



May 26, 2021

**REGISTERED MAIL**

Mohamed Samura  
Director  
Sierra Leone Canadian Children's Aid Society  
2301 – 24 Mabelle Avenue  
Toronto ON M9A 4X8

BN: 803284629RR0001  
File #: 3041666

Dear Mohamed Samura:

**Subject: Notice of intention to revoke  
Sierra Leone Canadian Children's Aid Society**

We are writing with respect to our letter dated January 6, 2020 (copy enclosed), in which Sierra Leone Canadian Children's Aid Society (the Organization) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from January 1, 2016 to December 31, 2017. Specifically, the Organization was asked to explain why the registration of the Organization should not be revoked in accordance with subsection 168(1) of the Income Tax Act (the Act).

The CRA made several attempts to set a date to commence the audit; however, the Organization failed to co-operate or to provide us with any documents to conduct the audit.

On February 13, 2019, after several attempts via telephone, we were able to speak to, Mohamed Samura, Director of the Organization, regarding the missed audit start date, which was scheduled for January 25, 2019. During the conversation, we discussed tentative dates to begin the audit in March 2019. On February 14, 2019, we received a letter by fax from the Organization stating that the tentative start of the audit in March 2019 would no longer be convenient and that no dates could be considered until the initial audit questionnaire was provided to the Organization. We later confirmed that the questionnaire had been received by the Organization on February 28, 2019.

In its letter dated March 12, 2019, the Organization informed us that since they had already filed their Form T3010, Registered charity information return, they did not expect to be requested to provide further documentation and that they needed more time to obtain the requested documentation from Sierra Leone. In another letter dated October 3, 2019, the Organization states "In 2018 after the Presidential and Parliamentary Elections in Sierra Leone our office was vandalized. Our computer and other relevant projects and financial information with details of the charitable activities in Sierra Leone were all missing".

Based on the aforementioned considerations, it is our view the Organization has failed to demonstrate any willingness to co-operate with the CRA for the conduct of the audit.

As a result, we issued an administrative fairness letter (AFL) dated January 6, 2020, to the Organization. On February 11, 2020, we made an unsuccessful telephone call to follow up with the Organization after the issuance of the AFL. As of this date, we have not received any response or documentation from the Organization.

### **Audit conclusion**

The audit by the CRA found that the Organization is not complying with the requirements set out in the Act. In particular, it was found that the Organization failed to keep and maintain adequate books and records in Canada as required by subsection 230(1) of the Act; and provide those books and records to CRA during the audit. It was also found that the Organization failed to file Form T3010, Registered Charity Information Return, for the December 31, 2018 fiscal period 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 January 6, 2020, and pursuant to subsections 168(1) and 149.1 of the Act, we propose to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the Canada Gazette:

Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(c), 168(1)(e), and subsection 149.1(2) of the Income Tax Act, of our intention to revoke the registration of the charity listed below and that by virtue of paragraph 168(2)(b) thereof. The revocation of registration will be effective on the date of publication of this notice in the Canada Gazette.

**Business number**  
803284629RR0001

**Name**  
Sierra Leone Canadian Children's Aid  
Society  
Toronto ON

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 Branch  
Canada Revenue Agency  
13<sup>th</sup> Floor  
250 Albert Street  
Ottawa ON K1A 0L5

Should the Organization choose not to file an objection to this notice of intention to revoke with the CRA within this period, a copy of the revocation notice, described above, will be published in the Canada Gazette after the expiration of 90 days from the date this letter was mailed. As such, the Organization's registration will be revoked on the date of publication.

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

### **Consequences of revocation**

As of the effective date of revocation:

- a) the Organization will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3) and paragraph 110.1(1)(a) of the Act respectively;
- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the notice of intention to revoke. This revocation tax is calculated on Form T2046, Tax Return Where Registration of a Charity is Revoked. Form T2046 must be filed, and the tax paid, on or before the day that is one year from the date of the notice of intention to revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix A. Form T2046 and the related Guide RC4424, Completing the Tax Return Where Registration of a Charity is Revoked, are available on our website at **canada.ca/charities-giving**;
- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the Excise Tax Act. As a result, the Organization may be subject to obligations and entitlements under the Excise Tax Act that apply to entities other than charities. If you have any questions about your Goods and Services Tax/Harmonized Sales Tax (GST/HST) obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

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

Yours sincerely,



Tony Manconi  
Director General  
Charities Directorate

### **Enclosures**

- CRA Audit Fairness Letter dated January 6, 2020
- Appendix A, Relevant provisions of the Act

c.c: Alex Kabia, Director  
Sierra Leone Canadian Children's Aid Society



January 6, 2020

Mohamed Samura, Director  
Sierra Leone Canadian Children's Aid Society  
2301 – 24 Mabelle Avenue  
Toronto ON M9A 4X8

BN: 803284629RR0001  
File #: 3041666

Dear Mohamed Samura:

**Subject: Audit of Sierra Leone Children's Aid Society**

This letter results from the audit of Sierra Leone Children's Aid Society (the Organization), related to the operations of the Organization for the period from January 1, 2016 to December 31, 2017.

The Canada Revenue Agency (CRA) has identified specific areas of non-compliance with the provisions of the Income Tax Act (the Act) and its Regulations in the following areas:

AREAS OF NON-COMPLIANCE		
	Issue	Reference
1.	Failure to keep and maintain adequate books and records	149.1(2), 168(1)(e), 230(2), 230(4)
2.	Failure to file an information return as and when required by the Act and/or its Regulations	149.1(2), 149.1(14), 168.1(1)(c)

The purpose of this letter is to describe the areas of non-compliance identified by the CRA as they relate to the legislative and common law requirements applicable to registered charities, and to provide the Organization with the opportunity to make additional representations and provide all the necessary books and records including all the supporting documents.

Registered charities must comply with the law, failing which the Organization's registered status may be revoked in the manner described in section 168 of the Act. The balance of this letter describes the identified areas of non-compliance in further detail.



## General legal principles

In order to maintain charitable registration under the Act, Canadian law requires that an organization demonstrate that it is constituted exclusively for charitable purposes (or objects) and that it devotes its resources to charitable activities carried on by the organization itself.<sup>1</sup> 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:

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

The public benefit requirement involves a two-part test:

The first part of the test requires the delivery of a **benefit** that is recognizable and capable of being proved, and socially useful. To be recognizable and capable of being proved, a benefit must generally be tangible or objectively measurable. Benefits that are not tangible or objectively measurable must be shown to be valuable or approved by the common understanding of enlightened opinion for the time being.<sup>3</sup> In most cases, the benefit should be a necessary and reasonably direct result of how the purpose will be achieved and of the activities that will be conducted to further the purpose, and reasonably achievable in the circumstances.<sup>4</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>5</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:

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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” except to the extent that an activity falls within the specific exemptions of subsections 149.1(6.1) or (6.2) of the Act. *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10 at paras 155-159 [Vancouver Society]. A registered charity may also devote resources to activities that, while not charitable in and of themselves, are necessary to accomplish their charitable objectives (such as expenditures on fundraising and administration). However, any resources so devoted must be within acceptable legal parameters and the associated activities must not become ends in and of themselves.

<sup>2</sup> The Act does not define charity or what is charitable. The exception is subsection 149.1(1) which defines charitable purposes/objects as including “the disbursement of funds to qualified donees”. The CRA must therefore rely on the common law definition, which sets out four broad categories of charity. The four broad charitable purpose/object categories, also known as the four heads of charity, were outlined by Lord Macnaghten in *Commissioners for Special Purposes of the Income Tax v Pemsel*, [1891] AC 531 (PC) [Pemsel]. The classification approach was explicitly approved of by the Supreme Court of Canada in *Guaranty Trust Co of Canada v MNR*, [1967] SCR 133, and confirmed in *Vancouver Society*, supra note 4.

<sup>3</sup> See generally *Vancouver Society*, supra note 4 at para 41, Gonthier J. dissenting; *Gilmour v Coats et al.* [1949] 1 All ER 848 [Gilmour]; *National Anti-Vivisection Society v IRC*, [1947] 2 All ER 217 at 224 (11L), Wright LJ [National Anti-Vivisection Society].

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

<sup>5</sup> See *National Anti-Vivisection Society*, supra note 6 at 49, Wright LJ; *In re Shaw deed*, [1957] 1 WLR 729; *Gilmour*, supra note 6, Simonds LJ at 446-447.



- 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>6</sup>

As well, a charitable purpose<sup>7</sup> should not be broad or vague. If the wording is too broad or vague, it will not be clear that a purpose is charitable (falls within a charitable purpose category and provides a public benefit) and defines the scope of the organization's activities. "Broad" means the purpose may allow for both charitable and non-charitable activities and/or the delivery of unacceptable private benefits. "Vague" means the wording may be interpreted in different ways. A purpose that is too broad or vague may not be eligible for registration<sup>8</sup>.

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

- for its own charitable activities - undertaken by the charity itself under its continued supervision, direction and control; and
- for gifting to "qualified donees" as defined in the Act.<sup>9</sup>

A charity's own charitable activities may be carried out by its directors, employees or volunteers, or through intermediaries (a person or non-qualified donee that is separate from the charity, but that the charity works with or through, such as an agent, contractor or partner). If acting through an intermediary, the charity must establish that the activity to be conducted will further its charitable purposes, and that it maintains continued direction and control over the activity and over the use of the resources it provides to the intermediary to carry out the activity on its behalf.<sup>10</sup>

Although there is no legal requirement to do so, and the same result might be achieved through other arrangements or means, entering into a written agreement can be an effective way to help meet the own activities test. However, the existence of an agreement is not enough to prove that a charity meets the own activities test. The charity must be able to show that the terms establish a real, ongoing, active relationship with the intermediary,<sup>11</sup> and are actually implemented. A charity must record all steps taken to exercise direction and control as part of its books and

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

<sup>7</sup> For more information about charitable purposes see CRA Guidance CG-019, How to Draft Purposes for Charitable Registration.

<sup>8</sup> Vancouver Society, supra note 4 per Iacobucci J at para. 158; Travel Just v. Canada Revenue Agency, 2006 FCA 343, [2007] 1 C.T.C. 294.

<sup>9</sup> A "qualified donee" means a donee described in subsection 149.1(1) of the Act.

<sup>10</sup> For more information, see CRA Guidance CG-002, Canadian Registered Charities Carrying Out Activities Outside Canada and Guidance CG-004, Using an Intermediary to Carry Out Activities Within Canada.

<sup>11</sup> See notably Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at para 30, [2002] FCJ no 315 [Canadian Committee for the Tel Aviv Foundation].



records, to allow the CRA to verify that the charity's funds have been spent on its own activities. While the nature and extent of the required direction and control may vary based on the particular activity and circumstances, the absence of appropriate direction and control indicates that an organization is resourcing a non-qualified donee in contravention of the Act.

The CRA must be satisfied that an organization's activities directly further charitable purposes in a manner permitted under the Act. In making a determination, we are obliged to take into account all relevant information. Accordingly, the current audit encompassed an enquiry into all aspects of the Organization's operations.

## Background

The Organization was registered as a charitable organization effective January 1, 2010 with the following purposes:

- (a) To advance education by establishing and operating daycare centers and after-school programs in Sierra Leone;
- (b) To advance education by providing courses, seminars, and workshops about parenting and prevention of child abuse;
- (c) To advance education by providing scholarships, bursaries, awards, and other forms of financial assistance to vulnerable children in Sierra Leone; and
- (d) To benefit the community by operating a drop-in centre in Sierra Leone for troubled youth including those with special needs, disabilities, and behavioural problems that will provide educational, cultural, recreational, and social activities in a supervised setting

The activities at the time of registration were:

- (a) To operate a pre-school/daycare center for children in the Eastern suburb community area of Freetown Sierra Leone....;
- (b) To educate the public by providing programs, workshops, and seminars about parenting and prevention of child abuse....;
- (c) To help destitute children including orphans and underprivileged children to stay in school by supporting them financially....;
- (d) To operate a drop-in centre for troubled youths including those with special needs, disabilities, behavioural problems, and challenges...

While we recognize that the Organization's purposes with which it was originally registered, CRA must be satisfied that an organization's activities directly further charitable purposes in a manner permitted under the Act. In making a determination, we are obliged to take into account all relevant information. Our consideration of both purpose and activities must be based on current legislation, court decisions, and Charities Directorate policies and procedures.

The Organization's Form T3010, Registered Charity Information Return, for the fiscal periods 2016 and 2017, indicates that the Organization's current activities are: 'child abuse programs; one family pre-school; scholarships to students in Sierra Leone; special needs assistance to





students; provision of supplies and equipment for schools in Sierra Leone; parenting workshops; and emergency assistance for orphan children in Sierra Leone’.

## Identified areas of non-compliance

### 1. Failure to keep and maintain adequate books and records

Pursuant to subsection 230(2) of the Act, every registered charity “shall keep records and books of account [...] at an address in Canada recorded with the Minister or designated by the Minister containing:

- a) information in such form as will enable the Minister to determine whether there are any grounds for revocation of its registration under the Act;
- b) a duplicate of each receipt containing prescribed information for a donation received by it;
- c) other information in such form as will enable the Minister to verify the donations to it for which a deduction or tax credit is available under this Act.”

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

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

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

- i. it is the responsibility of the registered charity to prove that its charitable status should not be revoked;<sup>12</sup>
- ii. a registered charity must maintain, and make available to the CRA **at the time of an audit**, meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required documentation and records subsequent thereto;<sup>13</sup> and
- iii. the failure to maintain proper books, records, and records of account in accordance with the requirements of the Act is itself sufficient reason to revoke an organization’s charitable status in the case of material or repeated non-compliance.<sup>14</sup>

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

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

<sup>14</sup> See Prescient Foundation v MNR, 2013 FCA 120 at para 51, [2013] FCJ no 512.



## Audit Findings

The Organization did not provide the CRA with the requested documents or any other documents to conduct the audit. As such the CRA was unable to verify the Organization's books and records.

The CRA made numerous attempts to contact the Organization and schedule the audit since January 25, 2019. The Organization was mailed an engagement letter dated February 1, 2019. After several telephone calls to follow up on our engagement letter we were finally able to talk with the director Mohamed Samura on February 13, 2019. During our conversation, we discussed tentative dates for the audit to begin in March 2019. Mohamed Samura agreed to call back and confirm the audit dates.

On February 14, 2019, we received a letter from the Organization stating that the March 2019 proposed dates were not convenient and that no alternate dates could be considered until the initial audit questionnaire was provided to the Organization. Following that letter, we mailed on February 15, 2019 the initial interview questionnaire to the Organization and included the list of books and records required to conduct the audit. On February 28, 2019, it was confirmed that the Organization received our letter. The Organization then sent CRA a letter dated March 12, 2019 indicating that since the Organization already filed its T3010s every year as required, it did not expect to be requested to provide further documentation. The letter further stated that the Organization needed more time to obtain documentation from Sierra Leone and would communicate with the auditor to arrange a new schedule.

CRA had not heard from the Organization since that communication. As a result, we sent by registered mail another letter dated September 27, 2019, to the Organization's three listed directors. The letter requested that the Organization provide CRA with books and records required to conduct the audit.

To date, there has been no response from the Organization in regards to our request to conduct the audit nor has the Organization provided the CRA with the books and records required to conduct the audit. As a result, we were unable to verify the information reported by the Organization in its T3010s for the periods under audit. In particular, the information reported in:

- Section C2 where the Organization described its on-going programs and activities as child abuse programs, one family pre-school, Sierra Leone scholarships, special needs assistance, provision of supplies and equipment to Sierra Leone schools, parenting workshops, and emergency assistance for orphans.
- Section C6 for the periods under audit, the Organization indicated that it conducted fundraising activities by checking off the following:
  - line 2510 Auctions
  - line 2540 Door-to-door solicitation
  - line 2560 Dinners/ galas/concerts



- line 2570 Sales
  - line 2575 Internet
  - line 2610 Targeted contacts
  - line 2630 Tournament/sporting events
- In spite of the above fundraising indicators, the Organization did not report any amount on line 4630, Total non tax-receipted revenue from fundraising or line 5020 Total expenditures on fundraising in Schedule 6 Detailed Financial Information. Consequently, the Organization's fundraising activities could not be verified.
- Schedule 2 Activities outside Canada, where the Organization failed to provide the values of the items gifted to non-qualified donees in Sierra Leone.
- Schedule 5 Non-cash gifts, line 580, Total amount of tax receipted non-cash gifts in the amounts of \$75,240 in 2016 and \$95,758 in 2017.
- Schedule 6 Detailed Financial Information, the amounts reported in the following lines could not be verified:
  - line 4200 Total assets or any of the asset lines, \$13,356 in 2016 and \$13,004 in 2017.
  - line 4350 Total liabilities or any of the liabilities lines, \$13,356 in 2016 and \$13,004 in 2017.
  - line 4500 Total eligible amount of all gifts for which the charity has issued or will issue tax receipts for \$95,450 in 2016 and \$48,520 in 2017. Further, the amount \$95,758 reported on line 580 for the 2017 fiscal period exceeded that reported on line 4500 by \$47,238.
  - line 4530 Total other gifts received for which a tax receipt was not issued by the charity (excluding amounts on lines 4575 and 4630) in the amount of \$122,361 for 2016 and \$176,046 for 2017.
  - line 4950 Total expenditure before gifts to qualified donees of \$213,221 in 2016 and \$223,861 in 2017.

Under paragraph 168(1)(e) of the Act, the registration of a charity may be revoked if it fails to comply with or contravenes subsection 230(2) of the Act dealing with books and records. It is our position that the present case consists of material non-compliance. For this reason, it appears to us that there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(e) of the Act.

## **2. Failure 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.

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

## Audit Findings

The Organization has the following errors and omissions in its 2016 and 2017 T3010 for the audit periods under review as detailed below.

### 1.Errors and omissions

#### Both 2016 and 2017 T3010:

- Section A, there is a spelling error in the Organization's name
- Section C, C6 indicates the Organization's carried out extensive fundraising activities (as lines 2510, 2540, 2560, 2570, 2575, 2610, and 2630 were all checked off), however no fundraising revenues were reported on Schedule 6 line 4630 and no fundraising expenses were reported on line 5020
- Section C, C4 line 2100 was checked 'no' for activities outside of Canada, yet schedule 2 for activities outside Canada was partly filled out indicating that there were activities/expenditures outside Canada - in Sierra Leone
- Schedule 2 was not completed correctly, for example, there was no amount entered in line 200, even though there were items listed as being exported to Sierra Leone
- Schedule 2 line 260 was missing the values in Canadian dollars for each item exported to Sierra Leone (values for the items of computers, laptops, books, clothing, food, and bicycles)
- Schedule 6, line 4330, other liabilities, had the net assets of the Organization reported here, however this line is only for liabilities not identified in the other lines
- Schedule 6, line 4200, total assets, should not equal the line 4350, total liabilities
- Schedule 6, lines 5900 and 5910 were not completed
- The TF725 form was not filed

#### 2017 T3010:

- Section C line 4000 was answered 'no' to gifts in kind (GIK), yet the Organization had reported an amount on Schedule 5 GIK
- Section E Certification, had no (director) signature for the Organization

<sup>15</sup> Opportunities for the Disabled Foundation v MNR, 2016 FCA 94 at paras 48-51.



- Schedule 5 Gifts in Kind line 580 (for tax receipted non-monetary GIK that is included in receipted revenue,) exceeds the receipted revenue reported on Schedule 6, line 4500
- The T1235 had an incorrect telephone number for the director president

## 2. Late filing

The Organization has not filed its 2018 T3010 Charity Information Return which was due on June 30, 2019.

Under paragraph 168(1)(c) of the Act, the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it fails to file a charity information return as and when required under the Act. It is our position the Organization has failed to comply with the Act by failing to file an accurate T3010 and has failed to file an information return within six months from the end of the Organization's taxation year. For these reasons, there may be grounds to revoke the registered status of the Organization under paragraph 168(1)(c) of the Act.

The Organization's letter to CRA dated October 3, 2019 states that "In 2018 after the Presidential and Parliamentary Elections in Sierra Leone our office was vandalized. Our computers and other relevant projects and financial information with details of the charitable activities in Sierra Leone were all missing".

The Organization is not in compliance with subsection 149.1(14) of the Act as stated above.

### **The Organization's options:**

#### **a) No response**

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

#### **b) Response**

Should you choose to respond, please provide the books and records required to conduct the audit along with your written representations and any additional information regarding the findings outlined above within 30 days from the date of this letter. After considering the representations, submitted by the Organization, the Director General of the Charities Directorate will decide on the appropriate course of action, which may include:

- no compliance action;
- issuing an educational letter;
- resolving the issues through a Compliance Agreement;
- applying penalties or suspensions or both, as described in sections 188.1 and/or 188.2 of the Act; or

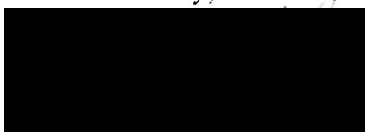


- issuing a notice of intention to revoke the registration of the Organization in the manner described in subsection 168(1) of the Act

If you appoint a third party to represent you in this manner, please send us a written authorization naming the individual or organization and explicitly authorizing the individual or organization to discuss your file with us.

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

Yours sincerely,



Kelly Jubinville  
Audit Division  
Kitchener Tax Services Office  
166 Frederick Street, Kitchener ON N2H 0A9  
Telephone: (226) 750-4962  
Fax: (519) 585-2803

## Appendix A

**149.1(1) Qualified donees**

In this part, a qualified donee 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,

(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.

**Section 168:****Revocation of Registration of Certain Organizations and Associations****168(1) Notice of intention to revoke registration**

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

(a) applies to the Minister in writing for revocation of its registration;

(b) ceases to comply with the requirements of this Act for its registration;

(c) in the case of a registered charity or registered Canadian amateur athletic association, fails to file an information return as and when required under this Act or a regulation;

(d) issues a receipt for a gift otherwise than in accordance with this Act and the regulations or that contains false information;

(e) fails to comply with or contravenes any of sections 230 to 231.5; or

(f) in the case of a registered Canadian amateur athletic association, accepts a gift the granting of which was expressly or implicitly conditional on the association making a gift to another person, club, society or association.

### **168(2) Revocation of Registration**

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

(a) if the charity or association has applied to the Minister in writing for the revocation of its registration, the Minister shall, forthwith after the mailing of the notice, publish a copy of the notice in the Canada Gazette, and

(b) in any other case, the Minister may, after the expiration of 30 days from the day of mailing of the notice, or after the expiration of such extended period from the day of mailing of the notice as the Federal Court of Appeal or a judge of that Court, on application made at any time before the determination of any appeal pursuant to subsection 172(3) from the giving of the notice, may fix or allow, publish a copy of the notice in the Canada Gazette, and on that publication of a copy of the notice, the registration of the charity or association is revoked.

### **168(4) Objection to proposal or designation**

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

(a) in the case of a person that is or was registered as a registered charity or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(2) to (4.1), (6.3), (22) and (23);

(b) in the case of a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.2) and (22); or

(c) in the case of a person described in any of subparagraphs (a)(i) to (v) of the definition "qualified donee" in subsection 149.1(1), that is or was registered by the Minister as a qualified donee or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.3) and (22).

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

Where the Minister



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

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

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

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

(c) refuses to accept for registration for the purposes of this Act any profit sharing plan or revokes the registration of such a plan,

(d) [Repealed, 2011, c. 24, s. 54]

(e) refuses to accept for registration for the purposes of this Act an education savings plan,

(e.1) sends notice under subsection 146.1(12.1) to a promoter that the Minister proposes to revoke the registration of an education savings plan,

(f) refuses to register for the purposes of this Act any pension plan or gives notice under subsection 147.1(11) to the administrator of a registered pension plan that the Minister proposes to revoke its registration,

(f.1) refuses to accept an amendment to a registered pension plan,

(g) refuses to accept for registration for the purposes of this Act any retirement income fund,

(h) refuses to accept for registration for the purposes of this Act any pooled pension plan or gives notice under subsection 147.5(24) to the administrator of a pooled registered pension plan that the Minister proposes to revoke its registration, or

(i) refuses to accept an amendment to a pooled registered pension plan,

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

### **180(1) Appeals to Federal Court of Appeal**

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

(a) the day on which the Minister notifies a person under subsection 165(3) of the Minister's action in respect of a notice of objection filed under subsection 168(4),

(b) [Repealed, 2011, c. 24, s. 55]

(c) the mailing of notice to the administrator of the registered pension plan under subsection 147.1(11),

(c.1) the sending of a notice to a promoter of a registered education savings plan under subsection 146.1(12.1),

(c.2) the mailing of notice to the administrator of the pooled registered pension plan under subsection 147.5(24), or

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

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

## **Section 188: Revocation tax**

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

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

(a) the taxation year of the charity that would otherwise have included that day is deemed to end at the end of that day;

(b) a new taxation year of the charity is deemed to begin immediately after that day; and

(c) for the purpose of determining the charity's fiscal period after that day, the charity is deemed not to have established a fiscal period before that day.

### **188(1.1) Revocation tax**

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

$$A - B$$

where

A

is the total of all amounts, each of which is

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

B

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

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

### **188(1.2) Winding-up period**

In this Part, the winding-up period of a charity is the period that begins immediately after the day on which the Minister issues a notice of intention to revoke the registration of a

taxpayer as a registered charity under any of subsections 149.1(2) to (4.1) and 168(1) (or, if earlier, immediately after the day on which it is determined, under subsection 7(1) of the Charities Registration (Security Information) Act, that a certificate served in respect of the charity under subsection 5(1) of that Act is reasonable on the basis of information and evidence available), and that ends on the day that is the latest of

(a) the day, if any, on which the charity files a return under subsection 189(6.1) for the taxation year deemed by subsection (1) to have ended, but not later than the day on which the charity is required to file that return,

(b) the day on which the Minister last issues a notice of assessment of tax payable under subsection (1.1) for that taxation year by the charity, and

(c) if the charity has filed a notice of objection or appeal in respect of that assessment, the day on which the Minister may take a collection action under section 225.1 in respect of that tax payable.

### **188(1.3) Eligible donee**

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

(a) of which more than 50% of the members of the board of directors or trustees of the registered charity deal at arm's length with each member of the board of directors or trustees of the particular charity;

(b) that is not the subject of a suspension under subsection 188.2(1);

(c) that has no unpaid liabilities under this Act or under the Excise Tax Act;

(d) that has filed all information returns required by subsection 149.1(14); and

(e) that is not the subject of a certificate under subsection 5(1) of the Charities Registration (Security Information) Act or, if it is the subject of such a certificate, the certificate has been determined under subsection 7(1) of that Act not to be reasonable.

### **188(2) Shared liability — revocation tax**

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

### **188(2.1) Non-application of revocation tax**

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

(a) within the one-year period that begins immediately after the taxation year of the charity otherwise deemed by subsection (1) to have ended, the Minister has registered the charity as a charitable organization, private foundation or public foundation; and

(b) the charity has, before the time that the Minister has so registered the charity,

(i) paid all amounts, each of which is an amount for which the charity is liable under this Act (other than subsection (1.1)) or the Excise Tax Act in respect of taxes, penalties and interest, and

(ii) filed all information returns required by or under this Act to be filed on or before that time.

### **188(3) Transfer of property tax**

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

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

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

### **188(4) Transfer of property tax**

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

### **188(5) Definitions**

In this section,

“net asset amount”

« *montant de l’actif net* »

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

$$A - B$$

where

A

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

B

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

“net value”

« *valeur nette* »

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

$$A - B$$

where

A

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

B

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

### **189(6) Taxpayer to file return and pay tax**

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

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

#### **189(6.1) Revoked charity to file returns**

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

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

#### **189 (6.2) Reduction of revocation tax liability**

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

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

exceeds

- (ii) the income of the charity for the post-assessment period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 if that period were a taxation year, and
- (b) all amounts, each of which is an amount, in respect of a property transferred by the charity before the particular time and during the post-assessment period to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

#### **189(6.3) Reduction of liability for penalties**

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

- (a) the consideration given by the other person for the transfer, and
- (b) the part of the amount in respect of the transfer that has resulted in a reduction of an amount otherwise payable under subsection 188(1.1).

#### **189 (7) Minister may assess**

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