



March 4, 2020

REGISTERED MAIL

Paget Warner
President
Brandon Street Community Development Project
495 Summerpark Crescent
Pickering ON L1V 7A8

BN: 893011965RR0001
File #: 0908269

Dear Paget Warner:

**Subject: Notice of intention to revoke
Brandon Street Community Development Project**

We are writing with respect to our letter dated January 2, 2019 (copy enclosed), in which Brandon Street Community Development Project (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, 2015 to December 31, 2016. 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 29, 2019. 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 current audit by the CRA was a follow-up to a previous audit that identified non-compliance with the requirements of the Act. Notwithstanding the Organization's agreement to implement corrective measures to remedy the issues identified in the previous audit, the current audit found continuous and repeated non-compliance. In particular, it was found that the Organization is not constituted and operated for exclusively charitable purposes, did not devote its resources to its own charitable activities, gifted resources to a non-qualified donee, failed to maintain adequate books and records, and issued donation receipts not in accordance with the Act and/or its Regulations. For all of these reasons, and for each reason alone, it is the position of the CRA that the Organization no longer meets the requirements for charitable registration and should be revoked in the manner described in subsection 168(1) of the Act.

For each of the reasons mentioned in our letter dated January 2, 2019, it is the CRA's position that the Organization has failed to meet the requirements for registration as a charitable foundation as outlined in subsection 149.1(1) of the Act. As such, the

Organization should have its registration revoked pursuant to subsections 168(1) and 149.1(3) of the Act. 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)(d), and 168(1)(e), and subsection 149.1(3), of the Income Tax Act, that I propose to revoke the registration of the charity listed below and that by virtue of paragraph 168(2)(b) thereof, the revocation of registration is effective on the date of publication of this notice in the Canada Gazette.

Business number	Name
893011965RR0001	Brandon Street Community Development Project Pickering ON

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

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

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

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

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

Yours sincerely,

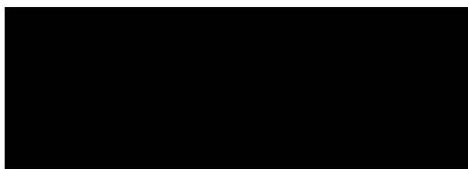


Tony Manconi
Director General
Charities Directorate

Enclosures

- CRA letter dated January 2, 2019
- Organization's representations dated January 29, 2019
- Appendix A, Comments on representations
- Appendix B, Relevant provisions of the Act

c.c.:





January 2, 2019

Paget Warner
President
Brandon Street Community Development Project
495 Summerpark Crescent
Pickering, ON L1V 7A8

BN: 89301 1965RR0001
File #: 0908269

Dear Paget Warner:

Subject: Audit of Brandon Street Community Development Project

This letter results from the audit of the Brandon Street Community Development Project (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period of January 1, 2015 to December 31, 2016.

On June 13, 2018, you were advised that the CRA had identified specific areas of non-compliance with the provisions of the Income Tax Act and/or its Regulations in the following areas.

AREAS OF NON-COMPLIANCE		
	Issue	Reference
1.	Failure to devote resources to charitable activities and Gifts to non-qualified donees	149.1(1) 149.1(3) 168(1)(b)
2.	Failure to be constituted for exclusively charitable purposes	149.1(3) 168(1)(b)
3.	Failure to maintain adequate books and records and Issuing receipts not in accordance with the Act and/or its Regulations	168(1)(d) 168(1)(e) 188.2(2)(a) 230 Reg. 3501 Reg. 5800(1)

This letter describes the areas of non-compliance identified by the CRA relating to the legislative and common law requirements that apply to registered charities, and offers the Organization an opportunity to respond and present additional information. The Organization must comply with the law; if it does not, its registered status may be revoked in the manner described in section 168 of the Act.

General legal principles

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

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

The public benefit requirement involves a two-part test:

- The first part of the test requires the delivery of a **benefit** that is recognizable and capable of being proved, and socially useful. To be recognizable and capable of being proved, a benefit must generally be tangible or objectively measureable. Benefits that are not tangible or objectively measureable must be shown to be valuable or approved by “the common understanding of enlightened opinion for the time being.”³ To be socially useful, a benefit must have public value and a demonstrable impact on the public.⁴ 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

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

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

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

⁴ See, for example, *National Antivivisection Society*, supra note 4 per Lord Wright at p. 49: “The law may well say that quite apart from any question of balancing values, an assumed prospect, or possibility of gain so vague, intangible and remote cannot justly be treated as a benefit to humanity, and that the appellant cannot get into the class of charities at all unless it can establish that benefit.”

purpose, and reasonably achievable in the circumstances.⁵ 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.⁶

- The second part of the test requires the benefit be directed to the **public** or a sufficient section of the public. This means a charity cannot:
 - have an eligible beneficiary group that is negligible in size or restricted based on criteria that are not justified based on the charitable purpose(s); or
 - provide an unacceptable private benefit. Typically, a private benefit is a benefit provided to a person or organization that is not a charitable beneficiary, or to a charitable beneficiary that exceeds the bounds of charity. A private benefit will usually be acceptable if it is incidental, meaning it is necessary, reasonable, and not disproportionate to the resulting public benefit.⁷

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

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

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

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

⁵ See, for example, *In re Grove-Grady, Plowden v. Lawrence*, [1929] 1 Ch. 557 per Russell L.J. at p. 588; *National Anti-Vivisection Society*, supra note 4 per Lord Wright at p. 49; *I.R.C. v. Oldham Training and Enterprise Council*, [1996] B.T.C. 539 (Oldham); and *Pemsel*, supra note 3 at p. 583.

⁶ *National Anti-Vivisection Society*, supra note 4 per Lord Wright at p. 49. See also, for example, *In re Shaw decd.*, [1957] 1WLR 729; and *Gilmore*, supra note 4 per Lord Simonds at pp. 446-447.

⁷ See CRA Policy Statement CPS-024, *Guidelines for Registering a Charity: Meeting the Public Benefit Test* for more information about public benefit.

⁸ A “qualified donee” means a donee described in any of paragraphs 110.1(1)(a) and (b) and the definitions “total charitable gifts” and “total Crown gifts” in subsection 118.1. As per subsection 149.1(6)(b), a charitable organization shall be considered to be devoting its resources to charitable activities carried on by it to the extent that, in any taxation year, it disburses not more than 50% of its income for that year to qualified donees.

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

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,¹⁰ and are actually implemented. A charity must record all steps taken to exercise direction and control as part of its books and 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.

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

Background

The Organization was registered on January 1, 1992, as a public foundation with the following purposes;

The purpose of the Organization is as follows:

- The establishment and maintenance of a community organization for the purposes of:
- (a) developing and fostering community spirit;
 - (b) promoting organized athletics, arts, recreation, education, civic emergency, social service, and other community endeavours;
 - (c) establishing and maintaining a community home;
 - (d) promoting adult educational, recreational and athletic facilities and equipment for benefit to the community; and such other complementary purposes not inconsistent with these objects.

While we recognize that the Organization's purpose is that with which it was originally registered, 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 year ended 2016 indicates the Organizations current activities are;

- Assisting youth in pursuing jazz education [education and bursary] leadership, mentorship and financial literacy skills - Rites of Passage education; and
- Youth trades and skills development -Adult computer skills and business development plans and financial investment counselling.

¹⁰ See, for example, *The Canadian Committee for the Tel Aviv Foundation v. Her Majesty the Queen*, 2002 FCA 72 (*Canadian Committee for the Tel Aviv Foundation*) at para. 30.

Previous non-compliance

An audit of the 2007 and 2008 fiscal years was completed on February 16, 2011. It resulted in a Compliance Agreement. The Compliance Agreement was signed on March 10, 2011, by the president of the Organization, Paget Warner.

By signing the Compliance Agreement, the Organization indicated that it wanted to rectify all identified areas of non-compliance and would implement all corrective measures as outlined. Further, by signing the Compliance Agreement, the Organization certified that it read, understood, and agreed to, the terms of the Compliance Agreement. The Organization further acknowledged that should it fail to implement all corrective measures in accordance with the terms of the Compliance Agreement, the Minister of National Revenue (the Minister) may apply penalties and suspensions provided for in sections 188.1 and/or 188.2 of the Act, which include suspension of the Organization's authority to issue official receipts and suspension of its status as a "qualified donee". The Minister may, by registered mail, also give notice that the Minister proposes to revoke the registration of the Organization by issuing a notice of intention to revoke in the manner described in subsection 168(1) of the Act.

The March 10, 2011 Compliance Agreement addressed the following areas of non-compliance:

1. Failure to maintain proper books and records
 - There was no 2007 general ledger.
 - Tax receipted donations reported on the T3010 return did not reconcile to the actual receipts on hand.
 - Total deposits and expenditures reported on the T3010 returns did not reconcile to the books and records.
 - Bank deposit book information was not maintained.
2. Lack of direction and control over the use of the Organization's resources
 - There were no agency/activity related agreements in place.
 - There was a lack of documentation provided to substantiate the Organization's control over funds paid to the [REDACTED]
3. Failure to file an information return as and when required by the Act and/or its Regulations
 - There were errors and omissions found on the T3010 information returns filed.
4. Issuing receipts not in accordance with the Act
 - The official donation receipts issued were not in compliance with Regulation 3501 of the Act and IT-110R3 as they did not contain the web address of www.cra.arc.gc.ca/charities.
 - Official donation receipts were issued for services rendered.
 - All official donation receipts were not accounted for.

5. Failure to issue T4/T4A slips

- The audit revealed that the Organization did not prepare and issue T4A statements for music scholarships provided.

Identified areas of non-compliance

1. Failure to devote resources to charitable activities and Gifts to non-qualified donees

A charitable activity is one that directly furthers a charitable purpose - which requires a clear relationship and link between the activity and the purpose it purports to further. The Act permits public foundations to either make gifts to other organizations that are qualified donees or to carry on their own activities. In the case of making a gift, paragraph 149.1(3)(b.1) provides that a public foundation may be revoked if it makes a gift other than to a qualified donee or in the course of charitable activities carried on by it.¹¹ A "qualified donee" means a donee defined in subsection 149.1(1). In summary, a public foundation may carry on its own charitable activities, it may make gifts to qualified donees or, it may make a gift in the course of charitable activities carried on by it.

Audit Findings

During the course of our audit it was determined that the Organization had not devoted resources to activities that would further charitable purposes. The audit showed the following:

1. Minimal books and records were provided during the course of the audit. As outlined in Section 3 below, in the 2015 fiscal year, 1.5% of expenses were verified by source documents, and in the 2016 fiscal year, 3.75% of expenses were verified by source documents. A more complete discussion of our concerns with the Organization's books and records appears below.
2. As per the president, Paget Warner, during the audit period, there were no active volunteers, no charitable work taking place, no involvement by the current board of directors, and the charity website was not being maintained.
3. During the period under audit, the Organization was renting parts of its farm property [REDACTED] No lease agreements were provided.
4. Minutes of the board meetings discuss the main goal of how to have the Organization's assets generate enough regular funds to pay for themselves, renovation and readiness of the farm house in order to create a bed and breakfast,

¹¹ This provision is retroactive to December 20, 2002, and covers the period under audit. <http://www.fin.gc.ca/drlég-apl/nwmm-amvm-1012n-05-eng.asp>, see Clause 308.

new approaches for generating income through the rental of the lodge and a [REDACTED] ad to be drafted to find a new tenant.¹²

5. In the 2015 and 2016 fiscal years, the Organization gifted \$12,500 and \$12,000 to the 100 Strong Foundation, a non-profit organization (NPO).¹³ The NPO is not a qualified donee. These disbursements are considered to be gifts made to a non-qualified donee.

Given the lack of information and supporting documentation, it was not possible to verify that any of the Organization's resources were devoted to conducting charitable activities such as, making gifts to other organizations that are qualified donees or to carrying on its own charitable activities. Rather, the Organization made gifts to a non-qualified donee which, is in contravention of the Act.

For these reasons, it appears there are grounds for the revocation of the charitable status of the Organization under paragraphs 149.1(3) and 168(1)(b) of the Act.

2. Failure to be constituted for exclusively charitable purposes

To be registered as a charity under the Act, Canadian law requires that an organization's purposes be exclusively charitable, and define the scope of the activities that can be engaged in by the organization.¹⁴

Audit Findings

As outlined above, given the overall lack of information and supporting documentation, it was not possible to verify that any of the Organization's resources were used to conduct its own charitable activities or to gift to qualified donees and thereby working to further a charitable purpose. As such, the Organization is not complying with the Act as it has not shown that it is devoting its resources to activities that further exclusively charitable purposes. When a charity's resources are not furthering exclusively charitable purposes, the charity is no longer meeting the requirements for registration under the Act.

For this reason, it is our position there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

3. Failure to maintain adequate books and records and Failure to issue receipts in Accordance with the Act

¹² Meeting Minutes December 1, 2016, Meeting Minutes dated October 29, 2018 and, Meeting Minutes November 16, 2018.

¹³ Field Visit Interview May 29, 2018 and cancelled cheques for fiscal years 2015 and 2016.

¹⁴ See *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10 at para 158; *Travel Just v Canada Revenue Agency*, 2006 FCA 343 at para 8, [2007] 1 CTC 294.

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;¹⁵
- 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;¹⁶ 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.¹⁷

Audit Findings

The audit found the following:

¹⁵ See *Canadian Committee for the Tel Aviv Foundation*, 2002 FCA 72 at paras 26-27, [2002] 2 CTC 93.

¹⁶ *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.

¹⁷ See *Prescient Foundation v MNR*, 2013 FCA 120 at para 51, [2013] FCJ no 512.

- There was not adequate documentation to show that internal controls were in place. There was no evidence of the segregation of duties; adequate authorization of transactions, adequate access restriction to resources and records of the Organization, and the operations of the Organization were conducted solely by Paget Warner, with no oversight by the board of directors.
- The purported 2015 and 2016 \$10,000 loan payable could not be substantiated and was not recorded in the general ledger. There was no documentation in the books and records to support the loan, and no loan agreement. As per the Organization's accountant, [REDACTED] \$10,000 is owed to the president, Paget Warner, for funds loaned to the Organization. As per discussions with Paget Warner, he did not loan funds to the Organization in the amount of \$10,000.
- The mortgage payable amount of \$169,377 reported in the 2015 and 2016 fiscal year's financial statements could not be substantiated. There was no mortgage amortization schedule or CMHC statements provided to support principal repayment and the year-end balance owing. As per bank account statements, the monthly mortgage payment was \$1,701.50. The accountant, [REDACTED] advised that no entry was made to the liability account as the payment was almost all interest. The president, Paget Warner, said he did not receive year-end statements from CMHC and did not obtain them for the audit.
- The total amount of tax-receipted donations reported on line 4500 of Form T3010 did not reconcile to the donation receipts on hand.

	<u>2015</u>	<u>2016</u>
Tax-receipted gifts- line 4500	\$48,479	\$21,665
Donations receipts submitted for audit	<u>\$37,110</u>	<u>\$15,700</u>
Difference	<u>\$11,769</u>	<u>\$ 5,965</u>

The difference was not explained by the Organization.

- Official donation receipts were issued incorrectly. In each of the 2015 and 2016 fiscal years, a \$6000 donation receipt was issued for services rendered; cut lawns and farm repairs.
2015 fiscal year, receipt #1228
2016 fiscal year, receipt #1239
- Monthly bank reconciliations were not performed.
- The total revenue reported could not be verified due to the lack of books and records to support the source of funds deposited to the bank accounts.
- 2015 fiscal year - \$51,697 of bank deposits could not be verified due to the lack of books and records.
- 2016 fiscal year - \$14,603 of bank deposits could not be verified due to the lack of books and records

- There are no signed lease agreements in the audit period, and no records to confirm the actual amount of rent(s) received from the three tenants renting at the (farm) property [REDACTED]
- [REDACTED] account statements were not maintained to verify revenue received and deposited to the bank account. The president, Paget Warner, advised he does not have the necessary account information and password to log into the [REDACTED] account.
- In the 2015 and 2016 fiscal years, there was a lack of source documents available to verify the expense claims made. CRA cannot conclude that the resources of the Organization were used to further the charitable activities (if any) of the Organization.

2015 Review - 1.65% of the expenses were verified

Total dollar value of 6 [REDACTED] invoices submitted for the audit	<u>\$1,080</u>
Total expenses as per the T3010 return	<u>\$65,286</u>

2016 Review - 3.75% of the expenses were verified

Total dollar value of invoices submitted for the audit	<u>\$1,875</u>
Total expenses as per the T3010 return	<u>\$49,989</u>

The Organization is in contravention of section 230(2) and Regulation 5800(1) of the Act, which includes retention of all source documents.

We found that the Organization did not comply with the Corrective Measures outlined in the Compliance Agreement it signed on March 10, 2011, as, maintaining proper books and records in accordance with the Act was one of the corrective measures that it agreed to follow. This demonstrates repeated serious non-compliance.

Further, it is our position that the Organization has failed to comply with the Act as it applies to the issuance of official donation receipts. Specifically, the total amount of tax-receipted donations reported on line 4500 of Form T3010, for both fiscal years under audit, did not reconcile with the donation receipts on hand. The audit also showed that the Organization issued receipts for gifts of services. Both issues were addressed in the March 10, 2011 Compliance Agreement. This is also a demonstration of repeated non-compliance.

It is our position that there are grounds to revoke the Organization's registration as a charity under paragraph 168(1)(d) of the Act, as it issued official donation receipts for services rendered which is not in accordance with the Act.

It is also our position that there are grounds to revoke the Organization's registration as a charity under paragraph 168(1)(e) of the Act, because it failed to comply with the requirements of subsection 230(2) of the Act. It should be noted that under paragraph 188.2(2)(a) a qualified donee can also have its receipting privileges suspended for this same contravention of the requirements of subsection 230(2) of the Act, however, due to the serious nature and repeated demonstration of non-compliance with respect to maintaining proper books and records, we are proposing to revoke the Organization's registered status.

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, the Director General of the Charities Directorate will decide on the appropriate course of action. The possible actions include:

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

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

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

Yours sincerely,



Karen Lockridge
Audit Division

Kingston Tax Services Office

Telephone: 613 541-7440

Fax: 613 541-7161

Address: 102 – 1475 John Counter Blvd.,
Kingston ON K7M 0E6

Internet: www.cra-arc.gc.ca/tax/charities/menu-e.html

c.c.: Floyd Wilson, Treasurer



Donna Miller, Secretary



VIA FAX

January 29, 2019

Canada Revenue Agency
Audit Division-Kingston Tax Services Office
102-1475 John Counter Blvd.
Kingston ON
K7M0E6

ATTENTION: Karen Lockridge

Dear Ms. Lockridge:


RE: BRANDON STREET COMMUNITY DEVELOPMENT PROJECT
File. # 0908269

BN: 893011965 RR 0001

We are writing this letter on behalf of our client and we are in receipt of your letter dated; JANUARY 2, 2019. I have reviewed your findings of your examination and your position that there are grounds to revoke the Brandon Street Community Development Project's registration (BRANDON) as a charity under paragraph 168(1)(d) of the Act. Specifically, the areas of Non-Compliance are:

1. Failure to devote resources to charitable activities and Gifts to non-qualified donees;
2. Failure to be constituted for exclusively charitable purposes; and
3. Failure to maintain adequate books and records and Issuing receipts not in accordance with the Act and/or its Regulations.

I have reviewed the examination and the circumstances not only with Mr. Paget Warner, the President, but with members of the board of BRANDON. It is very clear to me that this was not the intention of anyone at BRANDON, to contravene the Act.

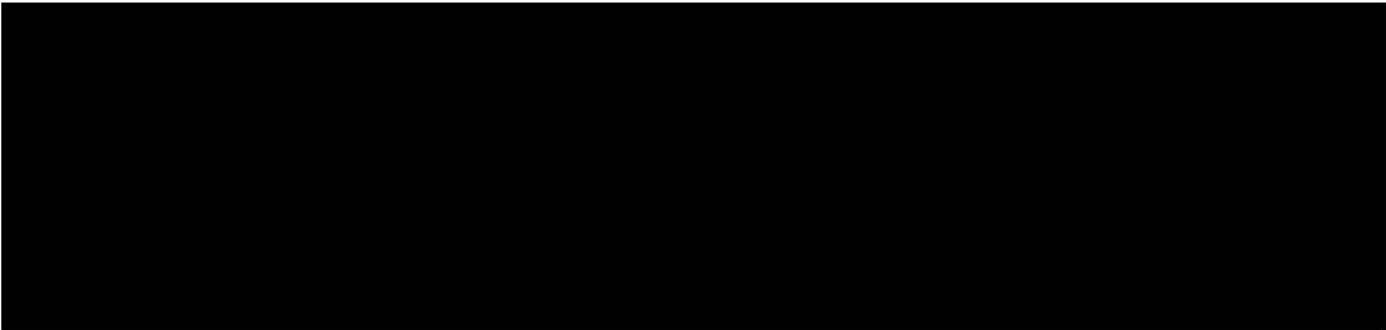


In fact, I have scheduled a meeting with the entire Board of BRANDON, as this matter is of extreme importance to resolve in its entirety, immediately and in future. The Board of BRANDON is fully committed of NO further occurrences to occur now or in future.

I have a commitment from BRANDON and we are committed to the following:

1. All matters and decision must only be approved by the Board of BRANDON and NOT by Paget Warner alone;
2. Within 30 days to create official policies and procedures;
3. These Policies and Procedures are to be enacted according to the Act and/or its Regulations;
4. All decisions will be made according to the Policies and Procedures and by the Board in its entirety; and
5. The books and records, already in place, will be available for your review in 30 days, since I would like to have an opportunity for my office to have a full examination.

I would like to apologize, on behalf of the Board of BRANDON. All though, the books and records should have been fully ready and according to the Act, upon your examination, for some unknown reason, the bookkeeper did not have them fully available for you. I do not know where this extends from or for what reason this occurred. Perhaps, BRANDON relied on them to prepare the daily bookkeeping and relied upon them to assist you with your examination. Perhaps, the bookkeeper and BRANDON did not fully comprehend the seriousness of your examination and believed that each of them had all the necessary documentation for an audit. However, it was clear during my initial findings, that the relationship between the bookkeeper and BRANDON was a "sad state of affairs." Perhaps, the bookkeeper, did not fully understand the seriousness of the situation or simply there was no communication, the reason is unknown.





I understand that ultimately it is the responsibility of the entire Board and I have made it very CLEAR to them of the seriousness of this matter. BRANDON understands that the relationship between the bookkeepers must be always maintained. Although the Board having demonstrated some knowledge of accounting procedures, the new policies and procedures will be addressing this matter, specifically on the matter of Internal Controls, entire Board oversight, retention of source documents and the Regulations of the Act. However, I have located the books and records and have found them to be fairly adequate according to the Act. However, I do require 30 days to fully examine them.

I have fully explained to the Board of BRANDON, that since the registered charity status confers special tax treatment to the charity, the Board must always act in the interests of the public by protecting a degree of public confidence in the charity and their charity work as well as by protecting the potential taxpayer donors.

I have also reviewed with the Board of BRANDON the matter of failure to devote resources to charitable activities and the failure to be constituted for exclusively charitable purposes. The Board of BRANDON has committed itself to provide exclusively charitable purposes. It was never the INTENTION of BRANDON not to provide this. They always believed this to be true. I also require 30 days to provide you the evidence of their INTENTION and how this important element of this organization will be maintained.

One should consider a 3 part test when considering suspending an organization;

1. **SERIOUSNESS OF THE MATTER.** In this case the matter is neither vexatious nor frivolous. It is a serious matter;
 2. **IRREPARABLE HARM:** "Irreparable" refers to the nature of the harm suffered rather than its magnitude. It is harm that cannot be quantified in monetary terms.
 3. **BALANCE OF INCONVENIENCE:** The third test is who would suffer greater harm. In this matter the question is will there be more irreparable harm to BRANDON and the public if it provides the charity to or will the public donees suffer more
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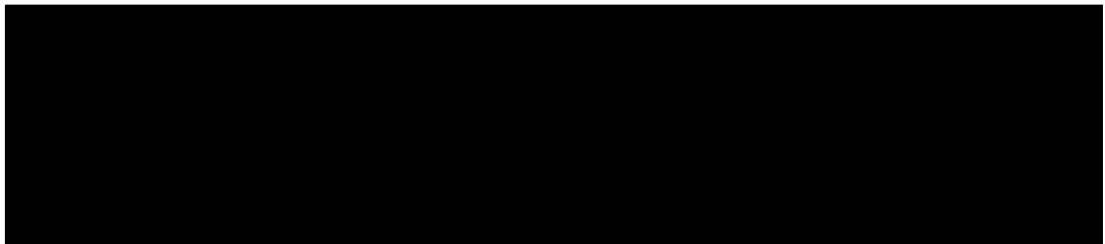



irreparable harm. When analysing BRANDON, it's size of the charity and the public it helps, it is in my opinion, that it is the public whom receives the charity that would suffer more irreparable harm. There would be no harm caused to the public donees as BRANDON has not committed any malicious public mistrust of public donations.

Once again, I apologize on behalf of the Board of BRANDON. We are pleading with you to have an extension of 30 days from today to prepare the new Policies and Procedures, provide you an opportunity to review and examine the books and records and to provide you our examination on BRANDON's exclusivity of charitable purposes. The Board of BRANDON will demonstrate that it is just and equitable to not suspend the organization.

The client has signed an RC59 authorizing us to be their representative. If you require any further authorization, please let us know. If you require further information, please feel free to contact this office anytime.

Yours very truly,



Brandon Street Community Development Project

Comments on Representations

In our administrative fairness letter (AFL) dated January 2, 2019, we explained that the audit conducted by the Canada Revenue Agency (CRA), for the period from January 1, 2015 to December 31, 2016, identified that the Brandon Street Community Development Project (the Organization) is not operating in compliance with the provisions of the Income Tax Act in the following areas:

1. Failure to devote resources to charitable activities and gifts to non-qualified donees;
2. It is not constituted and operated for exclusively charitable purposes;
3. Failure to maintain adequate books and records and issuing receipts not in accordance with the Act and/or its Regulations.

This is the Organization's second audit, in which we found that the same or similar issues of non-compliance remain present. The prior audit was conducted for the fiscal periods from January 1, 2007 to December 31, 2008.

During the previous audit, the CRA provided the Organization with the opportunity to address the identified areas of non-compliance by entering into a compliance agreement. The terms and corrective measures of the compliance agreement were agreed to and signed by Mr. Paget Warner, the Organization's President, on March 10, 2011. Mr. Warner was the President of the Organization for both audits and, as such, he and the Organization were fully aware of the issues of non-compliance and respective corrective measures that were required for the Organization to become compliant with the requirements of the Act.

The current audit found that the Organization did not meet all of the corrective measures as outlined in the compliance agreement. Despite its previous assurances in this regard, the audit found continuous and repeated non-compliance with the requirements of the Act. The Organization's continued contravention of the rules and regulations constitute grounds for the revocation of its charitable status.

We have reviewed the Organization's representations dated January 29, 2019, and we maintain our position that the issues identified during the audit represent a serious and repeat breach of the requirements of the Act and that, as a result, the Organization's registration as a charity should be revoked.

The basis for our position is further described in detail below, including:

- A summary of the issues raised in our AFL dated January 2, 2019;
- The Organization's representations dated January 29, 2019; and
- The CRA's response to the representations.

1. Failure to devote resources to charitable activities and gifts to non-qualified donees

The audit found that the Organization had not devoted resources to activities that would further charitable purposes. As outlined in section 3 below, minimal books and records were provided during the course of the audit. As a result, only 1.5% and 3.75% of total expenses could be verified by source documents for the 2015 and 2016 fiscal years, respectively. The minimal supporting documents that were made available during the audit did not demonstrate that the expenses incurred were as a result of conducting charitable activities in furtherance of exclusively charitable purposes.

Further, the minutes that were provided for the board meetings discuss the Organization's desire to have its assets generate regular funds and to find new approaches for generating income through the rental of its property.¹ The minutes did not address any other ongoing or planned charitable programming nor was it clear that resources devoted to such potential income generating activities would be in furtherance of exclusively charitable purposes.

The audit also found that the Organization gifted \$12,500 and \$12,000 to the 100 Strong Foundation, a non-profit organization (NPO), in the 2015 and 2016 fiscal years, respectively.² As this NPO is not a qualified donee, these disbursements are considered to be gifts made to a non-qualified donee.

Due to the lack of information and supporting documentation provided by the Organization, we were unable to verify that its resources were devoted to conducting charitable activities. Rather, the audit showed that the Organization made gifts to a non-qualified donee, which is in contravention of the Act.

Organization's response:

The Organization's representations dated January 29, 2019, stated that the board "has committed itself to provide exclusively charitable purposes". Further, the representations indicated that the Organization has committed to enacting new policies and procedures to address internal controls, board oversight, retention of source documents and abiding by the Regulations of the Act.

CRA's response:

The Organization's representations did not alleviate our concerns regarding its devotion of resources, as it did not provide additional information or documentation regarding any of its previous, planned or ongoing programming, such as detailed program descriptions, contractual agreements, promotional materials, reports, bank statements, and invoices. The Organization did not provide any copies of the new policies or procedures to address internal controls, board oversight, retention of source documents or the Regulations of the Act, as specified in its representations. Further, the Organization did not address how its income generating activities would work to achieve exclusively charitable purposes. As a result, we were unable to verify that

¹ Meeting Minutes December 1, 2016. Meeting Minutes dated October 29, 2018 and. Meeting Minutes November 16, 2018.

² Field Visit Interview May 29, 2018 and cancelled cheques for fiscal years 2015 and 2016.

its resources either have been or will be devoted to conducting charitable activities in furtherance of exclusively charitable purposes.

In addition, the Organization did not provide any information or documentation regarding the disbursements it made to the NPO, which is a non-qualified donee. Making gifts to a non-qualified donee is in contravention of subsection 149.1(3) of the Act. As a result, our concerns regarding gifts made to a non-qualified donee have not been alleviated.

For the reasons stated above, the Organization's representations have not alleviated our concerns regarding the devotion of its resources to charitable activities or to gifting to non-qualified donees. As such, the Organization has failed to meet the requirements of subsection 149.1(1) of the Act and our position remains that there are grounds for revocation of the charitable status of the Organization under subsection 149.1(3) and paragraph 168(1)(b) of the Act.

2. It is not constituted and operated for exclusively charitable purposes

Based on the overall lack of information and supporting documentation provided by the Organization during the audit, we were unable to verify that its resources were used to conduct its own charitable activities or to gift to qualified donees. As such the Organization has not shown that it is devoting its resources to activities through which it actively furthers any charitable purposes, which is a basic requirement of charitable registration.

Organization's response:

In its representations, the Organization stated that the Board "has committed itself to provide exclusively charitable purposes", and further explained that it was never the intention of the Organization to not provide this.

CRA's response:

The Organization's representations did not contain any additional information or documentation regarding how it has or plans to further any charitable purposes. When a charity's resources are not furthering exclusively charitable purposes, the charity is no longer meeting the requirements for registration under the Act. As such, the Organization's response has not alleviated our concern that it is not constituted and operated for exclusively charitable purposes.

As a result, our position remains that the Organization does not further exclusively charitable purposes, and has therefore failed to meet the requirements of subsection 149.1(1) of the Act. For this reason, it is our position that there are grounds for revocation of the charitable status of the Organization under subsection 149.1(3) and paragraph 168(1)(b) of the Act.

3. Failure to maintain adequate books and records and issuing receipts not in accordance with the Act and/or its Regulations

The audit found that the Organization failed to maintain adequate books and records with respect to the following facets of its operations:

- There was no documentation that demonstrated the Organization had any internal controls in place. For example, there was no evidence of segregation of duties, adequate authorization of transactions, and adequate access restriction to the Organization's resources and records.
- There was minimal documentation provided to verify the Organization's expenses and revenues. For example, there was no documentation in the books and records to support the \$10,000 loan payable and the \$169,377 mortgage payable reported on the Organization's financial statements, the rent received from its three tenants, or the total amount of tax-receipted donations as reported on line 4500 of the T3010 information return.

Furthermore, official donation receipts were issued incorrectly. For example, in the 2015 and 2016 fiscal years, a \$6000 donation receipt was issued for gifts of services, lawn cutting and farm repair services rendered, which is beyond the scope of the receipting rules for registered charities.

Organization's response:

In its representations, the Organization stated that "[a]ll though [sic], the books and records should have been fully ready and according to the Act, upon your examination, for some unknown reason, the bookkeeper did not have them fully available for you." The Organization further explained that it relied on the daily bookkeeping performed by the bookkeeper and therefore, it relied on the bookkeeper to assist with the audit. The Organization stated that it was possible that the bookkeeper did not fully understand the seriousness of the situation or that there was a lack of communication, and advised that it would have new policies and procedures in place to address internal controls, board oversight, retention of source documents and the Regulations of the Act.

CRA's response:

The Organization's representations did not alleviate our concerns with respect to maintaining adequate books and records and issuance of official donation receipts for services rendered, nor did it provide any documentation to verify the accuracy of its record keeping or its receipting practices. Moreover, the Organization did not adhere to the terms of the compliance agreement signed on March 4, 2011, with respect to maintaining proper books and records, and issuing official donation receipts in accordance with the Act, which constitutes material and repeat non-compliance.

It is the Organization's responsibility to ensure that the information contained in its books and records, including the T3010 and financial statements, are factual and complete, thereby meeting the requirements of the Act. The books and records must allow the CRA to verify revenues including all charitable donations received, that resources are spent on charitable programs, and that the charity's purposes and activities continue to be charitable. If a charity hires a third party

to maintain its records, such as a bookkeeper or accountant, the charity is still responsible for meeting all requirements. Furthermore, the charity is responsible for making all of its books and records available to CRA officials.³ Though the Organization stated in its response to our AFL that it had relied on the bookkeeper to provide us with the books and records, the Organization did not provide any additional information or documentation to address the concerns identified in the AFL.

As stated in section one above, the Organization provided source documents for only 1.5% and 3.75% of total expenses for the 2015 and 2016 fiscal years, respectively. However, the minimal supporting documents provided during the audit did not demonstrate that the expenses incurred were as a result of conducting charitable activities in furtherance of exclusively charitable purposes.

As outlined in our AFL, failure to maintain adequate books and records in accordance with the requirements of the Act is itself sufficient reason for the CRA to revoke an organization's charitable registration.⁴ The policy of the CRA relating to the maintenance of books and records, and books of account, is based on several judicial determinations.

The courts have established that:

- the onus is on the registered charity to provide that its charitable status should not be revoked.⁵
- a registered charity must maintain, and make available to the CRA at the time of an audit, meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required books and records at some later date.⁶
- paragraph 168(1)(e) of the Act provides that the Minister may propose to revoke registration of a charitable organization if it fails to comply with, or contravenes, any of sections 230 to 231.5 of the Act, and the Federal Court of Appeal has determined that non-compliance with section 230(2) of the Act is a proper basis upon which the Minister may issue such a notice.⁷
- The requirement to keep proper books and records is foundational and non-compliance with this requirement is sufficient to justify revocation.⁸

Furthermore, the Federal Court of Appeal has held that there exists a serious obligation for registered charities to maintain adequate books and records,⁹ and that material or significant, and/or repeated, non-compliance with the requirements of subsection 230(2) of the Act

³ <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/books-records.html>

⁴ *College Rabbinique de Montreal Oir Hachaim D'Tash v. Canada* (Minister of Customs and Revenue Agency) 2004 FCA 101, and *Ark Angel Foundation v. Canada* (National Revenue) 2019 FCA 21

⁵ *The Canadian Committee for the Tel Aviv Foundation v. Canada* 2002 FCA 72

⁶ *ibid.* See also *The Lord's Evangelical Church of Deliverance and Prayer of Toronto v. Canada* 2004 FCA 397

⁷ *Opportunities for the Disabled Foundation v. Canada* (National Revenue) 2016 FCA 94; and *Ark Angel Foundation v. Canada* (National Revenue) 2019 FCA 21

⁸ *Jaamia Al Uloom Al Islamiyyah Ontario v. Canada* (National Revenue) 2016 FCA 49, paragraph 15; *Ark Angel Foundation v. Canada* (National Revenue) 2019 FCA 21, paragraph 43; and *Many Mansions Spiritual Center, Inc. v. Canada* (National Revenue) 2019 FCA 189, paragraph 10

⁹ *Humane Society of Canada for the Protection of Animals and the Environment v. Canada* (National Revenue) 2015 FCA 178, paragraph 80

constitutes sufficient grounds for revocation.¹⁰

As a result, our position remains that the Organization does not meet the requirements of subsection 230(2) of the Act. For the reasons indicated above, it is our position that there are grounds for revocation of the charitable status of the Organization under paragraphs 168(1)(d) and 168(1)(e) of the Act.

Conclusion

Consequently, for all of the reasons explained above, it is the CRA's position that the Organization has failed to meet the requirements for registration as a charitable foundation as outlined in subsection 149.1(1) of the Act. As such, the Organization should have its registration revoked pursuant to subsections 168(1) and 149.1(3) of the Act.

¹⁰ Ark Angel Foundation v. Canada (National Revenue) 2019 FCA 21, paragraph 43

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

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,

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

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

$$A - B$$

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 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 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.