

July 18, 2024

**REGISTERED MAIL**

Randy Opmeer  
President  
HRC Care Society  
920 19th Avenue East  
Vancouver BC V4A 4H1

BN: 140942103RR0001  
Case number: 44790541

Dear Randy Opmeer:

**Subject: Notice of intention to revoke**

We are writing further to our letter dated May 25, 2023 (copy enclosed), in which HRC Care Society (the Organization) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from January 1, 2018, to December 31, 2019. 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* (the Act).

We have reviewed and considered your written responses dated July 21, 2023. While your responses addressed some of our concerns, they did not alleviate our more serious concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity, including repeated non-compliance. Our concerns are explained in Appendix A, attached.

**Conclusion**

The audit by the CRA found that the Organization continues to not comply with the requirements set out in the Act. It was found that the Organization failed to implement all of the agreed upon corrective measures of a compliance agreement that was signed by the Organization in 2014 following a previous audit. In particular, the Organization failed to devote resources to charitable activities carried on by the Organization itself by conferring an undue benefit to its directors. In addition, the Organization failed to maintain adequate books and records to allow the CRA to verify assets, liabilities, revenue, expenses, donations, and overall use of resources. The Organization also failed to issue official donation receipts in accordance with the Act and/or its Regulations and failed to issue an information return for amounts paid to an employee/director. Lastly, the Organization failed to file complete an accurate charity information returns as and when required to by the Act and/or its Regulations.

This non-compliance constitutes a serious and repeated 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 May 25, 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)(c), 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**

140942103RR0001

**Name**HRC Care Society  
Vancouver BC

Should the Organization choose to object to this notice of intention to revoke its registration in accordance with subsection 168(4) of the Act, a written notice of objection, with the Organization's business number, 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 must be sent to:

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

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

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

**Consequences of revocation**

As of the effective date of revocation:

- a) the Organization will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3) and paragraph 110.1(1)(a) of the Act respectively;

- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the notice of intention to revoke. This revocation tax is calculated on Form T2046, Tax Return where Registration of a Charity is revoked. Form T2046 must be filed, and the tax paid, on or before the day that is one year from the date of the notice of intention to revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix B. Form T2046 and the related Guide RC4424, Completing the Tax Return where Registration of a Charity is revoked, are available on our website at **canada.ca/charities-giving**;
- 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 Khare  
Director General  
Charities Directorate

**Enclosures**

- CRA letter dated May 25, 2023
- Compliance Agreement signed December 16, 2014
- Appendix A, Analysis of representations
- Appendix B, Relevant provisions of the Act

c.c.: Lorie M Marchinkow  
Director



May 25, 2023

Randy Opmeer  
President  
HRC Care Society  
920 19th Avenue East  
Vancouver BC V5V 1K7

**BN:** 140942103RR0001  
**Case Number:** 44790541

Dear Randy Opmeer:

**Subject: Audit of HRC Care Society**

This letter results from the audit of the HRC Care Society (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from January 1, 2018 to December 31, 2019.

On May 19, 2023, the Organization was advised that 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.	Failed to devote resources to charitable activities carried on by the Organization itself – Conferred an undue benefit to a person	149.1(1), 168(1)(b), 188.1(4), 188.1(5), 188.2(1)(b)
2.	Failed to maintain adequate books and records	168(1)(e), 188.2(2)(a), 230(2), 230(4), 230(4.1)
3.	Failed to issue official donation receipts in accordance with the Act and/or its Regulations	168(1)(d), 188.1(7), 188.2(2)(c), 163.2(1), 188.1(9), Regulation 3500, Regulation 3501
4	Failed to issue an information return for amounts paid (T4, T4A) – Failed to prepare proper documentation for payments to an employee/director	149.1(14), 153(1)(a), 168(1)(b), Regulation 200(2)

5	Failed to file an information return as required by the Act	149.1(14), 168(1)(c), 188.1(6), 188.2(2.1)
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As a registered charity, the Organization must comply with the law. If it fails to comply with the law, it may either be subject to sanctions under sections 188.1<sup>1</sup> and/or 188.2<sup>2</sup> of the Act, and/or have its registered charity status revoked in the manner described in section 168 of the Act.

This letter describes the areas of non-compliance identified by the CRA relating to the legislative and common law requirements that apply to registered charities, and offers the Organization an opportunity to provide representations to our findings to support why it believes that sanctions should not be assessed and/or why its registered status should not be revoked.

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

### **General legal principles**

In order to maintain charitable registration under the Act, Canadian law requires that an organization demonstrate that it is constituted and operated exclusively for charitable purposes (or objects) and that it devotes its resources to charitable activities carried on by the organization itself in furtherance thereof.<sup>3</sup> To be exclusively charitable, a purpose must fall within one or more of the following four categories (also known as “heads”) of charity<sup>4</sup> and deliver a public benefit:

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<sup>1</sup> Financial sanctions are assessed under Section 188.1 of the Act.

<sup>2</sup> Suspensions of a registered charity’s authority to issue official donation receipt, and qualified donee status, are assessed under section 188.2 of the Act.

<sup>3</sup> See subsection 149.1(1) of the Act, which requires that a charitable organization devote all of its resources to “charitable activities carried on by the organization itself” and *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10, 1999 CanLII 704 (SCC) at paras 156-159. A registered charity may also devote resources to activities that, while not charitable in and of themselves, are necessary to accomplish their charitable purposes (such as expenditures on fundraising and administration). However, any resources so devoted must be within acceptable legal parameters and the associated activities must not become ends in and of themselves.

<sup>4</sup> The Act does not define charity or what is charitable. The exception is subsection 149.1(1) which defines charitable purposes as including “the disbursement of funds to qualified donees.” The CRA must therefore rely on the common law definition, which sets out four broad categories of charity. The four broad charitable purpose categories, also known as the four heads of charity, were outlined by Lord Macnaghten in *Commissioners for Special Purposes of the Income Tax v Pemsel*, [1891] AC 531 (PC). The classification approach was explicitly approved of by the Supreme Court of Canada in *Guaranty Trust Co of Canada v Minister of National Revenue*, [1967] SCR 133, and confirmed in *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10, 1999 CanLII 704 (SCC).

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

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

The public benefit requirement involves a two-part test:

- The first part of the test requires the delivery of a **benefit** that is recognizable and capable of being proved, and socially useful. To be recognizable and capable of being proved, a benefit must generally be tangible or objectively measurable.
  - Benefits may be measurable or intangible. Benefits that are not tangible or objectively measurable should be shown to be valuable or approved by the common understanding of enlightened opinion for the time being.<sup>5</sup> In most cases, the benefit should be a necessary and reasonably direct result of how the purpose will be achieved.<sup>6</sup> An assumed prospect or possibility of gain that is vague, indescribable or uncertain, or incapable of proof, cannot be said to provide a charitable benefit.<sup>7</sup>
- The second part of the test requires the benefit be directed to the **public** or a sufficient section of the public. This means a registered charity cannot:
  - have an eligible beneficiary group that is negligible in size, or restricted based on criteria that are not justified based on the charitable purpose(s); or
  - provide an unacceptable private benefit. Typically, a private benefit is a benefit provided to a person or organization that is not a charitable beneficiary, or to a charitable beneficiary that exceeds the bounds of charity. A private benefit will usually be acceptable if it is incidental, meaning it is

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<sup>5</sup> 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).

<sup>6</sup> For more information about public benefit, see CRA Policy statement CPS-024, Guidelines for registering a charity: Meeting the public benefit test, and CRA Guidance CG-019, How to draft purposes for charitable registration. See also; Commissioners for Special Purposes of the Income Tax v Pe msel, [1891] AC 531 (PC) at 583.

<sup>7</sup> 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.

necessary, reasonable, and not disproportionate to the resulting public benefit.<sup>8</sup>

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.<sup>9</sup>

### **Background**

The Organization was registered effective January 1, 1994, as a charitable organization with the following purposes:

2. (a) To establish or acquire by purchase, gift, transfer, lease or otherwise, and to maintain and operate on a nonprofit basis, facilities for providing personal and intermediate care for relief of the aged and the disabled as permitted and authorized by applicable statutes of the Province of British Columbia to persons in need of such care.
2. (b) In furtherance of the purposes at paragraph 2 (a), to carry on any activities related to the provisions of care which, in the opinion of the board of directors, may be justified by the facilities, personnel, funds or other requirements that are or can be made, available.
2. (c) In furtherance of the purposes at paragraph 2 (a), to co-operate with other organizations whether incorporated or not, which have purposes similar in whole or in part to the purposes of this society.
2. (d) In furtherance of the charitable purposes at paragraph 2 (a), to carry out ancillary and incidental activities.

The activities at the time of registration were:

- a. nursing care;
- b. personal care (daily hygiene);
- c. housekeeping;
- d. laundry;
- e. meals;
- f. activity program;

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<sup>8</sup> For more information about public benefit, see CRA Policy statement CPS-024, Guidelines for registering a charity: Meeting the public benefit test.

<sup>9</sup> Canadian Magen David Adom for Israel v MNR, 2002 FCA 323 at para 69.

- g. hairdressing;
- h. maintenance of living accommodations;
- i. emotional/spiritual support;
- j. organization of lives;
- k. set up physicians appointments;
- l. arrange transportation as required;
- m. provide assistance in paying bills, etc.;
- n. provide assistance with day to day tasks; and
- o. co-ordinates admissions, rentals and sales to ensure compliance with the Strata Bylaws (incidental activity).

The registration was based on the information supplied by the Organization and on the understanding that it would be carrying out the activities listed in its application.

### **Previous audit**

A prior audit was conducted for the fiscal periods ending December 31, 2011 to December 31, 2012. A Compliance Agreement was administered as a result of this audit.

#### Areas of non-compliance:

- 1. Objects and activities
- 2. Books and records
- 3. Official donation receipts

#### Corrective measures:

- 1. Objects and activities
  - a. The Organization will ensure that the Board of Directors, and only the Board of Directors, is guiding the Organization to conduct charitable activities as established in its Constitution and By-laws. To this end, the Organization will also ensure that the Constitution and By-laws are readily available to all people who are responsible for directing and controlling the Organization.
  - b. The Organization will also ensure that all documentation is maintained at the business address of the organization and are available in the future at the time of review by CRA.
- 2. Books and records
  - a. The Organization will ensure that its books and records include documents which demonstrate that the Organization's activities comply with all applicable legislation. This includes, but is not limited to, meeting minutes where directors disclose any conflict of interest and excuse themselves from any discussion and voting on this matter. Further, the records will support that any compensation paid



does not exceed fair market value; this is especially relevant for non-arm's length transactions.

- b. The Organization will ensure that the T3010 Registered Charities Information return that it files includes, and accurately reflects, all transaction that the Organization was involved in during the period.
- c. The T4 information returns that the Organization files will include all payments to employees including cash, near cash; and all other taxable benefits, as required by the Act.
- d. The Organization will ensure that all supporting documents for expenses include a description of the goods or services purchased. The description must support that the expense was incurred to advance the Organization's charitable purposes.

### 3. Official donation receipts

- a. The Organization will revise its official donation receipts and receipting practices to be compliant with Regulation 3501. This includes ensuring that every donation receipt issued by the Organization includes: i. The full name of the donor, including their middle initial; ii. A brief description of the donated property where a gift in kind donation was made; iii. The name Canada Revenue Agency and its web address [www.cra-arc.gc.ca](http://www.cra-arc.gc.ca); iv. The place or locality where the receipt is issued.
- b. The Organization will ensure that it keeps a copy, either electronic or paper, of each donation receipt it issues.

### Implementation of corrective measures as per current audit:

#### 1. Objects and activities

- a. This measure has been corrected.
- b. This measure has not been corrected.

#### 2. Books and records

- a. This measure has not been corrected.
- b. This measure has not been corrected.
- c. Unable to determine if this measure has been corrected.
- d. This measure has not been corrected.

#### 3. Official donation receipts

- a. This measure has been corrected.
- b. Unable to determine if this measure has been corrected.

The Organization failed to implement all of the agreed upon corrective measures of the previous Compliance Agreement.

### Identified areas of non-compliance

#### 1. Failed to devote resources to charitable activities carried on by the Organization itself – Conferred an undue benefit to a person.

### Legislation and jurisprudence

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

At common law, a private benefit<sup>10</sup> means a benefit provided to a person or organization that is not a charitable beneficiary, or a charitable beneficiary where a benefit goes beyond what is considered to be charitable. Private benefits can be conferred on a charity's staff, directors, trustees, members, and/or volunteers while they are carrying out activities that support the charity, or to third parties who provide the charity with goods or services. Where it can be fairly considered that the eligibility of a recipient relates solely to the relationship of the recipient to an organization, any resulting benefit will not be acceptable.

Providing a private benefit is unacceptable unless it is **incidental** to accomplishing a charitable purpose. A private benefit will usually be incidental where it is necessary, reasonable, and proportionate to the resulting public benefit.<sup>11</sup>

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

- (a) an action taken to achieve a charitable purpose; or
- (b) a necessary step, a consequence, or a by-product of an action taken to achieve a charitable purpose; or
- (c) the operation of a related business as defined in subsection 149.1(1) of the Act.

and

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

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<sup>10</sup> **Personal benefit** is also sometimes used instead of **benefit** in the common law private benefit context; See CRA Guidance CG-019, How to draft purposes for charitable registration.

<sup>11</sup> For more information, see CRA Policy statement CPS-024, Guidelines for registering a charity: Meeting the public benefit test.

and

- (iii) **Proportionate** – Proportionate means the private benefit cannot be a substantial part of a purpose or activity, or be a non-charitable end in itself. The private benefit must be secondary and the public benefit must be predominant and more significant.

The public benefit cannot be too speculative, indirect or remote, as compared to a more direct private benefit, particularly when a direct benefit is to private persons, entities, or businesses.

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

- paying excessive salaries/remuneration
- paying for expenses, or providing benefits that are not justified or needed to perform required duties
- providing excessive per diems
- unjustified/unnecessary or excessive payments for services, facilities, supplies, or equipment
- promoting the work, talent, services, or businesses of certain persons or entities, without justification
- A grantee organization making profits from a grant activity, and not applying the profits to the charitable purposes of the grant.

Pursuant to subsection 149.1(1) of the Act, as a charitable organization, no part of the Organization's income can be payable to, or otherwise made available for, the personal benefit of any proprietor, member, shareholder, trustee or settler thereof. Any portion of a charitable organization's income that is received by such a person would be an unacceptable private benefit.

Typically, private benefits that are unacceptable under the common law will also be undue under subsection 188.1(5) of the Act. An **undue benefit** means a benefit provided by a registered charity, a registered Canadian amateur athletic association (RCAAA), or a third party at the direction, or with the consent, of a charity or RCAAA that would otherwise have had a right to that amount. An undue benefit 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 RCAAA that is paid, payable, assigned or otherwise made available for the personal benefit of any person who:

- (a) is a proprietor, member, shareholder, trustee or settlor of the charity or RCAAA;
- (b) has contributed or otherwise paid into the charity or RCAAA more than 50% of the capital of the charity or RCAAA; or

- (c) does not deal at arm's length with a person in (a) or (b), or with the charity or RCAA.

Undue benefit does not include

- (a) a gift to a qualified donee;
- (b) reasonable consideration or remuneration for property acquired or services received by the charity or RCAA;
- (c) a gift made, or a benefit provided, in the course of a charitable act<sup>12</sup> in the ordinary course of the charitable activities carried on by the charity or RCAA, unless it can be reasonably considered that the beneficiary was eligible for the benefit solely due to the relationship of the beneficiary to the charity or RCAA.

Subsection 188.1(4) of the Act provides for the levying of a penalty to registered charities under specific circumstances. Under the Act, a registered charity cannot confer on a person an undue benefit (for example, a transfer of property or other resources of the charity to a person who does not deal with the charity at arm's length or who is the beneficiary of a transfer because of a special relationship with a donor or charity).

Under subsection 188.1(4) of the Act, a registered charity that confers on a person an undue benefit is liable to a penalty equal to 105% of the amount of the benefit. This penalty increases to 110% and the suspension of tax-receipting privileges for a repeat infraction within 5 years.

### **Audit findings**

According to the Organization, directors received remuneration each year for services rendered to the Organization and for attending board meetings, up to a maximum of \$600.00 each quarter. Remuneration issued during the 2019 fiscal year exceeded this limit, and no explanation was provided regarding this discrepancy. The Organization provided business use of home and mileage claims for a portion of total remuneration issued; however, no supporting documentation was provided to substantiate these claims when requested by the CRA. In addition, the Organization's By-laws prohibit its board members from accepting any remuneration for services rendered; the Organization was also informed of this in the previous compliance agreement.

Due to the lack of supporting documentation submitted and/or maintained, the Organization's books and records are deemed inadequate. Moreover, these payments are deemed an undue benefit.

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<sup>12</sup> While charitable act is not defined in the Act, it is considered to refer to an activity that itself provides a charitable benefit to an eligible beneficiary.

<b>Total paid per director</b>	<b>FYE 2019-12-31</b>	<b>FYE 2018-12-31</b>
Boersma	\$2,800.00	\$2,400.00
Klaren	\$2,800.00	\$2,400.00
Machinkow	\$2,800.00	\$2,400.00
Opmeer	\$2,800.00	\$2,400.00
	\$0	\$600.00
<b>Total in FYE</b>	<b><u>\$11,200.00</u></b>	<b><u>\$10,200.00</u></b>

It is our view that by remunerating its directors, and being unable to provide adequate supporting documentation to substantiate the reason, and amounts paid, the Organization provided unacceptable private benefits. As a result, the Organization failed to meet the requirements of section 149.1 of the Act that it devote its resources to charitable activities carried on by the Organization itself. As such, there are grounds for the Minister to revoke the charitable status of the Organization in the manner as described under paragraph 168(1)(b) of the Act.

Additionally, it is our view that the above mentioned unacceptable private benefits are also considered to be undue benefits as described in subsection 188.1(5) of the Act. As such, there may also be grounds for the Minister to sanction the Organization under subsections 188.1(4) and paragraph 188.2(1)(b) of the Act.

Calculation of the penalty proposed:

Fiscal period ending	Type of Sanction	Sanction %	Sanctioned amount	Sanction
2018-12-31	Undue Benefit	105%	\$11,200.00	\$11,760.00
2019-12-31	Undue Benefit	105%	\$10,200.00	\$10,710.00

## **2. Failed to maintain adequate books and records.**

### **Legislation and jurisprudence**

Subsection 230(2) of the Act requires that every registered charity shall maintain adequate records<sup>13</sup> and books of account at an address in Canada recorded with the Minister or designated by the Minister containing:

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

<sup>13</sup> 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.”

- (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 records<sup>14</sup> of account, at an address in Canada registered with the CRA, containing information in such form as will enable the Minister to determine whether there are 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:

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<sup>14</sup> 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."

- the onus is on the registered charity to prove that its charitable status should not be revoked.<sup>15</sup>
- 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.<sup>16</sup>
- Paragraph 168(1)(e) of the Act provides that the Minister may propose to revoke registration of a charitable organization if it fails to comply with, or contravenes, any of sections 230 to 231.5 of the Act., and the Federal Court of Appeal has determined that non-compliance with section 230(2) of the Act is a proper basis upon which the Minister may issue such a notice.<sup>17</sup>
- The requirement to keep proper books and records is foundational and non-compliance with the requirement is serious and justifies revocation.<sup>18</sup>

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.<sup>19</sup>

### **Audit findings**

A review of the Organization's books and records identified a number of deficiencies. In some instances, the Organization either did not maintain, or was unable to provide, books and records when requested. As such, the Organization's books and records were inadequate for verifying assets, liabilities, income, expenses, donations, and overall use of resources. In particular, the following deficiencies were found:

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

<sup>16</sup> 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.

<sup>17</sup> 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.

<sup>18</sup> 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.

<sup>19</sup> Ark Angel Foundation v Canada (National Revenue), 2019 FCA 21 at para 43.

## General Documentation:

- The General Ledger (GL) and Preliminary Trial Balance (TB) did not reconcile. Further, the T3010 and GL did not reconcile.
- The Organization did not submit the December 2019 board of directors meeting minutes, or the November 2019 General Manager Report as requested.

## Asset Documentation:

- Bank accounts [REDACTED] are not accounted for in the Financial Statements, GL, TB, or T3010 information return.
  - The Organization stated that it does not maintain ownership of these accounts; however, no supporting documentation was provided to support this statement. The directors of the Organization have signing authority of these accounts.
- Bank account [REDACTED] and [REDACTED] is both an asset and liability for the Organization. This account was recorded on the Financial Statements and reported as a liability on the T3010 returns; however, it was not recorded as an asset in the Financial Statements or on the T3010 returns.
- Supporting documentation was requested but not provided for a [REDACTED]
- Insurance documents were requested but not provided for a [REDACTED] and [REDACTED]
- There was no supporting documentation provided for the \$76,346.00 receivable, due from [REDACTED]. As such, the CRA was not able to verify the receivable reported.

## Liability Documentation:

- The Organization did not provide agreements for the Resthome fund (GL [REDACTED]), Addit'l Future Dev. Fund (GL # [REDACTED]), and [REDACTED] recorded on the Financial Statements and reported on Line 4320, "Amounts owing to non-arm's length persons", of the Form T3010.

## Revenue Documentation:

- Supporting documentation was requested for the gain on disposal reported in the GL and Financial Statements. The Organization submitted only a general journal document, which is inadequate for verification purposes.
- We were unable to trace all sampled revenue items to the bank statements. The Organization was asked to indicate which bank account the sampled items were



deposited into, including the date, and deposit entry the item is included in. Bank deposit slips were also requested. The Organization did not provide supporting documentation.

- The Organization did not provide the November 2019 bank statements for any bank accounts.

Expense Documentation:

- We were unable to complete a withdrawal analysis due to lack of supporting documentation.
- We were unable to trace all sampled expense items to the bank statements.
- The Organization did not provide supporting documentation, as requested, for all sampled expenses.
- Due to a lack of supporting documentation provided, a determination regarding the charitable nature for a portion of the sampled expense items cannot be made. Accordingly, it is not possible to determine if the allocation of these expenses to Line 5000 of the December 31, 2019 T3010 return is correct.
- GL payroll account entries are labelled as "PAYROLL ENTRIES". As a result, it is not possible to trace reported values from the T4 box totals to the GL.
- Supporting documentation for employee benefit GL accounts [REDACTED] were requested; however, the Organization did not submit any documentation.
- A listing of items and amounts that account for the December 31, 2019 T4 box 40 total [REDACTED] was requested. The Organization indicated that these box 40 amounts consisted of extended health, dental, bonus, and gift cards; however, no further information/documentation was submitted to support the amounts.
- As per the December 31, 2019 GL, the Organization incurred a \$12,995.50 expense for gift cards. The Organization submitted a listing of staff who received gift cards in 2019, which totalled \$1,700.00. The resulting \$11,295.50 gift card balance poses a high risk of private benefit. Supporting documentation for this balance was requested; however, the Organization did not submit any representations.

Due to the inadequacies in the Organizations records, a determination cannot be made regarding the correct reporting of near cash gifts on T4 slips, which was a concern addressed in the previous compliance agreement.

- Supporting documentation exhibiting the salary ranges for administration, care aids, managers, nurses, and pastoral staff was requested; however, the Organization did not submit any documentation that could be utilized to determine if salaries paid to these employees were reasonable in relation to services rendered.
- The Organization did not provide supporting documentation to substantiate the figures reported as remuneration to directors. The Organization explained payments were for business use of home and mileage claims; however, further supporting documentation was not submitted to confirm amounts.
- A mileage log book was requested; however, the Organization stated that it does not maintain a log book.

Donation Documentation:

- Per the official donation receipts provided, the Organization received \$1,282.00 and \$5,445.00 in its December 31, 2018 and December 31, 2019 fiscal periods, respectively. However, the Financial Statements and GL indicate that the Organization only received receipted donation revenue. However, the Financial Statements and GL indicate that the Organization only received \$250.00 and \$456.00 in receipted donation revenue in its December 31, 2018 and December 31, 2019 fiscal periods, respectively. Further, the Organization did not maintain a receipt listing that could be cross referenced with receipts issued.
- During the previous audit of the Organization's books and records for its December 31, 2011 and December 31, 2012 fiscal periods, the following areas of non-compliance were identified during a review of the Organization's official donation receipts: 3.(a) contents; and 3.(b) copies of donation receipts. Specifically, as it pertains to item (b), the Organization agreed to ensure that it maintains an electronic or paper copy of each donation receipt it issues. Due to the inadequacies of the Organization's books and records during the current audit, it is not possible to determine if item 3 of the previous compliance agreement has been rectified.
- Bank deposit slips related to donations were requested, but not provided.
- The Organization was asked to indicate: which GL accounts the sampled donations were allocated to, including journal entry numbers; which bank account donations are deposited into, including date of deposit, and deposit amounts the samples were included in; and to provide copies of cheques received. The Organization did not submit any representations; therefore, sampled donations could not be traced to the GL or bank statements.

Per the previous compliance agreement, the Organization was required to ensure that all documentation is maintained, and available to the CRA for review. Further, the Organization was required to ensure that all supporting documents for expenses include a description of goods/services purchased.

Given the Organization's failure to fulfill its requirement to maintain and make available adequate books and records, and its failure to comply with the corrective measures agreed to in the previous compliance agreement, it is our view that the present audit constitutes repeat serious and material non-compliance. For this reason, there are grounds for revocation of the Organization's charitable status under paragraph 168(1)(e) of the Act.

In addition, the Minister may suspend the Organization's authority to issue official donation receipts for one year for having inadequate books and records under paragraph 188.2(2)(a) of the Act.

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

#### **Legislation and jurisprudence**

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.

#### Split receipting – intention to give

A transfer of property for which some advantage (or consideration) is received does not in and by itself disqualify the transfer from being considered a gift provided the fair market value (FMV) of the advantage does not exceed 80% of the value of the transferred property and the transfer was made with the intention to make a gift (donative intent).

Split receipting is the method used to calculate the eligible amount of a gift for receipting purposes when the donor has received an advantage (consideration) in return for their donation. To figure out the eligible amount of the gift, a charity has to subtract the FMV of the advantage from the FMV of the gift. Some examples of an advantage are: cost of the meal, cost of the entertainment and door prizes. Where the advantage does not exceed \$75 or 10%, the full amount paid for the gift may be receipted. However, where advantages have a combined FMV that is more than \$75 or 10% of the FMV of the gift, a charity has to subtract these advantages from the FMV of the gift when issuing official donation receipts. Where the advantage is more than 80% of the FMV of the gift, the CRA generally considers that there is no true intention to make a gift. Therefore, a charity cannot issue a receipt.

### Gifts in kind

Where the donation is a gift of property other than cash, a charity is required to support the amount that represents the fair market value of the property as of the date of the donation, preferably by way of independent appraisal for gifts exceeding \$1,000 and must be disclosed on the receipt.<sup>20</sup> Fair market value generally means the highest price, expressed in dollars, that a property would bring in an open and unrestricted market, between a willing buyer and a willing seller. The fair market value of the property must be determined before an amount can be recorded on a receipt for tax purposes.

For every situation, whether the property is personal property, real property, or intangible property, donors and qualified donees are encouraged to contact a professional appraiser, valuator, or other individual who is accredited in the field of valuation. The chosen individual should also be knowledgeable about, and active in, the marketplace for the specific property. Further, the chosen individual should be independent, and not associated with the donor, the qualified donee, or another party associated with the purchase, sale, or donation of the property.

### Computer-generated receipts

The Act allows for the issuance of computer-generated official donation receipts provided that the receipts are readable and the reliability of the computer data is sufficiently protected. A computer-stored copy of an electronically issued receipt does not require a signature to be considered a duplicate.<sup>21</sup>

### **Audit findings**

Official donation receipts issued during the audit period do not contain all required elements of Regulation 3501 of the Act.

#### The following elements are missing:

- a statement that it is an "official receipt for income tax purposes";
- the website address, **[www.canada.ca/charities-giving](http://www.canada.ca/charities-giving)**;
- a unique serial number;
- are receipts issued in a reasonably serial manner with respect to the unique serial numbers;
- are all numbers in a series accounted for;
- the full address of the donor; and
- the signature of an authorized person.

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<sup>20</sup> See CRA publication P113 – Gifts and Income Tax 2020; CRA publication IT-297R2, Gifts in Kind to Charity and Others.

<sup>21</sup> See CRA Policy statement CPS-014, Computer-generated official donation receipts.

It is important to note that the previous compliance agreement stated that the CRA's web address should be indicated on donation receipts as follows, "www.cra-arc.gc.ca". The Organization did update the web address as required by the previous compliance agreement at that time. However, effective March 31, 2019<sup>22</sup>, the address required was changed to [www.canada.ca/charities-giving](http://www.canada.ca/charities-giving), which was not found on receipts issued after this date.

The current audit found that multiple donation receipts issued in the December 31, 2019 fiscal year end were assigned the same serial number, and significant gaps were identified in the series.

Based on the above findings, it is our view that the Organization issued receipts otherwise than in accordance with the Act and/or its Regulations, and under paragraph 188.2(2)(c) of the Act, a charity may receive a notice of suspension of its authority to issue official donation receipts for this non-compliance. Further, the Organization may be liable to a penalty under subsection 188.1(7) of the Act.

Additionally, the Organization may be subject to the revocation of its charitable registration under paragraph 168(1)(d) of the Act.

#### **4. Failed to issue an information return for amounts paid (T4, T4A) – Failed to prepare proper documentation for payments to an employee/director.**

##### **Legislation and jurisprudence**

As per paragraph 168(1)(c) of the Act, a registered charity must “file an information return as and when required under this Act or a regulation”.<sup>23</sup> While this paragraph refers specifically to a registered charity’s Form T3010, it also refers to all other information returns that the registered charity is required to file.

In accordance with Regulation 200(1) and Regulation 200(2) of the Act, a registered charity may be required to prepare and file a complete Form T4, Statement of Remuneration Paid, and Form T4A, Statement of Pension, Annuity and Other Income, both of which need to be filed with a summary return. Form T4 is to be completed and filed every year a registered charity makes a payment to an individual as described in 153(1) of the Act in excess of \$500 in a calendar year. These payments can include salaries, wages, commissions, tips, vacation pay, and taxable benefits or allowances. Conversely, Form T4A is to be completed and filed every year in which a registered charity makes payments or provides income to individuals in excess of \$500 in a calendar

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<sup>22</sup> Refer to <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/issuing-receipts.html>.

<sup>23</sup> Subsection 168(1) of the Act states, “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 [...] (c) in the case of a registered charity, registered Canadian amateur athletic association or registered journalism organization, fails to file an information return as and when required under this Act or a regulation”.

year, and includes payments for pension or superannuation, annuities, fees for services, scholarships, bursaries, grants or financial assistance.<sup>24</sup>

### **Audit findings**

The Organization failed to issue T4A slips to directors, as required by the Act, for remuneration paid in the December 31, 2018 and December 31, 2019 fiscal year ends.

In addition, due to the inadequacies in the Organization's payroll records, a determination cannot be made regarding the correct reporting of near cash gifts (i.e. gift cards) on T4 slips, which was a concern addressed in the previous compliance agreement.

For these reasons, it is our view that there are grounds for the Minister to revoke the charitable status of the Organization under paragraph 168(1)(b) of the Act.

### **5. Failed to file an information return as required by the Act.**

#### **Legislation and jurisprudence**

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 a charity to ensure that the information provided in its Form T3010, Registered Charity Information Return, schedules and statements, is factual and complete in every respect. A charity is not meeting its requirements to file an information return in prescribed form if it fails to exercise due care with respect to ensuring the accuracy thereof. The Federal Court of Appeal has confirmed that a significant number of inaccuracies, or beyond what might reasonably be viewed as minor, in a T3010 are a sufficient basis for revocation.<sup>25</sup>

### **Audit findings**

Our review of the T3010 returns for the audit period noted the following issues:

- The Organization did not report start and end dates of its directors on its December 31, 2018 and December 31, 2019 Form T1235, "Directors/Trustees and Like Officials"

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<sup>24</sup> For more information about completed Form T4 or Form T4A, or other payroll requirements, see Guide T4001, Employers' Guide – Payroll Deductions and Remittances; Guide RC4120, Employers' Guide – Filing the T4 Slip and Summary; and Guide RC4157, Deducting Income Tax on Pension and Other Income, and Filing the T4A Slip and Summary.

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

Worksheet”. Further, the Organization did not report end dates for its directors on its most recently filed Form T1235 (December 31, 2021).

- The Organization did not complete Lines 5900 or 5910 of the T3010 return for its December 31, 2018 and December 31, 2019 fiscal year ends.
- Bank accounts [REDACTED] are not accounted for in the Organization's Financial Statements, GL, TB and T3010 information return. Moreover, these bank accounts have not been reported on Line 4100, “Cash, bank accounts, and short-term investments” of the Organization’s T3010 returns for the audit period.
- Bank accounts [REDACTED] are both an asset and liability for the Organization.
  - Account [REDACTED] was recorded on the Financial Statements and reported as a liability on Line 4320, “Amounts owing to non-arm’s length persons” of the T3010 returns. However, it was not recorded as an asset in the Financial Statements or on the T3010 returns.
  - According to the previous compliance agreement, account [REDACTED] is both an asset and liability; however, it was not reported as such on the T3010 returns.
- As per the Memorandum of Agreement, the [REDACTED] (motor vehicle) was not purchased in the Organization's name. The supporting documentation provided does not verify that the Organization maintains ownership of this asset, therefore it should not be reported as an asset on the Form T3010.
- The Organization did not report the \$3,431.69 gain on disposal of a motor vehicle on its December 31, 2019 Form T3010. This gain should be reported on Line 4600, “Net proceeds from disposition of assets”, of the T3010. As such, the Organization did not record all revenue items in accordance with subsection 149.1(14) of the Act.
- The Organization incorrectly reported all revenue accounts on Line 4650, “Other revenue not already included in the amounts above” of the T3010 returns.
- The Organization did not fulfill its obligation to report eligible amounts of all gifts for which tax receipts were issued on Line 4500 of the T3010 returns.
- Due to the lack of information and supporting documentation provided by the Organization, it is not possible to determine if all of the sampled expense items are recorded and categorized correctly on the T3010 returns.
- The Organization incorrectly allocated all of its expenses to Line 5000, “Total expenditures on charitable activities, on its T3010 returns. A portion of the sampled

expenses should have been allocated to Line 5010, “Total expenditures on management and administration”, of the T3010 return.

- Due to the lack of supporting documentation provided, a determination regarding the charitable nature of a portion of sampled expense items cannot be made. Therefore, it is not possible to determine the correct allocation of all expense items to Line 5000 and 5010 of the T3010 returns.
- A portion of the sampled expense items were incorrectly recorded and categorized on Line 4920, “Other expenditures” of the T3010 returns.
- The Organization reported 170 total staff on its December 31, 2019 Form T3010; however, 213 T4 slips were issued according to slips filed with the CRA.
- The Organization reported 159 total staff on its December 31, 2018 Form T3010; however, 178 T4 slips were issued according to slips filed with the CRA.
- There is a material discrepancy between Line 4880, “Total expenditure on compensation” reported on the T3010 and the T4 slips filed with the CRA.
- The Organization indicated that it did not compensate directors for services provided during the fiscal period (other than for reimbursement for expenses) on Line 3200, Question C8 of the T3010 returns. However, the Organization did compensate its directors for the provision of services.
- The Organization incorrectly reported remuneration to directors on Line 5000, of the T3010 returns.

Per the previous compliance agreement, the Organization is required to ensure that the T3010 return accurately reflects all transactions that the Organization was involved in during the period.

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 or its Regulations. It is our view the Organization has failed to comply with subsection 149.1(14) of the Act by failing to file an accurate T3010 return. For this reason, there may be grounds to revoke the Organization’s charitable status.

It is our view that the Organization has failed to comply with the Act by failing to file an accurate T3010 return. For this reason, there may be grounds to suspend the Organization’s authority to issue official donation receipts under subsection 188.2(2.1) of the Act.<sup>26</sup> Further, the Organization may be liable to a penalty under subsection 188.1(6) of the Act.

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<sup>26</sup> See also CRA guidance on “Failure to file your return” at [canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/t3010-charity-return-overview](https://canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/t3010-charity-return-overview).



**The Organization's options:****a) Respond**

If the Organization chooses to respond, send written representations and any additional information regarding the findings outlined above **within 30 days** from the date of this letter to the address below. After considering the response, we will decide on the appropriate course of action. The possible actions include:

- no compliance action;
- issuing an educational letter;
- resolving the issues through a Compliance Agreement;
- applying penalties or suspensions or both, as described in sections 188.1 and 188.2 of the Act; or
- issuing a notice of intention to revoke the registration of the Organization in the manner described in subsection 168(1) of the Act.

**b) Do not respond**

The Organization may choose not to respond. In that case, we may proceed with the application of penalties and/or suspensions described in sections 188.1 and/or 188.2 of the Act or give notice of its 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 Act provides the Minister the discretion to revoke a charity's registration. Section 168 of the Act describes the manner in which the Minister may revoke a charity's registration. In accordance with subsection 168(1) of the Act, when proposing to revoke, the charity is given notice by registered mail of the Minister's intention to revoke the charity's registration. The charity's registration is not revoked until a copy of the notice is published in the Canada Gazette. Paragraph 168(2)(b) of the Act allows the Minister to publish the notice in the Canada Gazette any time after the expiration of 30 days from the date of the mailing of the notice.

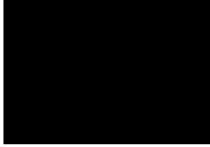
After considering the Organization's response to this letter, the Minister may decide to exercise her authority to revoke its charitable registration. If so, the Minister will issue a notice of intention to revoke the Organization's registration and will indicate in the notice whether the Minister intends to publish the notice in the Canada Gazette immediately after the expiration of 30 days from the date of the mailing of the notice.

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

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If you have any questions or require further information or clarification, do not hesitate to contact me at 587-337-8351. My team leader, Crystal Scott, may also be reached at 587-335-1670.

Yours sincerely,



Jacob Stelfox  
Audit Division  
Alberta Tax Services Office  
Telephone: 587-337-8351  
Toll Free: 1-800-267-2384  
Facsimile: 780-495-6908  
Address: Suite 10, 9700 Jasper Avenue NW  
Edmonton AB T5J 4C8


c.c.: Jack Klaren  
Director



## Compliance Agreement

Between

HRC Care Society (the Organization)  
Business Number 14094 2103



And

Canada Revenue Agency (CRA)

During an audit of the Organization's books and records for the fiscal periods ending December 31, 2011 and December 31, 2012, conducted by the CRA, the following areas of non-compliance with the provisions of the *Income Tax Act* and/or its *Regulations* were identified.

### Areas of Non-Compliance

#### **1. Objects and Activities**

An organization's objects and activities are formally expressed in its Constitution and By-laws. For a registered charity these guiding documents must direct the organization to conduct exclusively charitable activities as required by Subsection 149.1(1) of the Act. It is a responsibility of the Board of Directors to direct the organization to conduct charitable activities in support of its objects.

The Organization maintained minutes of the monthly board meetings. In the review of the minutes for the November 27, 2012 meeting, it was noted that the board asked the Hope Consistory for their long term plan for the Organization. It is the duty of the Organization's Board of Directors to direct and control the Organization; the activities of the Organization should never be decided by a third party.

Further, the Organization was unable to produce its Constitution and By-laws during the site visit. Without these key guiding documents it is difficult for the people directing the Organization to make decisions that support the Organization's objects. During the same visit, the Organization was also unable to produce the minutes from its Annual General Meeting (AGM). Without the AGM minutes it is difficult to verify that the Board of Directors is guiding the Organization to charitable activities in support its Constitution and By-laws. All these documents were provided subsequent to the site visit.

The Organization, like all charitable organizations, is required by Subsection 149.1(1) of the Act to be exclusively charitable. In order for the CRA to assess its

compliance with the Act, it is necessary for the organization to provide books and records at the time of audit that explain both its current objects and its ongoing activities in support of those objectives. Further, the board is responsible to provide direction and control for the Organization based on its approved objects and activities, and should not be taking that direction from other parties or organizations. .

## 2. Books and Records

### (a) Documentary support of activities

As discussed above, charitable organizations are required by subsection 149.1(1) of the Act to conduct exclusively charitable activities. Subsection 230(2) requires charitable organizations to maintain books and records which confirm that the activities of an organization support subsection 149.1(1) and are exclusively charitable.

The Board of Directors of HRC Care Society are the stewards of the Organization, and as such are responsible to direct the Organization in accordance with all applicable laws. This includes the *Income Tax Act*, the *BC Societies Act* and the Organization's own By-laws. The books and records of the organization serve to document the board's activities and compliance with applicable legislation.

During the review period the board approved two activities which were not in compliance with all the legislation. The board elected to offer compensation to the directors for each board meeting that they attend. Board members now have the option to receive \$200 for attending a board meeting. This is a contravention of article 17 of the Organization's own By-laws, which states in part "...no member of the Board shall accept any remuneration for services rendered to the HRC Care Society...".

In addition, the Organization engaged two individuals, [REDACTED] [REDACTED] to perform work for the Organization outside of the board duties that they were already doing. These were non-arm's length transactions which require clear documentation to demonstrate that an undue benefit was not bestowed upon these individuals. Specifically, there should be documents to demonstrate that the board satisfied Articles 27 and 28 of the *BC Societies Act*. These Articles address conflicts of interest for directors; including disclosure of interests and abstention from voting. While the CRA does not administer this Act, compliance with these articles will assist in providing support that an undue benefit, as defined in Subsection 188.1(5) of the *Income Tax Act*, has not been bestowed in the awarding of the employment or contract. Generally speaking an undue benefit is bestowed under Subsection 188.1(5) when a payment is not: reasonable remuneration or compensation for goods or services acquired; a gift

or benefit conferred in the course of charitable activities; or a gift to a qualified donee.

The Organization's books and records do not contain sufficient documentation to demonstrate that the Organization conducted its activities in full compliance with the Act. For additional information regarding books and records and supporting documents please see our Income Tax Information Circular IC 78-10R5 *Books and Records Retention/Destruction* which is available on the CRA website at [www.cra-arc.gc.ca](http://www.cra-arc.gc.ca).

**(b) T3010 Registered Charity Information Return**

The Organization has filed a T3010 *Registered Charity Information Return* annually, as required by Subsection 149.1(14) of the Act. The review determined that some of the required information was not included on the filed returns.

The Organization maintains a 'Comfort Fund' of prepaid funds contributed by the residents to pay for their incidental expenses. The comfort fund is both an asset and a liability for the Organization; it has received cash that it is holding and it has an offsetting liability of unearned revenue. The Comfort Fund was not included in the Statement of Financial Position and subsequently it was not reported on the T3010.

The Organization received donations through the on-site chapel where weekly Christian church services are conducted. These funds are forwarded to [REDACTED] another qualified donee. The donations that were transferred to [REDACTED] were not reported on the T3010. These transfers should be included in the value reported on Schedule 6 at Line 5050 *Total amount of gifts made to all qualified donees*.

In addition to the information currently reported, the Comfort Fund and the donations that are transferred to [REDACTED] must be reported on the T3010 to make the Organization's reporting complete and accurate.

**(c) Cash/near cash reporting on employee's T4's**

The Organization takes the opportunity to recognize outstanding work by employees, or special occasions, by providing deserving employees with a gift card. The value of the gift cards received by the employees was not included in the T4's issued to the employees for the year.

Any payments of cash, or near cash (such as a gift card), given to an employee must be included on the T4 *Statement of Remuneration Paid* issued to the employee for the period. For further information on recognition awards see the *Rules for gifts and awards* page on the CRA website.

#### **(d) Supporting documents**

Subsection 230(2) of the Act provides a description of the books and records that a qualified donee must retain. In part, it states that a qualified donee must keep information in such form that will enable the Minister to determine if there are grounds to revoke an organization's registration.

The Organization's supporting documents for expenses included credit card receipts. Some the expenses were only supported by credit card receipts. Such receipts do not provide a description of the goods or services purchased; this makes it difficult to confirm that the expense was incurred to further the Organization's charitable activities. Therefore, expenses that are supported only by credit card receipts do not meet the requirements of the Act.

The Organization's supporting documents must contain sufficient information to demonstrate that the expenses were incurred in furtherance of the Organization's charitable activities.

### **3. Official Donation receipts**

#### **(a) Contents**

Regulation 3501 of the Act identifies specific information that must appear on every donation receipt issued by a qualified donee; which includes a registered charity. This information may also be found in CRA bulletin IT-110R3 *Gifts and Official Donation Receipts*, which is available on the CRA website.

The Organization's donation receipts were sampled and reviewed for compliance with the Regulation. The following areas of non-compliance were identified:

- The full name of the donor is not always recorded on the receipt. The full name of the donor, including their complete first name, last name and middle initial (if they have one), must appear on the receipt.
- A brief description of donated property (gift in kind donations) did not appear on the receipt. A description of the donated property is required for all gift in kind donations.
- The name of the Canada Revenue Agency and its web address [www.cra-arc.gc.ca](http://www.cra-arc.gc.ca) are not on the receipt. This information is required to be on the receipt.
- The place or locality where the receipt was issued was not recorded. The receipt must state the place or locality where it was issued.

#### **(b) Copies of donation receipts**

All qualified donees are required by subsection 230(2) of the Act to retain a duplicate of each donation receipt they issue.

The Organization did not have a complete set of duplicate donation receipts issued in the review years. It is acknowledged that there were changes of key senior management personnel in June of 2012. The record keeping improved after the change and there are duplicate copies of all donation receipts issued following the change in management.

The Organization wishes to rectify all identified areas of non-compliance on a voluntary basis. The CRA is prepared to provide the Organization with an opportunity to do so. For this purpose, the parties agree that the Organization shall implement the following corrective measures.

### **Corrective Measures**

#### **1. Objects and Activities**

The Organization will ensure that the Board of Directors, and only the Board of Directors, is guiding the Organization to conduct charitable activities as established in its Constitution and By-laws. To this end, the Organization will also ensure that the Constitution and By-laws are readily available to all people who are responsible for directing and controlling the Organization.

The organization will also ensure that all documentation is maintained at the business address of the organization and are available in the future at the time of review by CRA.

#### **2. Books and Records**

The Organization will ensure that its books and records include documents which demonstrate that the Organization's activities comply with all applicable legislation. This includes, but is not limited to, meeting minutes where directors disclose any conflict of interest and excuse themselves from any discussion and voting on the matter. Further, the records will support that any compensation paid does not exceed fair market value; this is especially relevant for non-arm's length transactions.

The Organization will ensure that the T3010 *Registered Charities Information Return* that it files includes, and accurately reflects, all transactions that the Organization was involved in during the period.

The T4 information returns that the Organization files will include all payments to employees including: cash; near cash; and all other taxable benefits, as required by the Act.

The Organization will ensure that all supporting documents for expenses include a description of the goods or services purchased. The description must support that the expense was incurred to advance the Organization's charitable purposes.

### 3. Official Donation receipts

The Organization will revise its official donation receipts and receipting practices to be compliant with Regulation 3501. This includes ensuring that every donation receipt issued by the Organization includes:

- The full name of the donor, including their middle initial
- A brief description of the donated property where a gift in kind donation was made.
- The name Canada Revenue Agency and its web address [www.cra-arc.gc.ca](http://www.cra-arc.gc.ca)
- The place or locality where the receipt is issued.


The Organization will ensure that it keeps a copy, either electronic or paper, of each donation receipt it issues.

### Date of Implementation of all Corrective Measures


The Organization shall implement all corrective measures **immediately**.

By signing below, the parties certify that they have read, understood, and agree to, the terms of this Compliance Agreement. The Organization further acknowledges that should it fail to implement all corrective measures in accordance with the terms of this Compliance Agreement, the Minister of National Revenue (the Minister) may, by registered mail, give notice that the Minister proposes to revoke the registration of the Organization by issuing a Notice of Intention to Revoke in the manner described in subsection 168(1) of the Act.

Organization per: Authorized Signatory with the authority to bind the Organization

 Board President  
Name and position of signatory  
(please print)

Witness

  
Name of witness (please print)



[Redacted]

Organization per: Board Director

Witness

[Redacted]

[Redacted]

BOARD MEMBER

Name and position of signatory  
(please print)

Name of witness (please print)

[Redacted]

Full name and address of Organization

Date of signing: Dec 16, 2014

[Redacted]

CRA per:

[Redacted]

Name and position of signatory  
(please print)

Date of signing: 29 DECEMBER, 2014

## APPENDIX A

**HRC Care Society  
Comments on Representations**

In the administrative fairness letter (AFL) dated May 25, 2023, we explained that the audit conducted by the Canada Revenue Agency (CRA) for the period from January 1, 2018, to December 31, 2019, identified that HRC Care Society (the Organization) is not operating in compliance with the provisions of the Income Tax Act (the Act) in the following areas:

1. Failed to devote resources to charitable activities carried on by the Organization itself – Conferred an undue benefit to a person
2. Failed to maintain adequate books and records
3. Failed to issue official donation receipts in accordance with the Act and/or its Regulations
4. Failed to issue an information return for amounts paid (T4, T4A) – Failed to prepare proper documentation for payments to an employee/director
5. Failed to file an information return as required by the Act

We have reviewed and considered your representations dated July 21, 2023, and we maintain our position that the non-compliance identified during the audit constitutes a serious and repeated breach of the requirements of the Act. As a result of this non-compliance, the Organization's charitable status should be revoked.

Although we maintain our position that each of the section 188.1 penalties listed in the AFL are applicable and could be assessed from a technical perspective,<sup>1</sup> we will not be assessing any of the proposed penalties as a result of the current audit. Instead, and as noted above, due to the serious and repeated breach of the requirements of the Act, the Organization's charitable status should be revoked.

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

- A summary of the issues raised in the AFL dated May 25, 2023;
- A summary of the representations provided by the Organization dated July 21, 2023; and
- The CRA's response to the representations.

**1. Failed to devote resources to charitable activities carried on by the Organization itself – Conferred an undue benefit to a person**

As we noted in the AFL, the audit found that the Organization provided remuneration to its directors, and did not provide adequate supporting documentation to substantiate the reason(s) for the remuneration amounts. Consequently, by providing unacceptable private benefits, the Organization failed to meet the requirements of section 149.1 of the Act that it devote its resources to charitable activities carried on by the Organization itself.

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<sup>1</sup> Under subsection 189(7) of the Act, the Minister (that is, the CRA) may assess any applicable financial penalties against revoked charities and/or charities the Minister is in the process of revoking.

**The Organization's representations**

The Organization represented that no benefit was received, as the amounts issued to directors during the audit period are reimbursements for business use of home expenses and mileage. The Organization submitted information regarding directors' personal residences, related expenses and distances from those residences to specified locations for board meetings and other activities; a reimbursement form for Lorie Marchinkow; and a calculation of business use of home expense forms and mileage information for Jack Klaren.

In its representations, the Organization advised that directors did not submit documentation related to services provided and that the Organization did not maintain records related to amounts issued to directors.

**CRA's response**

It is our position that the Organization's response did not provide adequate supporting documentation to demonstrate that the remuneration paid to its directors was acceptable. Moreover, as indicated in the AFL, the Organization's By-laws prohibit it from remunerating its directors for services rendered.

During the course of the audit, a request for supporting documentation was issued by the CRA. The Organization submitted some of the claim amounts and calculations thereof but not all, and supporting documentation to substantiate the remuneration was not submitted.

For example, one reimbursement form that was submitted shows that for January, February, and March of 2018, Lorie Marchinkow was reimbursed \$600.00 for attending board meetings of which \$144.60 was for mileage and \$18.00 for parking/tolls. The remaining \$437.40 was reportedly spent on office supplies and food, for which the Organization did not provide supporting documentation.

While the Organization claims that amounts issued to directors during the audit period were reimbursements for mileage and business use of home expenses, this is inconsistent with the President and General Manager's statements that directors were remunerated, in part, for the provision of services and that the services in question were directorial duties.

In its 2014 Compliance Agreement, the Organization acknowledged and agreed that its By-laws prohibit its directors from accepting any remuneration for services rendered.

According to Corrective measure 2 of its Compliance Agreement, the Organization is required to ensure that all supporting documents for expenses include a description of the goods or services purchased. Moreover, the description provided must support that the expense was incurred to advance the Organization's charitable purposes. In the current audit, the Organization failed to provide adequate supporting documentation in regards to the amounts issued to directors, and therefore, failed to implement the agreed upon corrective measure. In addition, the President and General Manager stated that no such books and records were maintained.

As such, the Organization's representations are not adequate for the purposes of substantiating the value of expenses incurred by directors for which reimbursements were issued, or for determining what extra services directors provided (including hours worked, hourly rate, and charitable purpose), as they are unsupported.

Therefore, it remains our position that the Organization has failed to devote all of its resources to charitable activities, as required by the Act as a condition for charitable registration. For this reason, there are grounds for revocation of the Organization's charitable status under paragraph 168(1)(b) of the Act.

## **2. Failed to maintain adequate books and records**

As outlined in the AFL, the Organization failed to maintain and/or provide adequate books and records to allow the CRA to verify the Organization's assets, liabilities, revenue, expenses, donations, and overall use of resources. Moreover, the Organization's general ledger and preliminary trial balance did not reconcile, nor did its general ledger and Form T3010. In addition, the Organization did not submit its December 2019 meeting minutes or its November 2019 General Manager Report.

### **The Organization's representations**

The Organization submitted its balance sheets, trial balances, adjusting and reclassifying journal entries, financial statements, some bank statements, and its Form T3010s for fiscal years ending December 31, 2018, and 2019. It also provided applicable promissory notes, amortization schedules, invoices and cheque copies. The Organization also provided its 2018 and 2019 payroll reconciliations, 2018 and 2019 T4 slip summary totals, 2018 employer payroll and contract labour report, and 2019 annual payroll report and payment document. The Organization submitted copies of its official donation receipts, and supporting documentation for its salary ranges by position. The Organization submitted information regarding directors' personal residences, related expenses and distances from those residences to specified locations for board meetings and other activities.

The Organization represented that the \$76,346 receivable from [REDACTED] was created due to legal bills related to the sale of property and that the liability was repaid as part of an adjustment to [REDACTED]

With regards to the Future Development Fund and [REDACTED] the Organization provided the same documentation that was previously submitted to the CRA.

The Organization represented that there was no December 2019 meeting and that the last meeting was held November 26, 2019, yet no records from that meeting were provided.

The Organization confirmed that its buses are used for the Organization's activities, specifically to transport residents of the care facility. That said, the Organization also noted that the care home was sold in 2020. As such, the Organization now has only investments, and no longer receives donations.

## **CRA's response**

We have reviewed the Organization's representations, and note that while some of our concerns were addressed and alleviated, the Organization failed to address all of the books and records deficiencies outlined in our AFL. The Organization also provided copies of the same records that had already been provided to the CRA during the audit.

The Organization failed to provide adequate documentation, and/or adequate explanations, pertaining to multiple bank accounts listed on its financial statements, failed to provide bank statements for all its accounts, and failed to corroborate its claim that some of its bank accounts are client accounts and not true assets. As a result, the CRA cannot confirm the accuracy of any of the reported information, including revenues and expenditures.

The Organization failed to provide sufficient documentation pertaining to a \$76,346 receivable amount due from [REDACTED]. The documentation provided was previously submitted for review and does not show a \$76,346 receivable amount. As such, the CRA was unable to verify the receivable reported.

The Organization also failed to provide sufficient representations relating to its Future Development Fund or its [REDACTED]. As such, we are unable to trace all sampled revenue items. The Organization was asked to indicate which bank account the sampled items were deposited into, including the date, and the deposit entry that the item was included in. Bank deposit slips were also requested. The Organization failed to provide this information.

Lastly, the Organization failed to provide representations as to why the November 2019 General Manager Report was not provided.

Based on the audit findings, the Organization failed to implement corrective measures relating to its books and records, as outlined in its previous compliance agreement with the CRA.

As a result, it remains our position that the Organization has failed to maintain adequate books and records in accordance with the Act. For this reason, there are grounds for the Minister to revoke the Organization's charitable status under paragraph 168(1)(e) of the Act.

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

As outlined in the AFL, there were various errors and omissions noted in the Organization's official donation receipts (ODRs) issued during the audit period. Moreover, the current audit found that multiple donation receipts issued in the December 31, 2019, fiscal year were assigned the same serial number, and significant gaps were identified in the series.

#### **The Organization's representations**

In response to our concerns with the Organization's official donation receipts, it submitted a revised official donation receipt template.

### **CRA's response**

The Organization's revised official donation receipt template contains all required elements of Regulation 3501 of the Act, which would alleviate this area of concern going forward; however, it remains that receipts issued during the audit period were inadequate despite the Organization's 2014 Compliance Agreement in which it acknowledged and agreed to ensure its receipting practices were in compliance with Regulation 3501 of the Act. Furthermore, the Organization did not comment on the errors found related to the repeated serial number or the significant gaps.

For this reason, it is the CRA's view that there are grounds for the Minister to revoke the Organization's charitable status under paragraph 168(1)(d) of the Act.

#### **4. Failed to issue an information return for amounts paid (T4, T4A) – Failed to prepare proper documentation for payments to an employee/director**

As outlined in the AFL, the Organization failed to issue T4A slips to its directors, as required by the Act, for remuneration paid during its 2018 and 2019 fiscal years. In addition, due to the Organization's insufficient payroll records, a determination could not be made regarding the correct reporting of near-cash gifts (i.e., gift cards) on its 2019 T4 slips. Complete and accurate reporting of near-cash gifts was an issue identified and agreed to in the Organization's 2014 signed Compliance Agreement.

### **The Organization's representations**

According to the Organization, "T4A slips not required to be issued as amounts relate to expense reimbursements." The Organization also indicated that "[a] vendor (Medical Pharmacies) gave the Society about \$10,000 in gift cards to give to the staff each year which are mostly distributed at their annual Christmas Party. This was done and still is each year. It may be that-that particular year they purchased them and MP reimbursed them. That happened one year a while ago. The \$1,700 was from the Board to the management for Christmas."

The Organization submitted 2019 T4 slips, including Box 40. Other taxable allowances and benefits, for [REDACTED] The Organization provided a breakdown of the Box 40 totals for each individual, which shows that in 2019 gift card amounts were issued to [REDACTED] (\$500) and [REDACTED] (\$100).

### **CRA's response**

The audit found that the Organization failed to implement corrective measures pertaining to its payroll records, as required in its compliance agreement with the CRA.

As noted earlier in this document, the Organization did not provide sufficient supporting documentation to demonstrate that the remuneration paid to its directors was solely related to expense reimbursements. Furthermore, both the President and General Manager stated that the directors were remunerated, in part, for the provision of services and that the services in question

were directorial duties. Therefore, our concern related to failing to file T4A slips has not been alleviated.

In addition, our concern related to the complete and accurate reporting of near-cash gifts, has not been alleviated. While the Organization provided documents relating to the 2019 T4 slips, these records also confirmed that it did not report gift card amounts on all T4s.

For these reasons, it is the CRA's view that there are grounds for the Minister to revoke the Organization's charitable status under paragraph 168(1)(b) of the Act.

## **5. Failed to file an information return as required by the Act**

As indicated in the AFL, the Organization's T3010s for its 2018 and 2019 fiscal years contained multiple errors. Moreover, in its 2014 Compliance Agreement, the Organization agreed to ensure that its T3010s accurately reflect all transactions that the Organization is involved in during the applicable fiscal period.

### **The Organization's representations**

According to the Organization, the end dates were not reported for its directors as they are all still in their positions. Specifically, Arthur Boersma became a Director on February 23, 2016, and all other directors have been in their positions since at least 2005.

The Organization indicated that the amounts on Lines 5900/5910 of its December 31, 2018, and December 31, 2019, fiscal year end T3010s should be \$0.

According to the Organization, its bank accounts ending # [REDACTED] "...are client trust accounts and reported as such on the FS under note 3. As they are not true assets of the Society, they are netted on the FS and charity return. They are shown as adjustments on the TB though."

In response to discrepancies in the reporting of the Organization's bank accounts, it submitted its fiscal year ending December 31, 2018, and 2019 balance sheets, fiscal year ending December 31, 2019, financial statement and trial balance, December 2018 and 2019 reconciliation for bank account ending # [REDACTED], December 2019 transaction statement for bank account ending # [REDACTED] and a bank confirmation document.

In response to our concerns regarding the Organization's ownership of the [REDACTED], it submitted the purchase agreement for the [REDACTED].

In terms of the unreported gain of \$3,431.69 on the disposal of a motor vehicle, the Organization's representations indicate that "[t]he gain was missed being reported on the 2019 T3010 in error. Client accepts responsibility. They are putting controls in place to ensure this does not happen again, such as [REDACTED] will be completing the T3010s in the future."

In response to various items reported on incorrect lines of the Form T3010, the Organization indicated that it "reported these amounts on the incorrect lines in error." The Organization also submitted invoices and cheque copies in response to our concerns regarding incorrectly reported

items. The Organization also indicated that it “missed reporting...[eligible amounts of all gifts for which tax receipts were issued] on the correct lines in error.”

In response to multiple T4 concerns raised in the AFL, the Organization submitted its fiscal year ending December 31, 2018, and 2019 payroll reconciliations, 2018 and 2019 T4 slip summary totals, 2018 employer payroll and contract labour report, 2019 annual payroll report and payment document, and the T4 slip for [REDACTED].

Lastly, in response to our concern that the Organization compensated its directors for provision of services, it indicated that “[p]ayments made to directors is for business use of home office and mileage claims.” In addition, the Organization submitted information regarding directors’ personal residences, related expenses and distances from those residences to specified locations for board meetings and other activities; a reimbursement form for [REDACTED] and the calculation of business use of home expense forms and mileage information for [REDACTED].

### **CRA’s response**

Based on the Organization’s representations, we note that our concern regarding the missing start and end dates of its directors has been resolved. Moreover, our concern regarding whether the [REDACTED] is an asset belonging to the Organization has been resolved as the purchase agreement verifies the Organization as the purchaser.

We acknowledge the Organization’s willingness to correct its various T3010 reporting errors that were noted in the AFL, and the Organization’s willingness to provide its bank and financial statements. That said, the resolution of the Organization’s T3010 line reporting errors alone would not be sufficient to preclude revocation of its charitable status, as additional non-compliance issues remain, notably repeat non-compliance of concerns that were outlined in the 2014 Compliance Agreement.

While the Organization submitted a reconciliation of compensation expenditures between the T4 summary reports and the general ledger, these representations were inadequate for the purpose of reconciling the fiscal years ending December 31, 2018, and 2019 T4 amounts to the amounts reported on the respective T3010s. As a result, this issue has not been resolved.

With respect to amounts paid to directors, the Organization represented that these amounts were reimbursements for mileage and business use of home expenses. However, this is inconsistent with the audit findings, as the Organization’s President and General Manager made independent statements during phone conversations with the CRA that directors were remunerated, in part, for the provision of services. In addition, the President also stated that the services in question were directorial duties. Further, we were unable to verify the purpose of the amounts issued to directors, as the Organization failed to provide supporting documentation to show the nature of the expenses reimbursed to its directors.

In its 2014 Compliance Agreement, the Organization acknowledged that it had remunerated some of its directors but failed to maintain the documentation necessary to demonstrate that an undue benefit was not conferred. Consequently, as a corrective measure, the Organization agreed



to ensure that its books and records include documents which demonstrate that its expenditures were incurred to advance its charitable purposes. Based on the audit findings noted above, this is an area of repeat non-compliance.

Accordingly, the Organization was not compliant with its obligation to file an accurate information return as prescribed at subsection 149.1(14) of the Act. For this reason, it is the CRA's view that there are grounds for the Minister to revoke the charitable status of the Organization under paragraph 168(1)(c) of the Act.

### **Conclusion**

For the reasons outlined above and in the AFL dated May 25, 2023, it is the CRA's position that the Organization has failed to meet the requirements for registration as a charitable organization as outlined in subsection 149.1(1) of the Act. As such, the Organization should have its registration as a charity revoked pursuant to subsection 168(1) of the Act.

## Qualified Donees

### 149.1 (1) Definitions

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

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

(a) constituted and operated exclusively for charitable purposes,

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

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

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

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

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

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

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

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

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

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

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

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

(a) registered by the Minister and that is

(i) a housing corporation resident in Canada and exempt from tax under this Part because of paragraph 149(1)(i) that has applied for registration,

(ii) a municipality in Canada,

(iii) a municipal or public body performing a function of government in Canada that has applied for registration,

(iv) a university outside Canada, the student body of which ordinarily includes students from Canada, that has applied for registration, or

(v) a foreign charity that has applied to the Minister for registration under subsection (26),

(b) a registered charity,

(b.1) a registered journalism organization,

(c) a registered Canadian amateur athletic association, or

(d) Her Majesty in right of Canada or a province, the United Nations or an agency of the United Nations.

#### **149.1 (4) Revocation of registration of private foundation**

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

(a) carries on any business;

(b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;

(b.1) makes a disbursement by way of a gift, other than a gift made

(i) in the course of charitable activities carried on by it, or

(ii) to a donee that is a qualified donee at the time of the gift;

(c) has, in respect of a class of shares of the capital stock of a corporation, a divestment obligation percentage at the end of any taxation year;

(d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities.

#### **149.1 (4.1) Revocation of registration of registered charity**

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

- (a) of a registered charity, if it has entered into a transaction (including a gift to another registered charity) and it may reasonably be considered that a purpose of the transaction was to avoid or unduly delay the expenditure of amounts on charitable activities;
- (b) of a registered charity, if it may reasonably be considered that a purpose of entering into a transaction (including the acceptance of a gift) with another registered charity to which paragraph (a) applies was to assist the other registered charity in avoiding or unduly delaying the expenditure of amounts on charitable activities;
- (c) of a registered charity, if a false statement, within the meaning assigned by subsection 163.2(1), was made in circumstances amounting to culpable conduct, within the meaning assigned by that subsection, in the furnishing of information for the purpose of obtaining registration of the charity;
- (d) of a registered charity, if it has in a taxation year received a gift of property (other than a designated gift) from another registered charity with which it does not deal at arm's length and it has expended, before the end of the next taxation year, in addition to its disbursement quota for each of those taxation years, an amount that is less than the fair market value of the property, on charitable activities carried on by it or by way of gifts made to qualified donees with which it deals at arm's length;
- (e) of a registered charity, if an ineligible individual is a director, trustee, officer or like official of the charity, or controls or manages the charity, directly or indirectly, in any manner whatever; and
- (f) of a registered charity, if it accepts a gift from a foreign state, as defined in section 2 of the State Immunity Act, that is set out on the list referred to in subsection 6.1(2) of that Act.

#### **Revocation of Registration of Certain Organizations and Associations**

##### **168 (1) Notice of intention to revoke registration**

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

- (a) applies to the Minister in writing for revocation of its registration;
- (b) ceases to comply with the requirements of this Act for its registration;
- (c) in the case of a registered charity or registered Canadian amateur athletic association, fails to file an information return as and when required under this Act or a regulation;
- (d) issues a receipt for a gift otherwise than in accordance with this Act and the regulations or that contains false information;
- (e) fails to comply with or contravenes any of sections 230 to 231.5; or

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

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

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

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

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

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

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

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

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

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

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

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

Where the Minister

(a) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.2) and (22) and 168(1) by the Minister, to a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for registration as a

registered Canadian amateur athletic association, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Tax and Penalties in Respect of Qualified Donees**

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

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

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

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

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

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

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

$$A - B$$

where

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

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

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

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

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

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

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



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

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

(a) a registered charity

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

(ii) that is not the subject of a suspension under subsection 188.2(1),

(iii) that has no unpaid liabilities under this Act or under the Excise Tax Act,

(iv) that has filed all information returns required by subsection 149.1(14), and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **188 (5) Definitions – In this section,**

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

$$A - B$$

where

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

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

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

$$A - B$$

where

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

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

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

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

(a) file with the Minister a return for the year in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax payable by the taxpayer under this Part for the year; and

(c) pay to the Receiver General the amount of tax payable by the taxpayer under this Part for the year.

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

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

(a) file with the Minister

(i) a return for the taxation year, in prescribed form and containing prescribed information, and

(ii) both an information return and a public information return for the taxation year, each in the form prescribed for the purpose of subsection 149.1(14); and

(b) estimate in the return referred to in subparagraph (a)(i) the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year; and

(c) pay to the Receiver General the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year.

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

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

(a) the amount, if any, by which

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

exceeds

(ii) the income of the charity for the post-assessment period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 if that period were a taxation year, and

(b) all amounts, each of which is an amount, in respect of a property transferred by the charity before the particular time and during the post-assessment period to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

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

If the Minister has assessed a particular person in respect of the particular person's liability for penalties under section 188.1 for a taxation year, and that liability exceeds \$1,000, that liability is, at any particular time, reduced by the total of all amounts, each of which is an amount, in respect of a property transferred by the particular person after the day on which the Minister first assessed that liability and before the particular time to another person that was at the time of the transfer an eligible donee described in paragraph 188(1.3)(a) in respect of the particular person, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the total of

(a) the consideration given by the other person for the transfer, and

(b) the part of the amount in respect of the transfer that has resulted in a reduction of an amount otherwise payable under subsection 188(1.1).

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

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