



PROTECTED B

May 16, 2024

REGISTERED MAIL

Murray Engelking
Director
Engelking Foundation
4311 Savaryn Drive SW
Edmonton AB T6X 2E8

BN: 85083 8301 RR0001
Case number: 51290541

Dear Murray Engelking :

Subject: Notice of intention to revoke Engelking Foundation

We are writing with respect to our letter dated March 10, 2023 (copy enclosed), in which Engelking Foundation (the Organization) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from July 1, 2015, to June 30, 2017. Specifically, the Organization was asked to explain why its registration should not be revoked in accordance with subsection 168(1) of the *Income Tax Act*.

We have reviewed and considered your written response dated April 19, 2023. 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 below.

Failure to be constituted and operated exclusively for charitable purposes & Failure to devote resources to charitable activities carried on by the Organization itself

The audit found that the Organization's primary activity was to operate as a vehicle for its directors to engage in a series of circular, non-arm's length transactions.

On November 3, 2016:

- Murray Engelking became a director of the Organization;
- The Organization entered into an agreement to purchase shares from a corporation controlled by another director (Robert Tennant) of the Organization for \$225,000 (10,000 shares at \$22.50/share);
- The Organization issued a donation receipt to Murray Engelking for \$225,000; and
- The Organization agreed to sell the purchased shares to Murray Engelking for \$225,000. The consideration received for this was a promissory note.

Then, on June 30, 2017, the Organization purchased these shares back from Murray Engelking at \$35/share, resulting in it paying \$125,000 more than what the shares were purchased for, a 55.6% return for Murray Engelking. This led to the Organization recording a debt owing to Murray Engelking of \$121,930. The Organization has been

unable to provide third party documentation to support the value of these shares for any of the transaction dates.

By participating in these circular transactions for the benefit of parties not dealing at arm's length, the Organization has demonstrated it was not operated for exclusively charitable purposes nor did it devote resources to charitable activities carried on by the Organization itself. Instead, it was operated for the benefit of its directors, which constitutes a serious breach of the fundamental requirements for charitable registration.

Although outside of the audit period under review, we note that two of the Organization's directors are now ineligible individuals. Robert Tennant has served on the board of directors for nine charities that have been revoked for cause over the last three years, four of which included transactions similar to those that occurred during the audit period under review. John Rooney served as a director alongside Robert Tennant on eight of the same nine charities.

Failure to issue donation receipts in accordance with the Act and/or its regulations

As noted above, the Organization issued a donation receipt to its director Murray Engelking for \$225,000 on November 3, 2016. The only documentation provided in support of this was a copy of a cheque drawn on a lawyer's trust account for the original purchase of shares from Robert Tennant's corporation. This does not demonstrate that there was a transfer of property to the Organization, a requirement necessary to issue an official donation receipt.

As such, the Organization failed to provide adequate information and documentation to support the eligibility of this donation receipt.

Failure to maintain adequate books and records

The audit found that the Organization did not provide:

- Meeting minutes or other documentation demonstrating substantive discussions amongst the directors (and their decisions) of the Organization in regard to its investments;
- Documentation to support the values used in the share purchase and disposition transactions discussed above; and
- Documentation to substantiate that an eligible gift had been made to the Organization for which it issued a receipt.

Documenting decisions of board members, along with the discussions surrounding these decisions, is useful in demonstrating an organization is operating to further its charitable purposes. The absence of such documentation leaves the CRA without a crucial tool to evaluate whether an organization operates with appropriate direction, processes and oversight to ensure its activities and expenditures are intended to be charitable in nature.

In response to the audit findings, you provided a faxed letter, dated April 19, 2023. In it, you stated that the non-compliance described in our March 10, 2023, letter was

considered by an audit team all of whom were satisfied that the Organization was operating in compliance with the requirements of the Act. However, you did not supply any specifics or documentation to support this; nor did you substantiate how this assertion specifically resolves the areas of non-compliance identified in this audit. You also noted that "this matter is presently before the Federal Court of Appeal in Court File No. A-78-23 between the Ron W. Cameron Foundation and the Minister of National Revenue." However, the Organization did not offer any explanation as to how said case is pertinent to or might mitigate the non-compliance identified during the audit.

As such, the Organization failed to maintain and provide adequate books and records, in accordance with the Act, to demonstrate that it devoted its resources in furtherance of charitable purposes, or to demonstrate adequate internal governance to safeguard its charitable resources.

Therefore, as stated above, the Organization's representations have not alleviated our concerns with respect to its non-compliance with the requirements of the Act for registration as a charity, as set out in our letter of March 10, 2023.

Conclusion

The audit by the CRA found that the primary activity of the Organization was to operate as a vehicle for its directors to engage in a series of intentional circular non-arm's length transactions designed for their financial benefit. Furthermore, the audit determined that the Organization did not comply with the requirements set out in the Act. In particular, the Organization was not constituted and operated exclusively for charitable purposes, failed to issue donation receipts in accordance with the Act and/or its Regulations, and failed to maintain adequate books and records. This non-compliance constitutes a serious breach of the requirements for registration. For these reasons, it is our position that the Organization no longer meets the requirements for charitable registration.

Consequently, for the reasons mentioned in our letter dated March 10, 2023, and pursuant to subsection 168(1) of the Act, we hereby notify you of our intention to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, the revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

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

Business number	Name
850838301RR0001	Engelking Foundation Edmonton AB

As noted in our letter dated March 10, 2023, we informed you that the CRA may revoke the charitable registration of the Organization. We further informed you

that the CRA may, after the expiration of 30 days from the date of the mailing of the notice, publish a copy of the notice in the *Canada Gazette*, and on the date of that publication, the Organization's registration would be revoked.

After considering the Organization's response, this letter is to inform you that the CRA has decided to issue a notice of intention to revoke the Organization's registration and will publish a copy of the notice in the *Canada Gazette* immediately after the expiration of **30 days** from the date of mailing of this notice pursuant to paragraph 168(2)(b) of the Act. It was found that the Organization demonstrated serious non-compliance with the Act and was not operated for exclusively charitable purposes.

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

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

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

The Organization has the option of filing an application with the Federal Court of Appeal (FCA), as indicated in paragraph 168(2)(b) of the Act, to seek an order staying publication of the notice of revocation in the *Canada Gazette*. The FCA, upon reviewing this application, may extend the 30-day period during which the CRA cannot publish a copy of the notice.¹

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

¹ Unless an order from the FCA is issued extending the 30-day period, the Minister may publish the notice of revocation in the *Canada Gazette* after the 30-day period has elapsed.

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 that may result in significant changes in how the Organization calculates its Goods and Services Tax/Harmonized Sales Tax (GST/HST) to be collected, input tax credits, and rebate entitlements. If you have any questions about your GST/HST obligations and entitlements, please go to canada.ca/gst-hst or call GST/HST Rulings at 1-800-959-8287.

Reminder

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

Yours sincerely,

Sharmila P. Khare

Sharmila Khare
Director General
Charities Directorate

Enclosures

- CRA letter dated March 10, 2023
- Organization's representations dated April 19, 2023
- Appendix A, Relevant provisions of the Act

c.c.: Tyler Engelking, Director



March 10, 2023

Murray Engelking, Director
Engelking Foundation
4311 Savaryn Drive SW
Edmonton AB T6X 2E8

BN: 850838301RR0001
File #: 3047043
Case #: 51290541

Dear Murray Engelking:

Subject: Audit of Engelking Foundation

This letter results from the audit of the Engelking Foundation (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from July 1, 2015 to June 30, 2017.

The CRA identified specific areas of non-compliance with the provisions of the Income Tax Act (Act) and its Regulations in the following areas.

AREAS OF NON-COMPLIANCE		
	Issue	Reference
1.	It is not constituted and operated exclusively for charitable purposes	149.1(1), 168(1)(b)
2.	Failed to devote resources to charitable activities carried on by the Organization itself (a) Carrying out non-charitable activities (b) Providing a personal benefit to a proprietor, member, shareholder, trustee, or settlor of the Organization (c) Failing to meet its fiduciary duty	149.1(1), 168(1)(b), 251(1)(c)
3.	Failed to issue donation receipts in accordance with the Act and/or its Regulations	168(1)(d), Regulations 3500 and 3501
4.	Failed to file an information return as and when required by the Act and/or its Regulations	149.1(14), 168(1)(c)
5.	Failed to maintain adequate books and records	168(1)(e), 188.2(2)(a), 230(2), 230(4), 230(4.1)

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 which may be subject to sanctions under the Act. The Organization will also be provided with the opportunity to make representations or present additional information as to why a sanction should not be applied.

Registered charities must comply with the law, failing which penalties and/or suspensions may be applicable pursuant to sections 188.1 and/or 188.2 of the Act. These include suspension of the Organization's authority to issue official receipts and suspension of its status as a "qualified donee". While the purpose of a sanction is to provide an alternative to revocation, notice may still be given of our intention 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 balance of this letter describes the identified areas of non-compliance and the sanctions proposed 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 and operated exclusively for charitable purposes (or objects) and that it devotes its resources to charitable activities carried on by the organization itself in furtherance thereof.¹ To be exclusively charitable, a purpose must fall within one or more of the following four categories, also known as heads of charity², and deliver a public benefit:

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

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

The public benefit requirement involves a two-part test:

- The first part of the test requires the delivery of a **benefit** that is recognizable and capable of being proved, and socially useful. To be recognizable and capable of being proved, a benefit must generally be tangible or objectively measurable.

¹ See subsection 149.1(1) of the Act, which requires that a charitable organization devote all of its resources to "charitable activities carried on by the organization itself" and *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10, 1999 CanLII 704 (SCC) at paras 156-159. A registered charity may also devote resources to activities that, while not charitable in and of themselves, are necessary to accomplish their charitable purposes (such as expenditures on fundraising and administration). However, any resources so devoted must be within acceptable legal parameters and the associated activities must not become ends in and of themselves.

² The Act does not define charity or what is charitable. The exception is subsection 149.1(1) which defines charitable purposes as including "the disbursement of funds to qualified donees." The CRA must therefore rely on the common law definition, which sets out four broad categories of charity. The four broad charitable purpose categories, also known as the four heads of charity, were outlined by Lord Macnaghten in *Commissioners for Special Purposes of the Income Tax v Pemsel*, [1891] AC 531 (PC). The classification approach was explicitly approved of by the Supreme Court of Canada in *Guaranty Trust Co of Canada v Minister of National Revenue*, [1967] SCR 133, and confirmed in *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10, 1999 CanLII 704 (SCC).

- Benefits may be measurable or intangible. Benefits that are not tangible or objectively measurable should be shown to be valuable or approved by the common understanding of enlightened opinion for the time being.³ In most cases, the benefit should be a necessary and reasonably direct result of how the purpose will be achieved.⁴ An assumed prospect or possibility of gain that is vague, indescribable or uncertain, or incapable of proof, cannot be said to provide a charitable benefit.⁵
- The second part of the test requires the benefit be directed to the **public** or a sufficient section of the public. This means a registered charity cannot:
 - have an eligible beneficiary group that is negligible in size, or restricted based on criteria that are not justified based on the charitable purpose(s);
or
 - provide an unacceptable private benefit. Typically, a private benefit is a benefit provided to a person or organization that is not a charitable beneficiary, or to a charitable beneficiary that exceeds the bounds of charity. A private benefit will usually be acceptable if it is incidental, meaning it is necessary, reasonable, and not disproportionate to the resulting public benefit.⁶

The CRA must be satisfied that an organization's activities directly further charitable purposes in a manner permitted under the Act. In making a determination, we are obliged to take into account all relevant information. Accordingly, the current audit encompassed an enquiry into all aspects of the Organization's operations. The fact that some of the areas of non-compliance identified in this letter may, or may not, have been evaluated in preceding audits does not preclude the need for compliance with existing legal requirements. Furthermore, the CRA may take a position that differs from that reached previously based on reconsideration of the pertinent facts and law.⁷

The purposes of the Organization are as follows:

- a) To solicit and receive gifts, bequests, trusts, funds and property and beneficially or as a trustee or agent, to hold, invest, develop, manage, accumulate and administer funds and

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

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

⁵ Co-operative College of Canada v. Saskatchewan (Human Rights Commission), 1975 CanLII 808 (SKCA) at para 19; Vancouver Society of Immigrant and Visible Minority Women v MNR, [1999] 1 SCR 10, 1999 CanLII 704 (SCC) at para 202; For more information about charitable purposes see CRA Guidance CG-019, How to draft purposes for charitable registration at para 19.

⁶ For more information about public benefit, see CRA Policy statement CPS-024, Guidelines for registering a charity: Meeting the public benefit test.

⁷ Canadian Magen David Adom for Israel v MNR, 2002 FCA 323 at para 69.

property for the purpose of disbursing funds and property exclusively to registered charities as well as "qualified donees" under the provisions of the Income Tax Act.

- b) To undertake activities ancillary and incidental to the attainment of the aforementioned charitable purposes.

There have been no changes to the purposes and activities since registration.

Identified areas of non-compliance

1. The Organization is not constituted and operated exclusively for charitable purposes

As indicated in the general legal principles outlined above, 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 in which the organization may engage.⁸ Further, a purpose must fall within one or more of the four categories of charity and deliver a charitable public benefit.

The question of whether an organization is constituted exclusively for charitable purposes cannot be determined solely by reference to its stated purposes, but must take into account the activities in which an organization currently engages. In *Vancouver Society of Immigrant and Visible Minority Women v MNR*, the Supreme Court of Canada stated as follows:

In *Guaranty Trust*, *supra* at p.144, this Court expressed the view that the question of whether an organization was constituted exclusively for charitable purposes cannot be determined solely by reference to the objects and purposes for which it was originally established. It is also necessary to consider the nature of the activities presently carried on by the organization as a potential indicator of whether it has since adopted other purposes. In other words, as Lord Denning put it in *Institution of Mechanical Engineers v Cane*, [1961] A.C. 696 (H.L.), at p. 723, the real question is, "for what purpose is the Society at present instituted? (emphasis in original).⁹

A charitable activity is one that directly furthers a charitable purpose, which requires a clear relationship and link between the activity and the purpose it purports to further. If an activity is, or becomes, a substantial focus of an organization, it may no longer be in furtherance of a stated purpose. Instead, the activity may further, or even form, a separate or collateral purpose. An organization with a collateral non-charitable purpose is ineligible for registration under the Act.

⁸ *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10, 1999 CanLII 704 (SCC) at para 159; *Travel Just v Canada Revenue Agency*, 2006 FCA 343 at para 2.

⁹ *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10, 1999 CanLII 704 (SCC) at para 194, Iacobucci J. See also *AYSA Amateur Youth Soccer Association v Canada (Revenue Agency)*, 2007 SCC 42 at para 42.

Audit findings

During the audit, we noted that the Organization's purpose includes investing money in order to give to qualified donees. While this is an allowable activity, it is not a charitable activity, and as such should be secondary to the Organization's primary charitable activities. However, in our review of the Organization's activities within the audit period, we found its primary activity to be acting as a vehicle for Murray Engelking to invest in high-risk investments with as little impact to his personal finances as possible, rather than for the purpose of devoting resources to charitable activities. We arrived at this position based on the following events uncovered in the audit:

On November 3, 2016, the day that Murray Engelking joined the board of directors of the Organization (formerly known as Soby Foundation), an agreement was put in place for the Organization to acquire 10,000 [REDACTED] Class A shares from [REDACTED] at \$22.50/share for a total consideration of \$225,000.

It is our understanding that the purchase was financed by a donation of \$225,000 from Murray Engelking based on following:

- representations from director Robert Tennant ("Tennant") on January 29, 2019, on the payments of the transactions,
- a copy of the \$225,000 cheque from Murray Engelking payable to [REDACTED] to be drawn on Murray Engelking [REDACTED] trust account. The subject on the cheque is "purchase by Soby Foundation from [REDACTED] and,
- a donation receipt of \$225,000 issued to Murray Engelking.

As the cheque did not clear through the payor's bank, we asked for a confirmation of the proof of payment. To date, we have not received such confirmation.

On the same day, Murray Engelking acquired the 10,000 [REDACTED] shares at \$22.50/share from the Organization with a \$225,000 promissory note at 3.5% interest rate per year. To date, no promissory note has been submitted for our view. We arrived at this determination based on Tennant's representation and an interest accrual schedule of a \$225,000 promissory note.

On June 30, 2017, the Organization purchased the shares back from Murray Engelking for \$350,000 (\$35.00/share) and the promissory note issued by Murray Engelking to the Organization was cancelled. This resulted in an entry of \$121,930 for "amount owing to non-arm's length persons" created as a result of the debt owed to Murray Engelking for the purchase of and investment in the 10,000 [REDACTED] shares that the Organization bought back from Murray Engelking.

After the disposal of the [REDACTED] shares to Murray Engelking on November 3, 2016, a promissory note was received in lieu of payment. Although the note carried 3.5% interest per year, it is not known if the investment was secured and had a fixed repayment date. An investment in and of itself is not a charitable activity. While the purchase of investments is

allowed by registered charities, the charity must also take every precaution to protect its assets against possible loss. In this case, the Organization used \$225,000 to purchase investments while spending only \$5,000 in gifting to a qualified donee during 2017. Also, the investment of \$350,000 in [REDACTED] shares on June 30, 2017, without a formal independent appraisal report created a large debt of \$121,930 to the Organization in less than eight months. This is neither charitable, nor does it constitute sound governance.

Conclusion

In summary, it is our position that the Organization does not devote its resources to charitable activities. Accordingly, it is our position that the Organization has failed to meet the requirements of subsection 149.1(1) of the Act that it devote substantially all its resources to charitable. For this reason, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

2. Failed to devote resources to charitable activities carried on by the Organization itself

(a) Conduct of non-charitable activities

A charitable activity is one that directly furthers a charitable purpose - which requires a clear relationship and link between the activity and the purpose it purports to further. The Act permits private foundations to either make charitable gifts or to carry on their own charitable activities. In the case of making a gift, paragraph 149.1(4)(b.1) provides that a private 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 the foundation itself.¹⁰

The Act defines a charitable foundation at subsection 149.1(1) as “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...”.

The Organization’s formal purpose is “...to disburse funds and property exclusively to registered charities and qualified donees”. At the time of registration, the Organization’s activities were described as “to undertake activities that are ancillary and incidental to the attainment of the aforementioned charitable purpose.”

Audit findings

During the period under audit we found that the Organization had not carried out any charitable activities itself and only expended minimal funds to qualified donees (none in 2016 and \$5,000 in 2017) in furtherance of its charitable purposes. It was found that a variety of transactions had taken place during the audit period among the Organization, Tennant, [REDACTED] and Murray Engelking. These transactions included the transfer, sale and purchase of shares, as well as loans

¹⁰ This provision is retroactive to December 20, 2002, and covers the period under audit. <http://www.fin.gc.ca/drleg-apl/nwmm-amvm-1012n-05-eng.asp>, see Clause 308.

in the form of promissory notes. The majority of these transactions took place without adequate documentation to support them, e.g. share valuation reports. It is not known whether these loans were secured and had stipulated repayment dates.

No evidence has been provided that any of these financial transactions resulted in the direction of resources towards any activities in furtherance of the Organization's charitable purpose. Therefore, the Organization is not meeting the definition of a charitable foundation as found in the Act (mentioned above).

The term charitable is not defined in the Income Tax Act, as such the CRA relies on common law (court decisions) to determine what is charitable at law. 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. A charity that engages in or devotes its resources to the following activities may by placing its registered status in jeopardy:

- gifting to organizations that are not qualified donees
- providing personal benefits (directly or indirectly)
- activities that support or oppose a political party or candidate
- unrelated business activities
- activities that are illegal or contrary to Canadian public policy.

Conclusion

It is our position that the Organization has failed to meet the requirements of subsection 149.1(1) of the Act – “that it is constituted and operated exclusively for charitable purposes...”. As such, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

(b) Providing an undue benefit to a proprietor, member, shareholder, trustee, or settlor of the Organization

General Legislation

In order to satisfy the definition of a private foundation pursuant to subsection 149.1(1) of the Act, private foundation is defined as, “a charitable foundation that is not a public foundation”, and a charitable foundation “means a corporation or a trust [...] no part of the income of which is payable to, or otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settler thereof...”

Applicable sanctions legislation

Section 188.1 of the of the Act provides certain penalties for certain actions or activities of Canadian registered charities:

Undue benefits

(4) A registered charity or registered Canadian amateur athletic association that, at a particular time in a taxation year, confers on a person an undue benefit is liable to a penalty under this Part for the taxation year equal to

- (a) 105% of the amount of the benefit, except if the charity or association is liable under paragraph (b) for a penalty in respect of the benefit; or
- (b) if the Minister has, less than five years before the particular time, assessed a liability under paragraph (a) or this paragraph for a preceding taxation year of the charity or association and the undue benefit was conferred after that assessment, 110% of the amount of the benefit.

Meaning of undue benefits

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

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

Section 188.2 of the Act provides for suspension of receiving privileges for certain actions or activities of Canadian registered charities:

Suspension with Assessment

Paragraph 188.2(1)(c) further allows for a notice of suspension of receiving privileges for the period of one year when a penalty is assessed under subsection 188.1(9), if the total of all such penalties for the taxation year exceeds \$25,000.

Audit findings

At the time of November 3, 2016, the three directors of the Organization were Tennant, Murray Engelking, and John Rooney (“Rooney”).

Based on jurisprudence and the interpretation of Income Tax Folio S1-F5-C1, persons will be considered to act in concert when they have a common object or purpose as well as the same interest in seeing that the common object is achieved. If parties acting in concert exert control over a transaction, the parties together will be viewed as the directing mind and a non-arm's length relationship will exist.

To elaborate on our position, we shall revisit the share transactions as follows:

On November 3, 2016, both Tennant and Murray Engelking acted, on behalf of the Organization, to purchase 10,000 [REDACTED] Class A shares at the price of \$22.50/share from [REDACTED]
[REDACTED]

Although it was a substantial investment for the Organization, we found no minute book or minutes of the directors' meetings regarding the purchase and sale of investments. Further, no formal valuation reports on the shares were prepared and submitted for our review.

We determined that on September 9, 2016, [REDACTED] sold a total of 200,000 Class A shares to [REDACTED] recorded in its board minutes of September 9, 2016, that the price was justified to set at \$6/share based on the following factors:

- patent issuance;
- completion of Phase I;
- issuance of the Phase I report showing over 50% recovery [REDACTED]
- [REDACTED] grant extension (\$124K value), affirming [REDACTED] continued support and belief in [REDACTED] and
- continued development of [REDACTED] project planning

The [REDACTED] minutes state that it would need approximately \$45 million over the next three years to complete [REDACTED] as per the Phase II project planning completed to date.

From the shareholder ledger provided, there was no new capital invested into [REDACTED] after the 200,000 shares were distributed on September 9, 2016. Further, the board did not release any other favourable news in respect of their operations and developments in the energy sector in its minutes subsequent to September 9, 2016. In the absence of a formal share valuation report and any favourable news, it is difficult to understand how the share price would increase from \$6/share on September 9 to \$22.50/share on November 3, 2016.

A charity may invest its surplus funds or assets for purposes of generating additional revenues to be used for its otherwise charitable activities. However, charity law dictates that a charity's assets must be managed so as to obtain the best return within the bounds of prudent investment principles. While a charity may invest in a for-profit business, including those established by the charity, its directors/trustees need to satisfy themselves both that the investment represents a prudent use of the charity's assets and that no unacceptable or undue benefit is conferred on its directors or the taxable corporation.

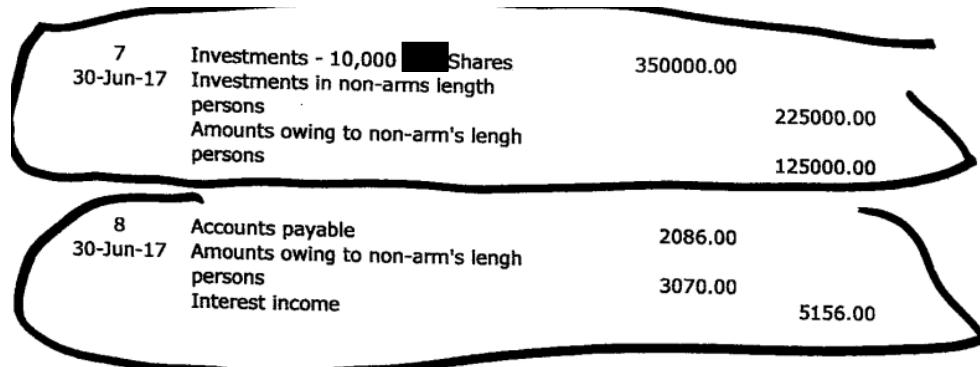
It appears that Tennant and Murray Engelking played a major role in the share transaction as Rooney's signature was not found on any of the documents provided. Both Murray Engelking and Tennant [REDACTED] and the [REDACTED] Murray Engelking is a practising counsel and the principal of [REDACTED] law firm, [REDACTED]. As directors of the Organization Tennant, Rooney, and Murray Engelking were expected to exercise due care/diligence when they acquired the shares from [REDACTED]. However, there was no attempt to establish the fair market value (FMV) of the investments to the Organization and no documentation was provided that would have enabled the determination of such.

From our review of the transaction documents, it seems that Rooney was not involved in any the share purchase and sale that took place within the Organization. It is our view that he was well aware of the events in the Organization as both Rooney and Tennant marketed the [REDACTED] shares in two of the foundations under their control. From the documents provided by Tennant on the share transactions, both Tennant and Rooney worked together to coordinate and orchestrate a series of transactions on the sale of the shares to foundations, including this one, under their control. As a result, it is our position that Tennant, Rooney and their corporations acted in concert with the common interest and object of using their own corporations to acquire the same number of Class A shares from [REDACTED] at the same time (from the shareholder ledger) and to sell [REDACTED] shares through their own corporations with a view to profit/gain to various entities within the same period of time. In other words, these two individuals were the promoters of the [REDACTED] scheme.

After the Organization acquired the shares from [REDACTED] on November 3, 2016, the shares were sold to Murray Engelking at the same price on the same day. The \$225,000 note payable issued to Murray Engelking was cancelled in lieu of payment for the shares. Again, no actual cash was involved in this transaction.

On June 30, 2017, Murray Engelking sold the shares back to the Organization at \$35/share to pay off the \$225,000 debt (promissory note) and its accrued interest of \$3,070. After the transaction was completed, the Organization owed Murray Engelking \$121,930 instead. Again, no formal independent valuation report was provided to support how the share price was determined.

The related journal entries shown below for "amount owing to non-arm's length persons" were created by the Organization as a result of the amount owed to Murray Engelking for the purchase of the 10,000 [REDACTED] shares from Murray Engelking. It is the net amount after interest payments (\$350,000 – \$225,000 = \$125,000 minus \$3,070 in 3.5% note interest = \$121,930) - a debt owed to Murray Engelking was created with no exchange of funds.



7	Investments - 10,000 [REDACTED] Shares	350000.00
30-Jun-17	Investments in non-arm's length persons	225000.00
	Amounts owing to non-arm's length persons	125000.00
8	Accounts payable	2086.00
30-Jun-17	Amounts owing to non-arm's length persons	3070.00
	Interest income	5156.00

On the same day, when the series of transactions was completed, both Tennant and Rooney resigned as directors and Murray Engelking's wife, Carol Engelking, and his son, Tyler Engelking, joined the Organization as directors. The Organization changed the designation to a Private Foundation.

From November 3, 2016 to June 29, 2017, just before Murray Engelking sold the shares to the Organization, there had been:

- no major changes in the shareholdings (shareholder ledger);
- no new significant capital added to [REDACTED] in FY 2017 (Item 13 - unaudited financial statements for the FY 2016 and 2017); and
- no favourable news released by [REDACTED]

The following excerpt was taken from the Notes to the 2017 Financial Statements of [REDACTED]

"To date, the Company has no products in commercial production or use and no history of earnings. The ability of the Company to continue operations is dependent upon its ability to obtain additional funding through research grant funding, the sale of common shares, investor support, successful research outcomes, developing new intellectual property and receipt of regulatory approvals. Furthermore, the industry in which the company operates is subject to rapid and substantial technological change that could reduce the marketability of the Company's technology."

As indicated in the minutes of September 9, 2016 above, [REDACTED] needed approximately \$45 million between 2016 and 2019 to complete [REDACTED]. As well, it also required new funding to continue operations. Without securing any new capital before June 30, 2017, it is not known how the share price could increase further from \$22.50/share to \$35/share without any significant progress in the [REDACTED]

The audit review shows that once Murray Engelking became Tennant's client, Tennant and Rooney were partnering with and including him in the group to implement a series of transactions with the ultimate goal of selling the shares back to the Organization on June 30, 2017, in order to obtain tax benefits through donation tax credits. Pursuant to paragraph 251(1)(c) of the Income Tax Act and paragraphs 1.37 to 1.41 of Income Tax Folio S1-F5-C1, Related Persons and Dealing at Arm's Length, it is our position that Tennant along with [REDACTED] Rooney, and Murray Engelking are not dealing at arm's length in the purchase and sale of [REDACTED] share transactions.

Although the stated share price on June 30, 2017, was \$35/share, as the directors and the Organization were not dealing at arm's length and in the absence of a bona fide valuation on the shares, it is our position that the FMV of the shares remained at \$6/share throughout the 2016 and 2017 fiscal years. As such, Murray Engelking received an undue benefit from disposing of 10,000 [REDACTED] Class A shares at \$35/share which is over the FMV to the Organization.

As per subsection 188.1(4) – Undue Benefits, a penalty would be assessed as follows:

Share price paid = \$35/share

FMV per CRA = \$6/share

Difference = \$29/share

Number of shares = 10,000

Penalty = 105%

2017 - Total undue benefit penalty under s.188.1(4) = $10,000 \times (\$35 - \$6) \times 105\% = \$304,500$

Furthermore, a one-year suspension of the Organization's charitable status would also apply under paragraph 188.2(1)(c) of the Act.

Conclusion

Accordingly, it is our position that the Organization has failed to meet the requirements of subsection 149.1(1) of the Act that it be constituted for exclusively charitable purposes. For these reasons, and each of these reasons, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

As well, per subsection 188.1(4) an undue benefits penalty and one-year suspension of the Organization's charitable status under paragraph 188.2(1) of the Act would apply.

(c) Fiduciary duty

Legislation

A charity registered under the Act is required to be bona fide - meaning that it must be made by an organization that is established and operated to confer a tangible or objectively measurable benefit upon the public, without personal or private gain¹¹.

Further, the courts have placed extensive responsibilities, known as fiduciary duties, on the directors of charities¹², which include:

- the duty to act honestly and in good faith, in the best interests of the charity and not in a manner that is self-serving,
- the duty to follow the laws and rules that apply to charities,
- the duty to use all charitable property and funds for only charitable purposes, and
- the duty to be accountable for the charity's property and funds.

Audit findings

By virtue of its involvement in the share purchases and donations arrangement in (a) above, the Organization's directors may have neglected and/or breached their responsibilities to properly safeguard the Organization's assets by allowing its resources to be used to purchase securities that have not been properly valued. Murray Engelking chose to use the Organization's assets in an unnecessary manner, which put the assets at risk. This risk was heightened further by having the Organization accept a promissory note from Murray Engelking himself. Murray Engelking personally benefitted from this series of transactions as he effectively transferred his own personal risk, as owner of the properties, to the Organization.

Therefore, by entering into the arrangements, the Organization has not upheld its fiduciary duty to use its assets in manners that are in its best interest; instead, the Organization put its assets at risk unnecessarily. The CRA has a responsibility, as a regulator, to ensure that organizations that have been granted the tax privileges of a registered charity are operating in a manner that complies with the requirements for such registration. It is our opinion that the Organization was not in compliance with the Act.

Conclusion

It is our position that the Organization has failed in its fiduciary duties to protect charitable assets and by extension. Accordingly, the Organization has failed to meet the requirements of

¹¹ M. Chesterman, *Charities, Trusts and Social Welfare* (London: Weidenfeld and Nicolson, 1979) at para 136; and see *Gilmour v. Coats et al*, [1949] 1 All E.R. 848

¹² See for example, *Ontario (Public Guardian and Trustee) v. Aids Society for Children (Ontario)*, [2001] O.J. No.2170 (QL) (O.S.C.J.); *Ontario (Public Guardian and Trustee) v. National Society for Abused Women*, [2002] O.J. No. 607 (O.S.C.J.); *Pathak v. Sabha*, (2004) CanLII 10850 (O.S.C.). See also *Lac Minerals Ltd. v. International Corona Resources Ltd.*, [1989] 2 S.C.R. 574 (S.C.C.); *Hodgkinson v. Simms*, [1994] 3 S.C.R. 377, 1994 CanLII 70 (S.C.C.); *M. (K.) v. M. (H.)*, [1992] 3 S.C.R. 6, 1992 CanLII 31 at pg. 31 (S.C.C.)

subsections 149.1(1) and 149.1(6.2) of the Act that it devote substantially all its resources to charitable activities carried on by the Organization itself. For these reasons, and each of these reasons, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

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

General Legislation

The law provides various requirements with respect to issuing official donation receipts by registered charities. These requirements are contained in Regulation 3500 and 3501 of the Act and are described in detail in Income Tax Folio S7-F1-C1, Split-receipting and Deemed Fair Market Value.

Subsection 3501(1) of the Regulations provides that each official donation receipt that a registered charity issues must contain, in a manner that cannot be readily altered, the prescribed contents of a receipt.

Applicable sanctions legislation

Section 188.1 of the of the Income Tax Act provides certain penalties for certain actions or activities of Canadian registered charities.

Incorrect information

188.1(7) Except where subsection (8) or (9) applies, every registered charity that issues, in a taxation year, a receipt for a gift otherwise than in accordance with this Act and the regulations is liable for the taxation year to a penalty equal to 5% of the amount reported on the receipt as representing the amount in respect of which a taxpayer may claim a deduction under subsection 110.1(1) or a credit under subsection 118.1(3).

Audit findings

During the audit, we found the Organization does not issue receipts according to the Act and its Regulations, based on our findings that:

- The charity's address in Canada as recorded with the CRA was not up-to-date; and
- The name Canada Revenue Agency and current website address of the CRA canada.ca/charities-giving were not found on the donation receipts.

As well, during the audit we found that from the Organization's books and records, Murray Engelking donated \$225,000 to the Organization on November 3, 2016. Based on donation receipt #1 issued to Murray Engelking and the cheque drawn on the [REDACTED]

[REDACTED] trust account, it is our understanding that Murray Engelking made a donation of \$225,000 to the Organization. However, the cheque was made payable to [REDACTED] and not the [REDACTED]

Organization. As indicated in Section 1 above, the Organization and Murray Engelking could not provide proof of payment for the donation, it is our position that an eligible gift has not been made.

In the absence of documentation confirming a transfer of property occurred between the donor and the charity, the reported transaction lacks the required transfer of property element as outlined in the CRA definition of an eligible gift¹³. As such, the receipt would be considered incorrect under subsection 188.1(7) of the Act

As per subsection 188.1(7) - Incorrect information, a penalty would be assessed as follows:

2017 - Incorrect information penalty on \$225,000 of 5% = \$11,250

Conclusion

Accordingly, it is our position that the Organization has failed to meet the requirements of sections 3500 and 3501 of the Regulations about issuing receipts only when allowed and ensuring all the required information is present. For these reasons, and each of these reasons, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(d) of the Act.

Additionally, per subsection 188.1(7), an incorrect information penalty would apply.

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

Legislation

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.¹⁴

¹³ See What is a Gift (www.canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/receiving-gifts/what-a-gift)

¹⁴ Opportunities for the Disabled Foundation v MNR, 2016 FCA 94 at paras 48-51.

Audit findings

During our review we noted the following missing or incorrect information on the T3010, Registered Charity Information Returns:

FYE 2016-06-30:

- Box 4050 should be checked NO; and
- Line 5000 and 5010 should be zero.

FYE 2017-06-30:

- Line 2000 should be checked YES;
- Line 5000 = \$127.00;
- For the T1235 Directors/Trustees and Like Officials Worksheet, the end dates for all Directors is required;
- Section D should be left blank if Schedule 6 is used to report financial information; and
- Schedule 1 should be filled out properly if the Organization is designated as a Private Organization.

Conclusion

Under subsection 188.2(2.1) of the Act, an Organization may receive a notice of suspension of its authority to issue official donation receipts for failing to report information that is required to be included in a return filed under subsection 149.1(14) of the Act. It is our position that the Organization has failed to comply with the Act by failing to file an accurate T3010 information return. For this reason, there are grounds to suspend the Organization's authority to issue official receipts under subsection 188.2(2.1) of the Act.

In addition, under paragraph 168(1)(c) of the Act, the registration of a charity may be revoked if it fails to file a charity information return as and when required under the Act. It is our position that the Organization has failed to comply with the Act by failing to file an accurate charity information return. For this reason, there are grounds to revoke the registered status of the Organization under paragraph 168(1)(c) of the Act.

4. Failed to maintain adequate books and records

Legislation

Subsection 230(2) of the Act requires that every registered charity shall maintain adequate records¹⁵ and books of account at an address in Canada recorded with the Minister or designated by the Minister containing;

¹⁵ Subsection 248(1) of the Act defines a record in the following way: "record includes an account, an agreement, a book, a chart or table, a diagram, a form, an image, an invoice, a letter, a map, a memorandum, a plan, a return, a

- (a) information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under this Act;
- (b) a duplicate of each receipt containing prescribed information for a donation received by it; and
- (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.

This provision is necessary to enable a charity to accurately provide the CRA with the information required by the Act, as well as ensuring the CRA can verify the accuracy of reported information through an audit and determine whether there are any grounds for revocation of the charity's registration.

Subsection 231.1(1) of the Act permits an authorized person to inspect, audit, or examine the books and records of a taxpayer, as well any document of the taxpayer, or of any other person that relates, or may relate, to the information that is, or should be, contained in the books and records of the taxpayer, or to any amount payable by the taxpayer under the Act.

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

Subsection 230(4) also states that 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 period as is prescribed; and
- (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.

Subsection 230(2) of the Act requires that registered charities maintain adequate books and records¹⁶ of account, at an address in Canada registered with the CRA, containing information in

statement, a telegram, a voucher, and any other thing containing information, whether in writing or in any other form."

¹⁶ Subsection 248(1) of the Act defines a record in the following way: "record includes an account, an agreement, a book, a chart or table, a diagram, a form, an image, an invoice, a letter, a map, a memorandum, a plan, a return, a statement, a telegram, a voucher, and any other thing containing information, whether in writing or in any other form."

such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under the Act.

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

- the onus is on the registered charity to prove that its charitable status should not be revoked.¹⁷
- a registered charity must maintain, and make available to the CRA at the time of an audit, meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required books and records at some later date.¹⁸
- 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 subsection 230(2) of the Act is a proper basis upon which the Minister may issue such a notice.¹⁹
- The requirement to keep proper books and records is foundational and non-compliance with the requirement is serious and justifies revocation.²⁰

While paragraph 230(2)(a) of the Act does not explicitly set out the types of books and records that a registered charity is required to maintain, which could therefore lead to a technical failure to comply with the Act, given the significant privileges that flow from registration as a charitable organization under the Act, the Minister must be able to monitor the continuing entitlement of charitable organizations to those privileges. In that regard, the Federal Court of Appeal has held that there exists a serious obligation for registered charities to maintain adequate books and records, and that material or significant, and/or repeated, non-compliance with the requirements of subsection 230(2) of the Act constitutes sufficient grounds for revocation.²¹

Applicable sanctions legislation

The Income Tax Act subsection 188.2(2) also provides for a General Suspension of receipting if the Organization is in contravention with section 230 to 231.5.

¹⁷ See Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at paras 26-27, [2002] 2 CTC 93.

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

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

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

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

Audit findings

In the course of the audit, no meeting minutes or source documents were provided to show that the directors of the Organization had discussed directing the Organization to invest its resources in high-risk investments and that they approved these transactions that were executed by Tennant (an ineligible individual at the time of these transactions) and Murray Engelking.

There were also no supporting source documents provided to show how the FMV of these 10,000 [REDACTED] Class A shares was calculated, before and after they were bought and sold. When documentation was requested to support their determination of the FMV, we only received documents that showed the values assigned to the shares, not how they were determined. The Organization failed to provide information detailing the considerations, evaluations and approvals carried out by the Board in using its resources for non-charitable purposes. The Organization failed to provide information concerning the intended duration and expected return of the long-term investment (corporate shares). The inadequate books and records maintained by the Organization raised serious concerns regarding the lack of internal controls applied by the directors of the Organization, as well as the potential conferral of undue and/or private benefits.

Documentary support was specifically required to support the value of shares. The shares of [REDACTED] were distributed on September 9, 2016, at a price of \$6/share²². However the shares purchased by the Organization June 30, 2017, were at a price of \$35/share. This significant increase provides an additional burden to substantiate the valuation applied for the transaction.

By failing to establish the FMV in regards to the purchase and sale of investments between the Organization and related parties [REDACTED] and Murray Engelking), the Organization failed to substantiate the value of the shares and to maintain adequate documentation.

The Organization also failed to demonstrate that the \$225,000 donation receipt issued in 2016 to director Murray Engelking represents recognition of eligible gifts, as neither the Organization nor director could provide proof of payment for the donation. In the absence of documentation confirming a transfer of property between the donor and the charity, the reported transaction does not meet the requirements outlined in the CRA's definition of an eligible gift²³.

In addition to the question of whether an actual gift of property occurred, and whether the investment in recognition of corporate shares represents a prudent use of the Organization's charitable resources, the expectation of due diligence to satisfy the fiduciary duties of the representatives governing the operations of the registered charity cannot be met in the absence of adequate documentation to demonstrate the purported gift's FMV.

The Organization has demonstrated a failure to satisfy the requirements of subsection 230(2) of the Act with respect to documentation demonstrating a reasonable and prudent evaluation of the use of charitable resources for the intended purpose of furthering charitable purposes of the Organization. As the acquisition required the totality of all assets held by the Organization

²² See www.sedar.com (Form 45-106F1 Report of Exempt Distribution)

²³ See What is a Gift (www.canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/receiving-gifts/what-a-gift)

(cash), no resources remained available to further charitable purposes, the investment activity failed to satisfy the requirements of the Organization's governing documents based on which it was granted charitable registration.

Conclusion

The Organization did not maintain or provide adequate documentary evidence to support the amounts reported in Form T3010 for the periods under audit. As such, we are unable to substantiate that the Organization is devoting its resources to charitable activities as required by the Act and common law. Accordingly, it appears that the Organization is not exercising due care with respect to the completeness and accuracy of its books and records to substantiate the use of its charitable resources, or in support of adequate internal governance to safeguard its charitable resources. It is our position the Organization has failed to demonstrate that it maintains adequate books and records as required.

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 with these provisions. For this reason, there are grounds for the revocation of the Organization's charitable status under paragraph 168(1)(e) of the Act.

Penalties and Sanctions

Due to the serious nature of the non-compliance issues described above, it is our view that a penalty under 188.1(4) and 188.1(7) could be applied as well as a general suspension of receipting privileges under 188.2(2) and suspension with assessment under 188.2(1).

According to our calculations, the applicable penalties would be:

2016 – 188.1(7) Receipting with incorrect information: $\$225,000 \times 5\% = \$11,250$

and,

2017 – 188.1(4) Providing a personal benefit to a director/member: $10,000 \times (\$35 - \$6) \times 105\% = \$304,500$

However, please note that the CRA is currently not proposing the assessment of a penalty and/or suspending the Organization's receipting privileges and qualified donee status in accordance with sections 188.1 and/or 188.2 of the Act.

Instead we are of the view that the non-compliance listed above warrants revocation under subsection 149.1(3) for the reasons listed above.

Other non-compliance issues not subject to penalty

It was noted during our review that, during the entire audit period, one of the directors was an ineligible individual under the definition found in section 149.1(1) of the Act. This individual is no longer considered ineligible as of November 2018. Although the individual is no longer considered ineligible it is of note that if an ineligible individual is found to be serving on the board of a charity, the CRA can choose to suspend receipting privileges or revoke charitable status due to the increased risk such an individual presents. Please refer to our policy guidance for further information at [Ineligible individuals - Canada.ca](#).

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, do not hesitate to contact me at the numbers indicated below. My team leader, Crystal Scott, may also be reached at 587-335-1670.

Yours sincerely,

A large black rectangular redaction box covering the signature area.

Joshua Taylor
Charities Auditor
Edmonton Tax Services Office

Telephone: 587-532-9931
Facsimile: 780-495-6908
Address: Suite 10, 9700 Jasper Avenue NW
Edmonton AB T5J 4C8

C.c.: Tyler Engelking, Director

Our File: 19998/MLE

April 19, 2023

Edmonton Tax Services Officer
Suite 10, 9700 Jasper Avenue NW
Edmonton, Alberta
T5J 4C8

Via Facsimile: 780-495-6908

Attention: Joshua Taylor

Dear Sir:

Re: Audit of Engelking Foundation – Case #51290541, File #3047043

I have your letter of March 10, 2023 directed to the Engelking Foundation and I am writing to respond.

The matters raised in your March 10, 2023 correspondence were carefully considered by an audit team in 2019 including an audit supervisor all of who were satisfied that the Foundation was compliant with the requirements of the *Income Tax Act* regarding Charitable Foundations. I also note that this matter is presently before the Federal Court of Appeal in Court File No. A-78-23 between the Ron W. Cameron Charitable Foundation and the Minister of National Revenue.

It is my respectful submission that any further determination with respect to the contents of your March 10, 2023 correspondence ought to be deferred until the outcome of the decision of the Court of Appeal in Court File No. A-78-23.

Kindly confirm by return,

Yours truly,

cc: Edmonton Tax Services Office
Attention: Crystal Scott
Via Facsimile: 780-495-6908

APPENDIX A

Qualified Donees

149.1 (1) Definitions

charitable foundation means a corporation or trust that is constituted and operated exclusively for charitable purposes, no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof, and that is not a charitable organization

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

(a) constituted and operated exclusively for charitable purposes,

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

(b) no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof,

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

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

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

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

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

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

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

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

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

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

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

149.1 (2) Revocation of registration of charitable organization

The Minister may, in the manner described in section 168, revoke the registration of a charitable organization for any reason described in subsection 168(1) or where the organization

- (a) carries on a business that is not a related business of that charity;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the organization's disbursement quota for that year; or
- (c) makes a disbursement by way of a gift, other than a gift made
 - (i) in the course of charitable activities carried on by it, or
 - (ii) to a donee that is a qualified donee at the time of the gift.

149.1 (3) Revocation of registration of public foundation

The Minister may, in the manner described in section 168, revoke the registration of a public foundation for any reason described in subsection 168(1) or where the foundation

- (a) carries on a business that is not a related business of that charity;

- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;
 - (b.1) makes a disbursement by way of a gift, other than a gift made
 - (i) in the course of charitable activities carried on by it, or
 - (ii) to a donee that is a qualified donee at the time of the gift;
- (c) since June 1, 1950, acquired control of any corporation;
- (d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities; or
- (e) at any time within the 24 month period preceding the day on which notice is given to the foundation by the Minister pursuant to subsection 168(1) and at a time when the foundation was a private foundation, took any action or failed to expend amounts such that the Minister was entitled, pursuant to subsection 149.1(4), to revoke its registration as a private foundation.

149.1 (4) Revocation of registration of private foundation

The Minister may, in the manner described in section 168, revoke the registration of a private foundation for any reason described in subsection 168(1) or where the foundation

- (a) carries on any business;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;
 - (b.1) makes a disbursement by way of a gift, other than a gift made
 - (i) in the course of charitable activities carried on by it, or
 - (ii) to a donee that is a qualified donee at the time of the gift;
- (c) has, in respect of a class of shares of the capital stock of a corporation, a divestment obligation percentage at the end of any taxation year;
- (d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities.

149.1 (4.1) Revocation of registration of registered charity

The Minister may, in the manner described in section 168, revoke the registration

- (a) of a registered charity, if it has entered into a transaction (including a gift to another registered charity) and it may reasonably be considered that a purpose of the transaction was to avoid or unduly delay the expenditure of amounts on charitable activities;
- (b) of a registered charity, if it may reasonably be considered that a purpose of entering into a transaction (including the acceptance of a gift) with another registered charity to which

paragraph (a) applies was to assist the other registered charity in avoiding or unduly delaying the expenditure of amounts on charitable activities;

(c) of a registered charity, if a false statement, within the meaning assigned by subsection 163.2(1), was made in circumstances amounting to culpable conduct, within the meaning assigned by that subsection, in the furnishing of information for the purpose of obtaining registration of the charity;

(d) of a registered charity, if it has in a taxation year received a gift of property (other than a designated gift) from another registered charity with which it does not deal at arm's length and it has expended, before the end of the next taxation year, in addition to its disbursement quota for each of those taxation years, an amount that is less than the fair market value of the property, on charitable activities carried on by it or by way of gifts made to qualified donees with which it deals at arm's length;

(e) of a registered charity, if an ineligible individual is a director, trustee, officer or like official of the charity, or controls or manages the charity, directly or indirectly, in any manner whatever; and

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

Revocation of Registration of Certain Organizations and Associations

168 (1) Notice of intention to revoke registration

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

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

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

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

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

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

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

168 (2) Revocation of Registration

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

- (a) if the charity or association has applied to the Minister in writing for the revocation of its registration, the Minister shall, forthwith after the mailing of the notice, publish a copy of the notice in the Canada Gazette, and
- (b) in any other case, the Minister may, after the expiration of 30 days from the day of mailing of the notice, or after the expiration of such extended period from the day of mailing of the notice as the Federal Court of Appeal or a judge of that Court, on application made at any time before the determination of any appeal pursuant to subsection 172(3) from the giving of the notice, may fix or allow, publish a copy of the notice in the Canada Gazette,

and on that publication of a copy of the notice, the registration of the charity or association is revoked.

168 (4) Objection to proposal or designation

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

- (a) in the case of a person that is or was registered as a registered charity or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(2) to (4.1), (6.3), (22) and (23);
- (b) in the case of a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.2) and (22); or
- (c) in the case of a person described in any of subparagraphs (a)(i) to (v) of the definition "qualified donee" in subsection 149.1(1), that is or was registered by the Minister as a qualified donee or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.3) and (22).

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

Where the Minister

- (a) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.2) and (22) and 168(1) by the Minister, to a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for registration as a registered Canadian amateur athletic association, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,
- (a.1) confirms a proposal, decision or designation in respect of which a notice was issued by the Minister to a person that is or was registered as a registered charity, or is an applicant for registration as a registered charity, under any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) and 168(1), or does not confirm or vacate that proposal, decision or designation within 90

days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal, decision or designation,

- (a.2) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.3), (22) and 168(1) by the Minister, to a person that is a person described in any of subparagraphs (a)(i) to (v) of the definition "qualified donee" in subsection 149.1(1) that is or was registered by the Minister as a qualified donee or is an applicant for such registration, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,
- (b) refuses to accept for registration for the purposes of this Act any retirement savings plan,
- (c) refuses to accept for registration for the purposes of this Act any profit sharing plan or revokes the registration of such a plan,
- (d) [Repealed, 2011, c. 24, s. 54]
- (e) refuses to accept for registration for the purposes of this Act an education savings plan,
- (e.1) sends notice under subsection 146.1(12.1) to a promoter that the Minister proposes to revoke the registration of an education savings plan,
- (f) refuses to register for the purposes of this Act any pension plan or gives notice under subsection 147.1(11) to the administrator of a registered pension plan that the Minister proposes to revoke its registration,
- (f.1) refuses to accept an amendment to a registered pension plan,
- (g) refuses to accept for registration for the purposes of this Act any retirement income fund,
- (h) refuses to accept for registration for the purposes of this Act any pooled pension plan or gives notice under subsection 147.5(24) to the administrator of a pooled registered pension plan that the Minister proposes to revoke its registration, or
- (i) refuses to accept an amendment to a pooled registered pension plan,

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

180 (1) Appeals to Federal Court of Appeal

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

- (a) the day on which the Minister notifies a person under subsection 165(3) of the Minister's action in respect of a notice of objection filed under subsection 168(4),
- (b) [Repealed, 2011, c. 24, s. 55]

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

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

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

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

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

Tax and Penalties in Respect of Qualified Donees

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

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

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

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

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

188 (1.1) Revocation tax

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

$$\mathbf{A - B}$$

where

A is the total of all amounts, each of which is

(a) the fair market value of a property of the charity at the end of that taxation year,

(b) the amount of an appropriation (within the meaning assigned by subsection (2)) in respect of a property transferred to another person in the 120-day period that ended at the end of that taxation year, or

(c) the income of the charity for its winding-up period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 as if that period were a taxation year; and

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

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

188 (1.2) Winding-up period

In this Part, the winding-up period of a charity is the period that begins immediately after the day on which the Minister issues a notice of intention to revoke the registration of a taxpayer as a registered charity under any of subsections 149.1(2) to (4.1) and 168(1) (or, if earlier, immediately after the day on which it is determined, under subsection 7(1) of the Charities Registration (Security Information) Act, that a certificate served in respect of the charity under subsection 5(1) of that Act is reasonable on the basis of information and evidence available), and that ends on the day that is the latest of

- (a) the day, if any, on which the charity files a return under subsection 189(6.1) for the taxation year deemed by subsection (1) to have ended, but not later than the day on which the charity is required to file that return,
- (b) the day on which the Minister last issues a notice of assessment of tax payable under subsection (1.1) for that taxation year by the charity, and
- (c) if the charity has filed a notice of objection or appeal in respect of that assessment, the day on which the Minister may take a collection action under section 225.1 in respect of that tax payable.

188 (1.3) Eligible donee

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

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

- (ii) that is not the subject of a suspension under subsection 188.2(1),
- (iii) that has no unpaid liabilities under this Act or under the Excise Tax Act,
- (iv) that has filed all information returns required by subsection 149.1(14), and
- (v) that is not the subject of a certificate under subsection 5(1) of the Charities Registration (Security Information) Act or, if it is the subject of such a certificate, the certificate has been determined under subsection 7(1) of that Act not to be reasonable; or

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

188 (2) Shared liability – revocation tax

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

188 (2.1) Non-application of revocation tax

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

- (a) within the one-year period that begins immediately after the taxation year of the charity otherwise deemed by subsection (1) to have ended, the Minister has registered the charity as a charitable organization, private foundation or public foundation; and
- (b) the charity has, before the time that the Minister has so registered the charity,
 - (i) paid all amounts, each of which is an amount for which the charity is liable under this Act (other than subsection (1.1)) or the Excise Tax Act in respect of taxes, penalties and interest, and
 - (ii) filed all information returns required by or under this Act to be filed on or before that time.

188 (3) Transfer of property tax

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

which is its tax payable under this subsection for a preceding taxation year in respect of the transaction or series of transactions.

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

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

188 (4) Joint and several, or solidary, liability – tax transfer

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

188 (5) Definitions – In this section,

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

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

where

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

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

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

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

where

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

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

189 (6) Taxpayer to file return and pay tax

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

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

189 (6.1) Revoked charity to file returns

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

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

189 (6.2) Reduction of revocation tax liability

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

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