



August 11, 2022

Paul Adler  
Director  
Family and Credit Counselling Services  
Serving York Region  
Suite 308  
300 John Street  
Thornhill ON L3T 5W4

BN: 107376238RR0001  
File number: 0607499  
Case number: [REDACTED]

Dear Paul Adler:

**Subject: Notice of intention to revoke**  
**Family and Credit Counselling Services Serving York Region**

We are writing with respect to our letter dated December 9, 2021 (copy enclosed), in which Family and Credit Counselling Services Serving York Region (the Organization) was invited to respond to the findings of the review conducted by the Canada Revenue Agency (CRA) for the period from April 1, 2017 to March 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 January 6, 2022. 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. Our concerns are explained in Appendix A, attached.

**Conclusion**

The review 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 be constituted and operated for exclusively charitable purposes, failed to devote resources to charitable activities, failed to meet disbursement quota, and failed to file an information return as and when required by the Act and/or its Regulations. 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 December 9, 2021, and pursuant to subsection 168(1) and 149(2) 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)(e), and subsection 149.1(2), and paragraph 149.1(2)(a) and (b) 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.

<b>Business number</b>	<b>Name</b>
10737 6238 RR0001	Family and Credit Counselling Services Serving York Region Thornhill ON

In addition, due to the serious nature of non-compliance found in the review, the CRA has decided to publish a copy of the notice in the Canada Gazette immediately after the expiration of 30 days from the date of mailing of this notice pursuant to paragraph 168(2)(b) of the Act.

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, please note that even if the Organization files a notice of objection with the CRA, this will not prevent the CRA from publishing the notice of revocation in the Canada Gazette immediately after the expiration of 30 days from the date of mailing of this notice.

The Organization has the option of filing an application with the Federal Court of Appeal (FCA), as indicated in paragraph 168(2)(b) of the Act, to seek an order staying publication of the notice of revocation in the Canada Gazette. The FCA, upon reviewing this application, may extend the 30-day period during which the CRA cannot publish a copy of the notice.

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 B, attached.

## Consequences of revocation

As of the effective date of revocation:

- a) the Organization will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3) 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 B. 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](http://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 1-800-959-8287.

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,

*Sharmila P Khare*

Sharmila Khare  
Director General  
Charities Directorate

### Enclosures

- CRA letter dated December 9, 2021
- Organization's representations dated January 6, 2022
- Appendix A, Comments on representation
- Appendix B, Relevant provisions of the Act

c.c.: Michael Levine  
Chair



December 9, 2021

Paul Adler  
Director  
Family and Credit Counselling Services  
Serving York Region  
Suite 308  
300 John Street  
Thornhill ON L3T 5W4

BN: 10737 6238 RR0001  
File #: 0607499  
Case number: [REDACTED]

Dear Paul Adler:

**Subject: Review of Family and Credit Counselling Services Serving York Region**

The Canada Revenue Agency (CRA) understands the significant personal and economic impact of COVID-19 on Canadians. The CRA is aiming to be responsive and to operate in a way that balances these realities with its duty to administer Canada's tax laws and the obligations of all Canadians to comply with tax laws.

This letter results from the review of the Family and Credit Counselling Services Serving York Region (the Organization) conducted by the CRA. The review related to the operations of the Organization for the period from April 1, 2017, to March 31, 2018.

During the course of the review, 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.	Failed to be constituted and operated for exclusively charitable purposes a) Unstated non-charitable purpose b) Delivered non- incidental private benefits c) Carried on an unrelated business	149.1(1), 149.1(2)(a), 168(1)(b)
2.	Failed to devote resources to charitable activities	149.1(2), 168(1)(b)
3.	Failed to meet disbursement quota	149.1(2)(b) 168(1)(b)
4.	Failed to file an information return as and when required by the Act and/or its Regulations	149.1(2), 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.

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

### Background

On January 1, 1970, "Family Services for South West York Region" (formerly the "Richmond Hill and Thornhill Area Family Services") was registered with the CRA.

Based on the Letters Patent dated November 17, 1969, its purpose was:

"To make available to all people in the Richmond Hill and Thornhill area in the said County of York family life education, family counselling and individual counselling".

On April 22, 1981, "Credit Counseling Service of York Region" was registered with the CRA.

Based on the Letters Patent dated August 19, 1980, its purpose was:

"To operate a credit counselling service available to all the people in the Regional Municipality of York".

On October 13, 1993, the CRA received a letter dated July 8, 1993, advising that these two organizations had amalgamated on June 2, 1992, to form **"Family and Credit Counselling Services Serving York Region"**.

### **Identified areas of non-compliance**

#### **1. Failed to be constituted and operated for exclusively charitable purposes**

To be registered as a charity 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.<sup>1</sup>

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<sup>1</sup> 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.

To be exclusively charitable, a purpose must fall within one or more of the following four categories (also known as “heads”) of charity<sup>2</sup> 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.

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.<sup>3</sup> In most cases, the benefit should be a necessary and reasonably direct result of how the purpose will be achieved.<sup>3</sup> An assumed prospect or possibility of gain that is vague, indescribable or uncertain, or incapable of proof, cannot be said to provide a charitable benefit.<sup>3</sup>
- 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.<sup>3</sup>

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<sup>2</sup> 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).

<sup>3</sup> 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; 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) at para 202; Commissioners for Special Purposes of the Income Tax v Pemsel, [1891] AC 531 (PC) at 583; Co-operative College of Canada v. Saskatchewan (Human Rights Commission), 1975 CanLII 808 (SKCA) at para 19.

In addition, it is a basic principle of charity law that in order for a purpose to be regarded as charitable, it must not be so vaguely or broadly stated as to permit the pursuit of non-charitable purposes and/or activities. By a broad purpose we mean that it may be accomplished by undertaking non-charitable activities. By vague we mean that the wording is such that we are unable to determine the exact meaning.

The purposes of an organization are the objectives that it is created to achieve. An organization's governing document must contain a clear statement of each of its purposes. Under the Income Tax Act, a purpose should generally identify three elements either expressly or implicitly through its context:

- the charitable purpose category (relief of poverty, advancement of education, advancement of religion, or certain other purposes beneficial to the community in a way the law regards as charitable<sup>4</sup>);
- the means of providing the charitable benefit; and
- the eligible beneficiary group.

Please note that only those purposes that fall within the four specific headings or categories are charitable at common law (which is quite different than what is charitable in the common sense of the word).

**a) Unstated non-charitable purpose**

A charitable activity is one that directly furthers a charitable purpose<sup>5</sup> – 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 the 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.

**Review Findings:**

The purposes listed in the Organization's Letters Patent of Amalgamation dated June 2, 1992, under the Corporations Act of Ontario, are the following:

- 1) To make available to all people in the Regional Municipality of York, the following programs/services:
  - a) Family Life Education programs;
  - b) Individual and family counselling/therapy;
  - c) Credit Counselling Services including money management, budget assistance, third party mediation services, and orderly payment of debt programs, as well as community education;

<sup>4</sup> This category identifies an additional group of particular purposes that have been held by the courts to be charitable at law. This does not mean that all purposes that provide a public benefit qualify as charitable.

<sup>5</sup> See Vancouver Society, *supra* note 1 per Iacobucci J. at para. 154.

- d) Group programs for women who are victims of abuse, men who perpetrate abuse, children who witness or are victims of abuse;
- e) Community Service Order Programs as an alternative to incarceration; and
- f) To provide or sponsor such other programs as are desirable or necessary from time to time.

2) The object of the programs and services noted above is to try and enrich the quality of life for residents of York Region and to assist them to realize their human potential as much as possible.

Although some portions of the purposes of the Organization could potentially be charitable under the categories of advancement of education and other purposes beneficial to the community as a whole in a way which the law regards as charitable, our review found that the Organization is pursuing an unstated non-charitable purpose; namely, the prevention of poverty. However, it has been determined by the Federal Court of Appeal that the prevention of poverty is not a charitable purpose, and as a result, 1 c), above, of the Organization's stated purposes, is no longer exclusively charitable.

Accordingly, the Organization was advised in our letter dated October 15, 2019, that not all of its credit counselling activities (described in detail below) were charitable at law. We also advised that the courts had confirmed that purposes for the prevention of poverty are not charitable.<sup>6</sup> The courts stated that charities whose purposes relieve poverty must have beneficiaries that are experiencing poverty at the time the benefits are provided. The courts have not accepted the risk of poverty as being equivalent to actually experiencing poverty.

Charities registered under the Act cannot be established with purposes for the prevention of poverty. However, charities can conduct activities that have the effect of preventing poverty. These activities typically advance purposes in one or more of the other charitable categories where the beneficiaries are not restricted to those that are poor. For example, a charity established to advance education could also teach money management skills. To further purposes that advance education, the education must be sufficiently structured, have a teaching or learning component, and involve a legitimate, targeted attempt to educate. The following statement from the Vancouver Society<sup>7</sup> decision summarizes the direction of the court in this regard:

To my mind, the threshold criterion for an educational activity must be some legitimate, targeted attempt at educating others, whether through formal or informal instruction, training, plans of self-study, or otherwise. Simply providing an opportunity for people to educate themselves, such as by making available materials with which this might be accomplished but need not be, is not enough. Neither is 'educating' people about a particular point of view in a manner that might more aptly be described as persuasion or indoctrination.<sup>8</sup>

<sup>6</sup> Credit Counselling Services of Atlantic Canada Inc. v. Minister of National Revenue, 2016 FCA 193 at para 10 and 22.

<sup>7</sup> See Vancouver Society, *supra* note 4.

<sup>8</sup> Vancouver Society of Immigrant and Visible Minority Women v MNR, [1999] 1 SCR 10 at para 171.

In response to our letter dated October 15, 2019, the Organization provided representations dated December 10, 2019, wherein it showed that it has not ceased its credit counselling programs, including its Debt Management Plan activities, and therefore appears to be continuing to operate in support of an unstated non-charitable purpose.

Based on these considerations, it is our view that the Organization has not demonstrated that it is established for exclusively charitable purposes. As a result the Organization does not meet the requirements of the Act for its continued registration, and there may be grounds for revocation of its charitable status under paragraph 168(1)(b) of the Act.

**b) Delivery of non- incidental private benefits**

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 charity from conferring an unacceptable private benefit in the course of pursuing charitable purposes.

At common law, a private benefit<sup>9</sup> 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 or members / 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 the 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, reasonable, and proportionate to the resulting public benefit.<sup>10</sup>

**(i) Necessary** – Necessary means legitimately and justifiably resulting from:

- (a) an action taken to achieve a charitable purpose; or
- (b) a necessary step, a consequence, or a by-product of an action taken to achieve a charitable purpose; or
- (c) the operation of a “related business” as defined in paragraph 149.1(l) of the Act.

And

**(ii) Reasonable** – Reasonable means related to the charitable need and no more than is needed to achieve the purpose, and fairly and rationally assessed and distributed.

And

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<sup>9</sup> “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”.

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

(iii) **Proportionate** – Proportionate means the private benefit cannot be a substantial part of a purpose or activity, or be a non-charitable end in itself. The private benefit must be secondary and the public benefit must be predominant and more significant. The public benefit cannot be too speculative, indirect or remote, as compared to a more direct private benefit, particularly when a direct benefit is to private persons, entities, or businesses.

Examples of unacceptable (not incidental) private benefit might include:

- paying 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.

Review Findings:

The review revealed that the Organization operated a Debt Management Plan (or DMP). A DMP is an arrangement whereby the Organization regularly collects, on behalf of a creditor, namely bank institutions and private retailers, outstanding debts from debtors as part of a plan to assist those individuals experiencing financial difficulty, and charges a fee for this service to individuals who can afford to pay.

Further, the Organization has indicated that it received funding from creditors that was directly linked to the value of recoveries collected from debtors on behalf of these creditors. For the fiscal period under review, the Organization received revenues totalling \$74,478 (as reported on line 4700, Total revenue, of Form T3010, Registered Charity Information Return) from its credit counselling programs.<sup>11</sup> Based on the Organization's response to Question C.1, on page 2 of the questionnaire dated December 10, 2019, we can reasonably assume that a portion of this revenue was generated through DMP-related activities by collecting funds on behalf of creditors.

As a result, it is our view that the Organization, by way of the DMP, delivered a non- incidental private benefit to banking institutions and private retailers, that were not themselves eligible beneficiaries of charitable resources. As we were not able to establish the monetary amount of any non- incidental private benefit delivered to non- charitable beneficiaries, we have not determined, and will not be assessing, a financial penalty. However, based on the findings of the review, it is our view that there may be grounds for revocation of the Organization's charitable status under paragraph 168(1)(b) of the Act.

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<sup>11</sup> On page 9 of the questionnaire, the Organization reported \$67,293 in revenues from its credit counselling programs. For our purposes, we consider the amount reported on prescribed forms (Form T3010) to be the accurate one.

**c) Carrying on an unrelated business**

Under the Act, charitable organizations may carry on businesses, provided that these are related businesses.<sup>12</sup> The Act defines related businesses as including those businesses that are not related to the charity's purposes if substantially all those employed in the business serve as unpaid volunteers. As well, as per our policy CPS-019, What is a related business, a related business is one that is linked to a charity's purpose and is subordinate to that purpose. "Carrying on" a business implies that the commercial activity is a continuous or regular operation. In determining whether or not the business is linked to a charity's purpose, the following four forms of connection or linkage have been identified:

- A usual and necessary concomitant of charitable programs
- An off-shoot of a charitable program
- A use of excess capacity
- The sale of items that promote the charity or its objects

To determine if the business activity is subordinate to a charity's purpose, as opposed to becoming an unstated purpose in its own right, requires looking at the business activities in the context of the charity's operations as a whole, such as the following.

- Relative to the charity's operations as a whole, the business activity receives a minor portion of the charity's attention and resources
- The business is integrated into the charity's operations, rather than acting as a self-contained unit
- The organization's charitable goals continue to dominate its decision-making
- The organization continues to operate for an exclusively charitable purpose by, among other things, permitting no element of private benefit to enter in its operations

**Review Findings:**

It appears, based on our findings, that during the fiscal period under review, the Organization devoted substantially almost all of its assets toward credit counselling and DMP activities, and as a result it failed to disburse the minimal amounts required of it in furtherance of its charitable purposes.

The failure to devote resources to a charitable purpose is further emphasized in the Organization's representations received during the review period. The Organization stated the following in the questionnaire, that:

- it is providing the following types of services: credit counselling; debt management services; financial management education; and referrals to other social service agencies (page 2);
- it is conducting on average two to five credit counselling sessions with a client (page 3);
- it is providing education and/or training programs for its credit counsellors (page 6); and
- it has two paid employees (page 7).

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<sup>12</sup> See paragraph 149.1(3)(a) of the Act.

On a separate document to answer Question C.4, on page 2 of the questionnaire, the Organization described its engagement process with its clients during a credit counselling session. In this document, the Organization stated that the agency fee is 10% of the total debt of client which is paid over the life of the program as part of the client's monthly payment. This demonstrated that credit counselling activities offered by the Organization are considered to be a private advantage and not beneficial to the community in a way that the law regards as charitable.

The Organization provided samples of documents, such as an application form, proposal form, client contract, debt profile worksheet, monthly budget worksheet, budgeting tips used during the credit counselling sessions with clients.

The Organization also provided four copies of the "Credit Counsellor Roles and Responsibilities". This document clearly states objectives, responsibilities, administrative operations, marketing, and qualifications for its credit counsellors to support the Organization's credit counselling activities.

It is our position that the business activity of operating the credit counselling and DMP activities are not subordinate to the Organization's stated purposes. The total revenue generated from credit counselling and DMP-related activities was \$74,478, which constituted 100% of the Organization's total revenue during the fiscal period under review (as reported on line 4700, Total revenue, of its Form T3010).

Further, based on the Organization's representations, it is also our view that the business is not linked to the Organization's stated purpose. Specifically:

- The DMP does not further the Organization's charitable purpose of advancement of education and other purposes beneficial to the community as a whole in a way which the law regards as charitable.
- The DMP is not run by volunteers. The Organization employed three people for its programs (which included credit counselling and DMPs), spending a total of \$23,586 on their salaries and benefits (as provided in the Organization's response to Question H.1. on page 7 of the questionnaire), or approximately 77.5% of its total compensation expense of \$30,424 (as reported on line 4880 of Form T3010).
- The DMP does not directly supplement a charitable program operated by the Organization. It is not a necessary component of the charitable education programs the Organization operates, nor does it enhance the Organization's education programs content. As such, it is our view that the focus of the DMP is to generate revenue for the Organization. Our view is further substantiated by the following factor:

- As mentioned above, the Organization reported \$74,478 in revenue from credit counselling DMP-related activities. Since the Organization has indicated it received funding from creditors that was directly linked to the value of recoveries collected from debtors on behalf of those creditors, we can reasonably assume that a fair portion of that revenue was received from those creditors.
- The DMP does not have a clear "start" or "end" date. As such, it would appear that the DMP constitutes an ongoing, continuous activity.

For these reasons, it is the opinion of the CRA that the Organization appears to be engaging in a business activity through its operation of the DMP, which is not, in our view, charitable at law. Based on these considerations, it is our view that there may be grounds for revocation of the Organization's charitable status under paragraph 149.1(2)(a) of the Act.

Summary:

It is our position that the Organization has failed to demonstrate that it is constituted and operated for exclusively charitable purposes. Consequently, there are grounds for the revocation of the Organization's charitable registration under paragraph 168(1)(b) of the Act.

Further, as noted above, there are grounds to revoke the Organization's registration under paragraph 168(1)(b) of the Act for its provision of non- incidental private benefits to entities that are not proper beneficiaries of charitable resources, and under paragraph 149.1(2)(a) of the Act for carrying on a business that is not related to the operation of a charity.

**2. Failed to devote resources to charitable activities**

All charitable organizations registered under the Act are required by law to devote their resources (funds, personnel, property) to exclusively charitable purposes and activities. Although a charity can use some of its resources for fundraising to support the charitable activities that further its charitable purposes, it is the CRA's position that fundraising is not a charitable purpose in itself, nor is it a charitable activity that directly furthers a charitable purpose.

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. In evaluating whether activities carried out alleviate conditions of poverty, it must be noted that not all goods, services, or other benefits that can be provided relieve poverty in a charitable manner. Again, 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 be reasonably achievable in the circumstances. An assumed prospect or possibility of gain is not enough.

In order to meet the legal requirements of the relief of poverty category, an organization must demonstrate that i) the intended target group of beneficiaries is individuals who are "poor" and; ii) it provides for essential needs/amenities, for those persons who do not have the means to procure even the basic necessities of life for themselves.

Review Findings:

Our review of the Organization's Form T3010, financial statements, and other documents suggests that the Organization has not conducted any charitable activities during the fiscal period under review.

On page 1 of the Organization's representations, received on June 2, 2021, and July 12, 2021, it was explained that: "[t]he website [REDACTED] serves two organizations, Family and Credit Counselling Services and Community Counselling Services of York Region. Community Counselling Services of York Region does the family counselling, mediation services, community service orders, and youth referral program. Family and Credit Counselling Services only does credit counselling activities." Also, the Organization stated that: "All the expenses are related to DMP."

In addition, during a telephone conversation with Paul Adler on September 29, 2021, further clarification was requested with respect to the activities of the Organization. It was made clear that the Organization is working in the same office as the Community Counselling Services Serving York Region, which is a separate organization with separate operations, and not a qualified donee<sup>13</sup> under the Act. The Community Counselling Services Serving York Region and the Organization share office-related costs like rent expenses and office supplies expenses; however, they have each separate payroll, staff, and operations.

The Community Counselling Services Serving York Region conducts the community activities and the Organization only conducts credit counselling activities. There are no written agreements between the organizations, instead, they are each their own separate entities.

It is evident that, although the Organization's purposes a), b), d), and e), as described previously, are charitable, the Organization had not been conducting any charitable activities in support of those purposes during the fiscal period under review.<sup>14</sup> As a result, it is our position that the Organization has failed to devote its resources to exclusively charitable activities in furtherance of charitable purposes.

Summary:

As the Organization has failed to devoted its resources to charitable activities, as required by the Act, during the period under review, there are grounds to revoke the Organization's status as a registered charity under paragraph 168(1)(b) of the Act.

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<sup>13</sup> See our Guidance document CG-010, Qualified donees, on the CRA website below.

<sup>14</sup> Based on conversations with the Organization, charitable activities have not been undertaken to this day, even though outside the scope of this review.

### **3. Failed to meet disbursement quota**

The disbursement quota<sup>15</sup> is the minimum amount that a registered charity must spend each year on its own charitable activities or on gifts to qualified donees. The disbursement quota calculation is based on the value of a charity's property not used for charitable activities or administration.

Subsection 149.1(2) of the Act states that 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:

- (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.<sup>16</sup>

A charity is allowed by virtue of subsection 149.1(20) of the Act to offset any shortfalls in its disbursement quota by applying any excesses in its disbursement quota from its immediately preceding taxation year and 5 or less of its immediately subsequent taxation years.

In considering the application of expenditures used to meet the disbursement quota, a charity must ensure that it is expensed directly on charitable activities and/or programs. This would include such payments as salaries to persons performing duties directly related to a charitable program, but would not include amounts paid for purely administrative expenses such as fundraising costs, legal or accounting fees and the like.

#### **Review findings:**

Based on the information the Organization reported on its Form T3010 and in its financial statements, the Organization has failed to satisfy its disbursement quota requirement for the fiscal period ending March 31, 2018. The review found a disbursement quota shortfall of approximately<sup>17</sup> \$6,248, as of March 31, 2018.

#### **Summary:**

As the Organization has not spent the minimum amount required on charitable activities for the fiscal period under review, it is our position that the Organization has failed to meet its disbursement quota. Consequently, there appear to be grounds to revoke the registration of the Organization under paragraphs 149.1(2)(b) and 168(1)(b) of the Act.

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<sup>15</sup> See enclosed document titled "Disbursement quota".

<sup>16</sup> See paragraph 149.1(2)(b) of the Act

<sup>17</sup> The average value of property is based on a specified number of periods (decided by the organization) over a 24-month span. The 24-month span can be divided into two to eight equal, consecutive periods. The number of periods is usually chosen when the organization files its first information return. For example, if a charity calculates the value of its property only once a year, it will use two 12-month periods to calculate an average value. This is how we calculated the amount indicated in this letter. (If a charity values its property every six months, then it will use four six-month periods to calculate an average value.)

**4. Failed to file an information return as and when required by the Act and/or its Regulations**

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.

For a registered charity, the prescribed form and the prescribed information include:

- Form T3010, Registered Charity Information Return;
- Form TF725, Registered Charity Basic Information Sheet;
- Form T1235, Directors/Trustees and Like Officials Worksheet;
- Form T1236, Qualified donees worksheet / Amounts provided to other organizations - if applicable; and
- the financial statements.

It is the responsibility of the Organization to ensure that the information provided in its Form 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.<sup>18</sup> The Federal Court of Appeal has confirmed that major inaccuracies in a Form T3010 are a sufficient basis for revocation.<sup>19</sup>

**Review Findings:**

The review revealed that the Organization did not accurately complete its Form T3010 for the fiscal period under review, in that items reported were incorrectly identified. Specifically:

- Section A, Identification

The Organization did not report its web address, [REDACTED] at Section A of its Form T3010

- Section C1, Line 1800

The Organization did not complete line 1800 "Was the charity active during the fiscal period?" at Section C1 of its Form T3010.

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<sup>18</sup> The information entered in returns is displayed on the CRA website for donors to see and may influence their decision to donate or not.

<sup>19</sup> Opportunities for the Disabled Foundation v MNR, 2016 FCA 94 at paras 48-51.

- Section C2, Ongoing programs and New programs

The Organization did not complete Section C2 (Ongoing programs) and (New programs) of its Form T3010.

- Section C6, Line 2660

The Organization reported “fees for credit counselling” on line 2660. However, Section C6 is reserved for fundraising information.

- Section F2, Confidential data

The Organization did not complete Section F2, as it did not provide the name and address of the individual who completed Form T3010.

- Schedule 6, Lines 5000 to 5040

The Organization did not report a breakdown of the amount reported on line 4950 “Total expenditures before gifts to qualified donees”, onto lines 5000 to 5040. In this regard, we remind you that lines 5000 to 5040 represent a breakdown of the expenditures on lines 4800 to 4920, plus line 5050 “Total amount of gifts made to all qualified donees”.

- Lines 5900 and 5910 (Disbursement quota)

The Organization did not complete line 5900 “average value of property not used directly in charitable activities or administration during the 24 months before the **beginning** of the fiscal period”, and line 5910 “average value of property not used directly in charitable activities or administration during the 24 months before the **end** of the fiscal period”.

These lines represent property such as any real estate, investments, or other assets that were not used directly in charitable activities or administration. This may include, for example, cash in bank accounts, inventory, stocks, bonds, mutual funds, GICs, land, and buildings.

**Line 5900** – Enter the average value of property not used directly in charitable activities or administration during the 24 months before the **beginning** of the fiscal period. Base the value on the number of periods chosen by the charity.

**Line 5910** – Enter the average value of property not used directly in charitable activities or administration during the 24 months before the **end** of the fiscal period. Base the value on the number of periods chosen by the charity.

- Form T1235, Directors/Trustees and Like Officials Worksheet

The Organization did not complete and include Form T1235 with its Form T3010 for the fiscal period ending March 31, 2018.

**Summary:**

The Organization has not completed an accurate and complete information return for the fiscal period under review. It is therefore our position that the Organization has failed to file an information return in the prescribed form, containing the prescribed information, as required by the Act. For this reason, there may be grounds to revoke the registered status of the Organization under paragraph 168(1)(c) of the Act.

**Conclusion**

For each of the reasons provided above, there appear to be sufficient grounds to revoke the Organization's registration as a charity under subsection 168(1) 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.

**b) 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.

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 on our website at <https://www.canada.ca/en/revenue-agency/services/forms-publications/forms/aut-01.html>.

If you have any questions or require further information or clarification, do not hesitate to contact me at the number below. My manager, Julie McCaffrey, may also be reached at 613-850-7091.

Yours sincerely,



Fereshta Hedjran  
Assisted Compliance Section  
Charities Directorate, Canada Revenue Agency

Telephone: 343-551-3503  
Toll Free: 1-800-267-2384  
Facsimile: 613-954-8037  
Address: Suite 1306  
Tower A, Place de Ville  
320 Queen Street  
Ottawa ON K1A 0L5

Enclosure:

- Disbursement quota calculation

c.c.: Michael Levine  
Chair

Family and Credit Counselling Services Serving York Region  
300 John Street  
Suite 308  
Thornhill, Ontario  
L3T 5W4  
Tel: (905) 707-7695  
[REDACTED]

January 6, 2022

Canada Revenue Agency  
Charities Directorate  
Suite 1306  
Tower A  
Place de Ville  
320 Queen Street  
Ottawa, Ontario  
K1A 0L5

RECEIVED BY THE  
[REDACTED]

CAN

BN: 10737 6238 RR0001      File #:0607499      Case number: [REDACTED]

In response to your review of Family and Credit Counselling Services Serving York Region, I wish to take exception to your findings.

As to our failure to operate as a charity we definitely qualify in the category of relief of poverty. Credit counselling service allows the public who are in debt to various creditors to alleviate their burden by having us set up a structured payment plan. All creditor interest is frozen and all collection agency calls are stopped. The client then pays a monthly amount which is proportionally distributed to the creditors. As a result, we fulfill our mission in helping the client out of their financial distress.

In addition, we provide education to the public through seminars and speaking engagements in how to avoid getting into financial troubles.

Our letters patent may state that we perform Family Life Education programs and Individual and family counselling; however, this was set up in 1992. Since then we have transitioned these functions to a related non-profit company, Community Counselling Services of York Region, leaving Family and Credit Counselling to solely perform credit counselling.

As to not devoting our resources to charitable activities, as I stated above we perform many services to the community such as seminars, talks, and individual counselling on how to manage their money properly and hopefully avoid unmanageable debt.

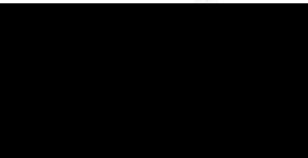
As to failure to meet disbursement quota, I would remind you that much of the salaries of the credit counsellors and executive director are devoted to educating the public in managing their income and their debt.

As to the failure to file the information return when required is hardly grounds for revocation of our status. In the past we have complied in a timely manner to all filings.

Whenever, we filed the T3010 we never once received any feedback from the CRA that information was missing, quite the opposite and that they accepted the return and sent notification of same.

Consequently, we feel that your rush to judgement in revoking our charitable status is unwarranted and ill advised. We may have some issues that you have related to us but we feel that the above should clear the up satisfactorily.

Yours sincerely,

A large black rectangular redaction box covering a signature.

Paul Adler

A small black rectangular redaction box.

## APPENDIX A

### Family and Credit Counselling Services Serving York Region

#### Review of Family and Credit Counselling Services Serving York Region (the Organization) for the period from April 1, 2017, to March 31, 2018

#### Comments on the Organization's Representations of January 6, 2022

The review conducted by the Canada Revenue Agency (CRA) identified that the Organization:

1. Failed to be constituted and operated for exclusively charitable purposes
  - a) Unstated non-charitable purpose
  - b) Delivered non- incidental private benefits
  - c) Carried on an unrelated business
2. Failed to devote resources to charitable activities
3. Failed to meet disbursement quota
4. Failed to file an information return as and when required by the Income Tax Act and/or its Regulations

We have reviewed the Organization's submission dated January 6, 2022, and we maintain our position that the non-compliance issues identified during our review represent a serious breach of the requirements of the Income Tax Act. The Organization has failed to provide additional documentation or reasonable explanations to address many of the areas of non-compliance identified during the review. As such, it remains our opinion that the Organization's registration as a charity should be revoked.

Below please find:

- i. A summary of the issues raised by the CRA in our letter of December 9, 2021;
- ii. A summary of responses provided by the Organization in its January 6, 2022, representation; and
- iii. The CRA's conclusion with respect to each issue.

#### 1. Failure to be constituted and operated for exclusively charitable purposes

To be registered as a charity 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.<sup>1</sup>

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<sup>1</sup> 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.

**a) Unstated non-charitable purpose**

A charitable activity is one that directly furthers a charitable purpose<sup>2</sup> – 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 the 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.

**b) Delivery of non- incidental private benefits**

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 charity from conferring an unacceptable private benefit in the course of pursuing charitable purposes.

**c) Carrying on an unrelated business**

Under the Act, charitable organizations may carry on businesses, provided that these are related businesses.<sup>3</sup> The Act defines related businesses as including those businesses that are not related to the charity's purposes if substantially all those employed in the business serve as unpaid volunteers. As well, as per our policy CPS-019<sup>4</sup>, What is a related business, a related business is one that is linked to a charity's purpose and is subordinate to that purpose. "Carrying on" a business implies that the commercial activity is a continuous or regular operation.

The Organization's response:

The Organization's response to our concerns was limited. Firstly, it contends that it qualifies for registration as a charity under the Act in the category of relief of poverty. It also states that,

"[c]redit counselling service connects the public who are in debt to various creditors to alleviate their burden by having us set up a structured payment plan. All creditor interests are frozen and all collection agency calls are stopped. The client then pays a monthly amount which is proportionally distributed to the creditors. As a result, we fulfill our mission in helping the client out of their financial distress."

The Organization also claims that it provides "(...) education to the public through seminars and speaking engagements in how to avoid getting into financial troubles."

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<sup>2</sup> See Vancouver Society, *supra* note 1 per Iacobucci J. at para. 154.

<sup>3</sup> See paragraph 149.1(3)(a) of the Act.

<sup>4</sup> <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/policy-statement-019-what-a-related-business.html>

Finally, the Organization notes that while its Letters Patent may “(...) state that it performs Family Life Education programs and individual and family counselling; however, this was set up in 1992. Since then, we have transitioned these functions to a related non-for-profit organization, Community Counselling Services of York Region, leaving the Organization to solely perform credit counselling activities.”

The CRA’s conclusion:

With respect to the Organization’s assertion that it qualifies in the category of relief of poverty by providing credit counselling activities, we confirm that while the relief of poverty is a recognized charitable purpose, in recent years the courts have determined that the prevention of poverty is not. Specifically, the paying down of debt, while beneficial to the individuals, is considered to be a private advantage towards those individuals, and would not be beneficial to the community in a way that the law regards as charitable.<sup>5</sup>

The Act requires a registered charity be “constituted” and “operated” exclusively for charitable purposes, this means that in order to meet the legislative requirements for continued registration, it is not enough that a charity is simply constituted exclusively for charitable purposes, it must also be actively operated exclusively for charitable purposes.

With respect to the Organization’s statement that it provides education to the public through seminars and speaking engagements in how to avoid getting into financial troubles, we note that in its representations dated June 2, 2021, and July 12, 2021, the Organization explained that “Community Counselling Services of York Region does the family counselling, mediation services, community service orders, and youth referral program. Family and Credit Counselling Services only does credit counselling activities.” The Organization repeated this claim – that it undertakes only credit counselling activities – in its representation dated January 6, 2022.

The Organization devoted all of its resources to non-charitable credit counselling activities during the fiscal period under review, representing a concurrent non-charitable purpose. The Organization failed to conduct any charitable activities during the fiscal period under review and therefore failed to operate exclusively for charitable purposes.

With respect to the Organization’s statement about the purposes found in its Letters Patent of 1992, this legal document identifies, amongst other information, the Organization’s name and purposes. The purposes contained in that document, as currently worded, are misleading to the public (governing documents are made available by the CRA to the public upon request).

A charity that wants to undertake programs and activities that are different from those previously approved should also check with the CRA beforehand to ensure that the proposed activities are charitable and that they fall within the charity’s approved purposes. In some cases, a charity may also have to amend its purpose(s) so that it has a basis for undertaking the proposed activities.

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<sup>5</sup> Credit Counselling Services of Atlantic Canada Inc. v. Minister of National Revenue, 2016 FCA 193 at para 10 and 22.

If a charity introduces purposes or undertakes activities that do not qualify as charitable, it places its registered status in jeopardy. By consulting with the CRA's Charities Directorate before making changes to its purposes, a charity can avoid straying beyond the scope of what is considered charitable at law.

The Organization failed to inform the Charities Directorate about the changes to its purposes and activities, leaving its charitable status susceptible to revocation, as the new activities are not charitable at law. While the Organization's programs and services may be commendable, they are not charitable at law, and the CRA must apply the statutory requirements and common law principles relevant to determining charitable status.

Consequently, our concerns have not been alleviated with respect to the Organization's failure to comply with the requirements outlined in subsection 149.1(1) of the Act, in that the Organization was not constituted and operated exclusively for charitable purposes. As a result, we hereby intend to revoke the registration of the Organization under subsection 149.1(2) of the Act.

## **2. Failure to devote resources to charitable activities**

All charitable organizations registered under the Act are required by law to devote their resources (funds, personnel, property) to exclusively charitable purposes and 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. In evaluating whether activities carried out alleviate conditions of poverty, it must be noted that not all goods, services, or other benefits that can be provided relieve poverty in a charitable manner. Again, 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 be reasonably achievable in the circumstances. An assumed prospect or possibility of gain is not enough.

In order to meet the legal requirements of the relief of poverty category of charitable purposes, an organization must demonstrate that i) the intended target group of beneficiaries is individuals who are "poor" and; ii) it provides for essential needs/amenities, for those persons who do not have the means to procure even the basic necessities of life for themselves.

### The Organization's response:

The Organization stated that it performs many services to the community such as seminars, talks, and individual counselling on how to manage money properly and avoid unmanageable debt.

### The CRA's conclusion:

With respect to the Organization's reference to the many services it performs, we reiterate from Item 1, above, that the Organization confirmed in its representations that it only performed credit counselling activities during the fiscal period under review, and up to present.

It is our position that while the Organization's purposes a), b), d), and e), as stated in its Letters Patent, are charitable as written, in actual fact, however, the Organization did not conduct any charitable activities in support of those purposes during the fiscal period under review.

Nor did the activities it actually conducted serve only to further purposes that are judicially recognized to be charitable at law. While some credit counselling activities, such as seminars, talks, and individual counselling on how to manage money properly and avoid unmanageable debt, fall within the category of relief of poverty, the courts have confirmed that purposes for the prevention of poverty are not charitable.<sup>6</sup> Charities whose purposes relieve poverty must have beneficiaries that are experiencing poverty at the time the benefits are provided. The courts have not accepted the risk of poverty as being equivalent to actually experiencing poverty.

The audit found substantially all of the Organization's expenses were related to its non-charitable Debt Management Program, and while the Organization has stated that it undertakes other credit counselling related activities that could be charitable, it provided no evidence to support that these programs existed.

Our concerns have not been alleviated with respect to the Organization's failure to devote its resources to charitable activities, and it remains our position that the Organization has failed to devote its resources exclusively to charitable activities in furtherance of charitable purposes. As a result, we hereby intend to revoke the registration of the Organization under paragraph 168(1)(b) of the Act.

### **3. Failure to meet disbursement quota**

The disbursement quota is the minimum amount that a registered charity must spend each year on its own charitable activities or on gifts to qualified donees. The disbursement quota calculation is based on the value of a charity's property **not** used for charitable activities or administration.

#### The Organization's response:

The Organization stated that "... much of the salaries of the credit counsellors and executive director are devoted to educating the public in managing income and debt."

#### The CRA's conclusion:

With respect to the Organization's statement about how its salary dollars are allocated, we note that the Organization declared in its June 2, 2021, and July 12, 2021, representations that "[a]ll the expenses are related to (Debt Management Plan) DMP."

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<sup>6</sup> Credit Counselling Services of Atlantic Canada Inc. v. Minister of National Revenue, 2016 FCA 193 at para 10 and 22.

Consequently, our concerns have not been alleviated with respect to the Organization's failure to meet its disbursement quota. As a result, we hereby intend to revoke the registration of the Organization under paragraphs 149.1(2)(b) and 168(1)(b) of the Act.

**4. Failure to file an accurate information return as and when required by the Act and/or its Regulations**

Most of the information in a charity's information return is available to the public. The public can view a charity's contact information, general activities, and financial information, to help guide them in making informed donation decisions. As such, it is the responsibility of the Organization to ensure that the information provided in its Form T3010, Registered Charity Information Return, and the associated schedules and statements, is factual and complete in every respect, and that it is filed within six months from the end of each taxation year. 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.<sup>7</sup>

The Organization's response:

The Organization stated that “(...) failure to file an information return when required is hardly grounds for revocation of its status. In the past it has complied in a timely manner to all filings.”

Furthermore, the Organization stated that when it “(...) filed the T3010, we never once received any feedback from the CRA that information was missing, quite the opposite and that they accepted the return and sent notification of same.”

The CRA's conclusion:

With respect to the Organization's opinion that failure to file an information return when required is hardly grounds for revocation of its status, we wish to note that the Federal Court of Appeal has confirmed that major inaccuracies in a Form T3010 are a sufficient basis for revocation.<sup>8</sup> The information provided in its Form T3010 for the fiscal period under review was incomplete and inaccurate. Although not mentioned in our previous letter, the Organization has a history, pre-COVID-19, of filing its return significantly after the due date, which is six months after March 31 of each year.

With respect to the Organization's defense concerning any errors and/or omissions in its Form T3010s, that the CRA did not provide any feedback or notify it of any errors, and in fact accepted the return and sent notification of its acceptance, we note that the CRA sends a Confirmation of Annual Information Return Filing either through the My Business Account portal, or by mail.

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<sup>7</sup> The information contained in a registered charity's Form T3010s is displayed on the CRA website for donors to see and may influence their decision to donate or not.

<sup>8</sup> Opportunities for the Disabled Foundation v MNR, 2016 FCA 94 at paras 48-51.

That notice is only an acknowledgement of having received the return, and advises that “[i]t is the responsibility of the Organization to ensure that the information provided in its Form T3010 is factual and complete in every respect.” The Confirmation of Filing notice does not mean the CRA has reviewed and accepted the content of the Form T3010, and should not be taken by the Organization as an indication that its Form T3010s were error free. Verification of the information provided in the Form T3010s may be undertaken at a later date through an office review, a desk audit, or a field audit.

Consequently, our concerns have not been alleviated with respect to the Organization’s failure to file an information return in the prescribed form, containing the prescribed information, as required by the Act and/or its Regulations. As a result, we hereby intend to revoke the registration of the Organization under paragraph 168(1)(c) of the Act.

**Qualified Donees**

**149.1 (1) Definitions**

**charitable foundation** means a corporation or trust that is constituted and operated exclusively for charitable purposes, 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, and that is not a charitable organization

**charitable organization**, at any particular time, means an organization, whether or not incorporated,

(a) constituted and operated exclusively for charitable purposes,

(a.1) all the resources of which are devoted to charitable activities carried on by the organization itself,

(b) 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,

(c) more than 50% of the directors, trustees, officers or like officials of which deal at arm's length with each other and with

(i) each of the other directors, trustees, officers and like officials of the organization,

(ii) each person described by subparagraph (d)(i) or (ii), and

(iii) each member of a group of persons (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(l)) who do not deal with each other at arm's length, if the group would, if it were a person, be a person described by subparagraph (d)(i), and

(d) that is not, at the particular time, and would not at the particular time be, if the organization were a corporation, controlled directly or indirectly in any manner whatever

(i) by a person (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(l)),

(A) who immediately after the particular time, has contributed to the organization amounts that are, in total, greater than 50% of the capital of the organization immediately after the particular time, and

(B) who immediately after the person's last contribution at or before the particular time, had contributed to the organization amounts that were, in total, greater than 50% of the capital of the organization immediately after the making of that last contribution, or

(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,

(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

**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

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) Joint and several, or solidary, liability – tax transfer**

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** of a charitable foundation at any time means the amount determined by the formula

$$\mathbf{A} - \mathbf{B}$$

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** of property owned by a charitable foundation, as of the day of its transfer, means the amount determined by the formula

$$\mathbf{A} - \mathbf{B}$$

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 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.