:

- the onus is on the registered charity to provide that its charitable status should not be revoked.¹⁷
- 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 books and records at some later date.¹⁸
- Subsection 168(1)(e) if the Act provides that the minister may propose to revoke registration of a charitable organization if it fails to comply with, or contravenes, any of sections 230 to 231.5 of the Act. The Federal Court of Appeal has affirmed this, determining that non-compliance with subsection 230(2) of the Act is a proper basis upon which the Minister may issue such a notice.¹⁹
- the requirement to keep proper books and records is foundational and non-compliance with the requirement is sufficient to justify revocation.²⁰

Given the significant privileges that flow from registration as a charitable organization under the Act, the Minister must be able to monitor the continuing entitlement of charitable organizations to those privileges.²¹ In that regard, the Federal Court of Appeal has held that there exists a serious obligation for registered charities to maintain adequate books and records,²² and that material or significant, and/or repeated, non-compliance with the requirements of subsection 230(2) of the Act constitutes sufficient grounds for revocation.²³

Audit findings

The corrective measures, as stated in the Compliance Agreement dated March 25, 2015, required the Organization to ensure that it maintained its books and records, specifically in reference to adequately demonstrating that it has not conferred a private benefit. As stated above, the books and records are required to contain information and documentation to allow the CRA to determine whether the Organization's activities continue to be charitable at law.

¹⁷ Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at paras 26-27.

¹⁸ Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at 39; See also Lord's Evangelical Church of Deliverance and Prayer of Toronto v Canada, 2004 FCA 397.

¹⁹ Opportunities for the Disabled Foundation v Canada (National Revenue), 2016 FCA 94 at para 39; and Ark Angel Foundation v Canada (National Revenue), 2019 FCA 21 at para 43.

²⁰ Jaamiah Al Uloom Al Islamiyyah Ontario v Canada (National Revenue), 2016 FCA 49 at para 15; and Ark Angel Foundation v Canada (National Revenue), 2019 FCA 21 at para 43.

²¹ Humane Society of Canada for the Protection of Animals and the Environment v Canada (National Revenue), 2015 FCA 178 at para 80.

²² Humane Society of Canada for the Protection of Animals and the Environment v Canada (National Revenue), 2015 FCA 178 at para 80.

²³ Ark Angel Foundation v Canada (National Revenue), 2019 FCA 21 at para 43.

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.

Audit findings

The corrective measures, as stated in the Compliance Agreement dated March 25, 2015, required the Organization to cancel receipt #2014001, which was issued in the amount of \$60,000 for an in-kind donation in July 2014 to [REDACTED]. This receipt was issued in the absence of adequate documentation to support the tax-receipted amount of the property donated. The Organization was advised that a new donation receipt may be issued once an appraisal of the fair market value of the donation was obtained.

The current audit revealed that the Organization has failed to enact the required corrective measure by cancelling this tax receipt.

Conclusion

It is our position that the Organization has issued receipts otherwise than in accordance with the Act and/or Regulations. For this reason, it is our view that there are grounds for the Minister to revoke the charitable status of the Organization under paragraph 168(1)(d) of the Act.

5. Failed to complete an accurate charity information return

Legislation and jurisprudence

Subsection 149.1(14) of the Act states that:

Every registered charity and registered Canadian amateur athletic association shall, within 6 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 an organization to ensure that the information provided in its Form T3010, Registered Charity Information Return (T3010), 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 a

significant number of inaccuracies, or beyond what might reasonably be viewed as minor in a T3010 are a sufficient basis for revocation.²⁵

Audit findings

The audit revealed that the Organization failed to file an accurate T3010 in that,

- (a) Line 4170 – the Organization did not report the personal use properties (i.e. sculpture, artwork) which were donated in 2014 with a total tax-receipted value of \$70,000
- (b) The Organization was late in filing its T3010 for the fiscal year ending December 31, 2018 by 47 days, and the fiscal year ending December 31, 2017, by 97 days.

Conclusion

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. For this reason, there may be grounds to revoke the registered status of the Organization under paragraph 168(1)(c) of the Act.

The Organization's options:

a) Respond

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, we 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;
- applying penalties or suspensions or both, as described in sections 188.1 and 188.2 of the Act; or
- issuing a notice of intention to revoke the registration of the Organization in the manner described in subsection 168(1) of the Act.

a) Do not respond

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

²⁵ Opportunities for the Disabled Foundation v MNR, 2016 FCA 94 at paras 50-51.

If you appoint a third party to represent you in this matter, please send us a written authorization with the party's name, contact information, and clearly specify the appropriate access granted to the party to discuss the file with us. For more information on how to authorize a representative, go to our web page at canada.ca/en/revenue-agency/services/forms-publications/forms/aut-01.

If you have any questions or require further information or clarification, do not hesitate to contact me at the numbers below. My team leader, (Crystal Scott), may also be reached at 250-857-2222.

Yours sincerely,

A large black rectangular redaction box covering a signature.

John Dumalski, [REDACTED]
Pacific Region Charity Audit
Vancouver Island and North Tax Services Office

Telephone: (250) 418-0264
Toll Free: (800) 267-2384
Facsimile: (250) 363-3000
Address: 9755 King George Blvd
Surrey, BC V3T 5E1

c.c.: [REDACTED]

A black rectangular redaction box covering a list of names following 'c.c.'.

April 19, 2021

To: Vancouver Island and North Tax Services Office
Attn: John Dumalski
Fax: 250-363-3000
From: Greg Sabo
Number of pages including cover: 3

IMPORTANT CONFIDENTIAL INFORMATION

This message is intended for the designated recipient only and may contain privileged or confidential information. If you have received it in error, please notify the sender immediately and delete the original. For [REDACTED] If you wish to limit our contact with you please contact our Privacy Officer at [REDACTED]

If all pages are not received please contact the sender at:
[REDACTED]

Re: Tofino Botanical Gardens Foundation

Sincerely,

[REDACTED]

[REDACTED]

Attention; John Dumalski
Pacific Region Charity Audit
Vancouver Island and North Tax Services Office

April 19, 2021

Re: Audit of Tofino Botanical Gardens Foundation

Please consider this as our response to the audit letter. I did request an extension to respond, in our telephone conversation of today, which you would not allow. I believe this should have been allowed as public accountants are overwhelmed at this time of year with tax filings and the Audit findings took you two years to complete, so an extra few days for a reply was not an unreasonable request.

Mr. Patterson is more of an artist than a business man and had failed to comply with earlier directives of the ministry, but has not had any benefit what so ever conferred on him from this organization.

While it has been the intention of the Charity to dissolve for the past 3 years, and this has been expressed to the auditor, we do object to your findings as follows;

- 1) Private benefit conferred on a director;

All revenues from the admissions to the botanical garden were run through the corporation, but what you failed to address is, so were the expenses. The corporation was not highly profitable during this period and no benefit was conferred on the director. Furthermore there were no salaries or wages paid to the director for his work either through the company or the charity.

- 2) Failed to maintain adequate books and records;

The organization maintained complete and accurate books and records. However, since the revenue and expenses of the botanical gardens were run through the corporation, you did not review these records. They were however complete and accurate.

- 3) Failed to issue receipts in accordance with the Act;

The receipt was issued but since the value of the art piece was difficult to ascertain, the artist agreed to forgo the deduction. The receipt was never completed and therefore never used as a deduction by the recipient and the artist has a signed agreement that the sculpture in question is on loan to the botanical gardens, so no receipt was required.

- 4) Failed to complete accurate charity information returns;

This assertion stems from the fact that the revenues and expenses were run through the corporation. Both the corporation and the charity reported all revenues and expense so it is our position that the charity returns, along with the corporate returns were in fact accurate and all have been filed to date.

If you have any questions or concerns, or would like to discuss this matter further, please contact the undersigned.

Yours Truly,

[REDACTED]

(ii) by a person, or by a group of persons that do not deal at arm's length with each other, if the person or any member of the group does not deal at arm's length with a person described in subparagraph (i)

qualified donee, at any time, means a person that is

- (a) registered by the Minister and that is
 - (i) a housing corporation resident in Canada and exempt from tax under this Part because of paragraph 149(1)(i) that has applied for registration,
 - (ii) a municipality in Canada,
 - (iii) a municipal or public body performing a function of government in Canada that has applied for registration,
 - (iv) a university outside Canada, the student body of which ordinarily includes students from Canada, that has applied for registration, or
 - (v) a foreign charity that has applied to the Minister for registration under subsection (26),
- (b) a registered charity,
- (b.1) a registered journalism organization,
- (c) a registered Canadian amateur athletic association, or
- (d) Her Majesty in right of Canada or a province, the United Nations or an agency of the United Nations.

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;
- (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; and
- (f) of a registered charity, if it accepts a gift from a foreign state, as defined in section 2 of the State Immunity Act, that is set out on the list referred to in subsection 6.1(2) of that Act.

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,

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(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.

Tax and Penalties in Respect of Qualified Donees

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

$$\mathbf{A - B}$$

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) a registered charity
 - (i) 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,

- (ii) that is not the subject of a suspension under subsection 188.2(1),
- (iii) that has no unpaid liabilities under this Act or under the Excise Tax Act,
- (iv) that has filed all information returns required by subsection 149.1(14), and
- (v) 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; or

(b) a municipality in Canada that is approved by the Minister in respect of a transfer of property from the particular charity.

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

- (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
 - (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 described in paragraph 188(1.3)(a) 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.