CANADA REVENUE AGENCY | AGENCE DU REVENU DU CANADA

MAR 3 0 2010

REGISTERED MAIL

Henvey Inlet First Nation Community Support Organization
General Delivery
Pickerel ON P0G 1J0

BN: 871656765RR0001
File #:3004094

Attention: Chief Wayne McQuabbie

Subject: Notice of Intention to Revoke
Henvey Inlet First Nation Community Support Organization

Dear Chief McQuabbie:

I am writing further to our letter dated August 17, 2009 (copy enclosed), in which you were invited to submit representations as to why the Minister of National Revenue (the Minister) should not revoke the registration of Henvey Inlet First Nation Community Support Organization (the Organization) in accordance with subsection 168(1) of the *Income Tax Act* (the Act).

We had subsequently received and approved a request from your representative, William Taggart, to extend the time of response to October 31, 2009. However, the Organization failed to respond by that date.

Conclusion:

Our audit has concluded that from April 1, 2003 to March 31, 2008, Henvey Inlet First Nation Community Support Organization (the Organization) issued receipts in excess of $44 million in receipts for cash received through various tax shelter arrangements. The Organization, in turn, transferred 99% of the receipted amount to the tax shelter promoters as fundraising fees and investments in off-shore accounts. The Organization was able to immediately retain 1%, or $464,181, of the total cash flowed through its accounts and reported receiving cumulative interest and investment income of $378,256, or a 0.8% cumulative return on its off-shore investments. The CRA's audits have found that of the funds purportedly invested off-shore, all or most were directed to an off-shore investment vehicle and then immediately returned to the original lender of the funds.

Based on the audit results, it is our position that the Organization has operated for the non-charitable purpose of promoting tax shelter arrangements in return for an accommodation fee of 1 %. In addition, it is our position that the Organization has failed to devote all its

resources to charitable activities; issued receipts for transactions that do not qualify as gifts; issued receipts otherwise than in accordance with the *Income Tax Act* and its Regulations; and has failed to maintain sufficient books and records to support its activities. Our audit findings were explained in detail in our letter of August 17, 2009, to which you have not responded after three mutually agreed upon extensions. Finally, in your letter of January 27, 2010, you implicitly acknowledged the deficiencies by requesting a voluntary revocation. For all of these reasons, and for each of these reasons alone, it is the position of the Canada Revenue Agency that the Organization's registration should be revoked.

Consequently, for each of the reasons mentioned in our letter dated August 17, 2009, I wish to advise you that, pursuant to the authority granted to the Minister in 168(1) Act, which has been delegated to me, I propose to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

> *Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(d) and 168(1)(e) of the* Income Tax Act, *that I propose to revoke the registration of the organization listed below and that the revocation of registration is effective on the date of publication of this notice.*

Business Number	**Name**
871656765RR0001	Henvey Inlet First Nation Community Support Organization Pickerel ON

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

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

A copy of the revocation notice, described above, will be published in the *Canada Gazette* after the expiration of 30 days from the date this letter was mailed. The Organization's registration will be revoked on the date of publication, unless the CRA receives an order, **within the next 30 days**, from the Federal Court of Appeal issued under paragraph 168(2)(b) of the Act extending that period.

Please note that the Organization must obtain a stay to suspend the revocation process, notwithstanding the fact that it may have filed a Notice of Objection.

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), or 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 prescribed form T-2046, *Tax Return Where Registration of a Charity is Revoked* (the Return). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the Notice of Intention to Revoke. A copy of the relevant provisions of the Act concerning revocation of registration, the tax applicable to revoked charities, and appeals against revocation, can be found in Appendix "A" attached. Form T-2046, and the related Guide RC-4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, are available on our website at www.cra-arc.gc.ca/charities;

c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the *Excise Tax Act* (ETA). As a result, the Organization may be subject to obligations and entitlements under the ETA that apply to organizations other than charities. If you have any questions about your GST/HST obligations and entitlements, please call GST/HST Rulings at 1-800-959-8287 (rest of Canada).

Finally, I wish to 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,

Cathy Hawara
A/Director General
Charities Directorate

Attachments:
- CRA letter dated August 17, 2009
- Appendix A

c.c.: William J. Taggart, Barrister and Solicitor
35 King Street East, Cobourg ON K9A 1K6

CANADA REVENUE AGENCY | AGENCE DU REVENU DU CANADA

BY FAX & REGISTERED MAIL

Henvey Inlet First Nation Community Support Organization
General Delivery
Pickerel ON P0G 1J0

BN: 871656765RR0001
File #: 3004094

Attention: Chief Wayne McQuabbie

August 17, 2009

Subject: Audit of Henvey Inlet First Nation Community Support Organization

Dear Chief McQuabbie:

This letter is further to the audit of the books and records of the Henvey Inlet First Nation Community Support Organization (the Charity) conducted by the Canada Revenue Agency (the CRA). The audit related to the operations of HIFNCSO as a registered charity for the period from April 1, 2003 to March 31, 2008.

Our audit had identified the following area of non-compliance with the *Income Tax Act* (the ITA) and/or its Regulations:

AREAS OF NON-COMPLIANCE:		
	Issue	**ITA References**
1	Issuing official donation receipts other than in accordance with the ITA and its Regulations	168(1)(d)
2	Failure to maintain adequate Books and Records	168(1)(e); 230(2)
3	Failure to devote all resources to charitable activities	168(1)(b); 149.1(1)

The purpose of this letter is to describe the areas of non-compliance identified by the CRA during the course of our audit as they relate to the legislative provisions applicable to registered charities and to provide the Charity with the opportunity to make additional representations or present additional information. In order for a registered charity to retain its registration, legislative and common law compliance is mandatory, absent which the Minister of National Revenue (the Minister) may revoke the Charity's registration in the manner described in section 168 of the ITA.

1. Issuing Official Donation Receipts other than in accordance with the ITA and its Regulations

Background:

Participation in Various Tax Shelter Gifting Arrangements

Our audit revealed that, during the periods under review, the Charity participated in the following tax shelter donation arrangements in the following years:

- ParkLane Charitable Donation Program (TS68494) - 2003
- EquiGenesis 2003 Charitable Donation Program (TS68643)-2003
- EquiGenesis 2004 Charitable Donation Program (TS69963)-2004
- Donation Program Supporting Canadian Amateur Athletics, Foundations and Charities (TS69260) – 2004 and 2005

While participation in tax shelter donation arrangements is not prohibited by the ITA *per se*, the CRA is extremely concerned that the Charity may be facilitating abusive arrangements. From our audit, it appears the Charity has agreed to participate in a number of donation arrangements with little regard to its own operations and legislative provisions applicable to registered charities. The Charity issued tax receipts for "property" flowed through its bank accounts, of which it was only entitled to keep 1%, and failed to demonstrate its due diligence prior to entering into the agreements or its on-going review of the donation arrangements. The remaining 99% of the funds were required to be transferred by the Charity off-shore to be "invested" in royalty agreements purportedly held on behalf of the Charity and to pay fundraising fees to the promoters of the donation arrangements. As described below, CRA audits have revealed these investments do not exist in the amounts reported by the Charity and that a majority of the funds allegedly "invested" were immediately repaid to the original lenders. Each of the donation arrangement programs were created by persons other than the Charity and the Charity merely accepted the terms of participating in order to receive its compensation.

Overview – Donation Program Supporting Canadian Amateur Athletics, Foundations and Charities – 2004 Series A – promoted by ParkLane

To illustrate our audit findings and positions, we will use Donation Program Supporting Canadian Amateur Athletics, Foundations and Charities - 2004 Series A throughout our letter. Despite minor differences in details, the principal concepts in our illustrations are applicable to each of the tax shelter donation arrangements in which the Charity participated[1]. A more detailed analysis of the step-by-step transactions involved in the Donation Program Supporting Canadian Amateur Athletics, Foundations and Charities - 2004 Series is outlined in Appendix "A".

[1] The 2005 Donation Program Supporting Canadian Amateur Athletics, Foundations and Charities differed from the other tax shelters arrangements in that the participants "donated" sub trust units received freely distributed by a trust plus cash instead of loaned funds to the Charity. The Charity purportedly converts the sub trust units to cash and agrees to transfer 99% of all cash off shore.

Using a hypothetical $10,000 "donation" as an example, a participant would be required to contribute out of pocket funds of $2,790. The participant would subsequently "borrow" $11,200 from a pre-arranged lender - Plaza Capital Finance Corp. (the Lender). These amounts, a total of $13,990, are held by an escrow agent in trust on the participants' behalf prior to receiving orders from the Charity for disbursement[2].

The loans secured by participants bear interest at the rate of 3% and have a ten-year term. Interest must be paid within 60 days of December 31st, each year. The participant directs the escrow agent to "donate" $10,000 to the Charity and to pay $336 to the Lender in payment of the first year's interest on the loan.

The participant also directs the escrow agent to remit the remaining $3,654 to Specialty Insurance Limited (SIL) as payment of the premium for a Policy of Insurance. Pursuant to this policy, SIL agrees to pay to the participant an amount equal to the difference between the expected annual rate of growth of 6.054% and the actual rate of growth under the investment contract agreement between SIL and Trafalgar Trading Limited. The insurance is payable only if the annual rate of growth under the investment contract is less than 6.054% per year.

It is represented that the investment contract and the insurance policy together will generate a minimum of $11,200 in 10 years (thereby paying off the loan advanced to the participants). Based on the leveraged amount a rate of return of 52.91%[3] would be required to accomplish the repayment.

Each participant directs the escrow agent to deposit $10,000 of the $13,990 held in trust in a Bank of Montreal account in the Charity's name. For a $10,000 donation, the Charity directs the Bank of Montreal to transfer $9,900 to Trafalgar Trading Limited pursuant to a Royalty Agreement. The Royalty Agreement alleges to entitle the Charity to receive 60% to 80% of any monthly profits earned based on the year and type of Royalty Agreement. From the $9,900 transferred to Trafalgar Trading Limited, a fee of approximately $600 is transferred to ParkLane Financial Group for fundraising services. Each of these transactions occurs within a 24-hour period.

In the end, for each tax-receipted $10,000 "donation", the Charity immediately receives unfettered access to and use of $100 and an unknown future "revenue-stream"; reports fundraising fees paid of $600; and "investments" of $9,300. Of the "invested" funds, the majority of the funds are transferred to corporations connected to the promoters or returned to the lender (refer to Appendix "A"). For its $10,000 "donation", the participant is out of pocket $2,790 yet has an official donation receipt for which he can claim a donation tax credit of at least $4,641[4].

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[2] The instructions provided by the Charity were also pre-arranged by the creators of the tax shelter programs and the Charity was found to accept the directions to transfer the funds off-shore, as presented by the creators of the programs.

[3] $240 x (1+52.91%- 6.054%) = $11,200

[4] Based on Federal and Ontario donation tax credits of 46.41%

Gifts:

It is our position that the Charity has contravened the ITA by accepting and issuing receipts for transactions that do not qualify as gifts.

No *Animus Donandi*

At law, a gift is a voluntary transfer of property without consideration. In most cases, a gift is a voluntary transfer of property without valuable consideration to the donor. An essential element of a gift is that there is intent to give. It must be clear that the donor intends to enrich the donee, by giving away property, and to grow poorer as a result of making the gift. It is our view, based on the transactions described above and in Appendix "A" that the primary motivation of the donor was not to enrich the Charity, but through a series of transactions and a minimal monetary investment, to make a profit through the tax credits so obtained. It is our view that the Charity was aware, or ought to have been aware, that it was participating in a scheme designed to produce inappropriate tax benefits through an artificial manipulation of the tax incentive.

In support of our position, we note that:

- The promotional materials for each of the tax shelter donation arrangements promise tax credits in excess of the actual cash contributed by the participant. For example, the promotional material for the 2003 Donations Canada donation arrangement show that for a $315 cash contribution by a donor in Ontario, coupled with a $10,000 "loan" received by and "donated by a donor in Ontario, will result in a tax credit of $464, thereby generating a positive cash flow of $149". It should also be noted that such promotional materials were provided to the Charity prior to its participation in each of the tax shelters.
- Participants in these arrangements, in return for a minimal participation fee, receive "loans" with full and prior knowledge that the loans would never have to be repaid. Due to a combination of insurance and aggressive investment strategies, participants are lead to believe it is highly unlikely or necessary they will have to repay the "loans".
- Transactions are pre-arranged, pre-determined and coordinated by the promoters of each donation arrangement and other pre-arranged third parties. The Charity has no interaction or involvement with the participants seemingly whatsoever nor are the participants prior or subsequent supporters of the Charity's activities outside of the tax shelter arrangements.
- Minimal information is provided to the prospective participant as to how the "donations" would benefit the Charity, or to the activities of the Charity they are supporting.
- The participant receives an official donation receipt for the full amount of their purported "donation" of which they contribute out of pocket cash as little as 11.25% (EquiGenesis 2003) with the remainder coming from a no-recourse loan.
- In the 2005 Donations Canada tax shelter, the participant receives an official donation receipt for the cash contribution (25% of total) and another receipt (75% of total) for trust units that were provided to the participants for nil consideration.
- The Charity does not have unrestricted access to or use of the funds "donated". While the funds are deposited temporarily in a bank account solely established by the Charity to receive these funds, the Charity is obligated to immediately transfer 99% of the funds deposited to a company directly connected to the promoter.

- The transactions are carefully arranged, as described in Appendix "A" to create the illusion of property being donated to the Charity and invested. In actuality, these funds followed a circular flow and ended up back in the hands of the lender (minus applicable fees to participants). The Charity initially received a 1% fee for its participation.
- The Charity also receives a minimal "investment stream", for its participation in the arrangement. For example, the trading profits on an "invested" principal of $9,506,066 US yielded a loss of $91,294 from January 2005 to November 2005, representing a negative1% rate of return.

It is clear that the primary purpose and result of these transactions was to provide the participant a donation tax credit that exceeded their actual cost of participation. In essence, the arrangement is one whereby the promoters, the Charity and the individual participants create the illusion of property being loaned, donated and invested, but in reality the donation arrangements involved the "purchasing" receipts for a fraction of the receipt's face value (i.e., that the only property involved in the scheme was the participation fee).

As above, the participants "donated" to the Charity with the clear intent to take advantage of the tax system through an artificial series of transactions. In return for a participation fee, the participants secured "loans" which they knew they would never have to repay and donated these to the Charity. The Charity, for its part, issued receipts for the full value of the funds transferred - even though it was obligated to immediately transfer 99% of these funds to an offshore company. In our view, the primary motivation of the donor in these transactions was to profit from the tax system by a combination of the tax credits available for donations and the artificial loan transaction. The Charity was aware, or ought to have been aware, of the motivations of the participants as it had full access to the promotional materials and information about the scheme in which it participated. The Charity also participated in more than one donation arrangement, whereby the transactions and results were similar, yet continually chose to participate in arrangements when the Charity was not benefiting or receiving profit distributions in the amounts promoted.

As such, it is our position that there is no intention to make a "gift" within the meaning assigned at 118.1 of the ITA. Participants in these donation arrangements are primarily motivated by the artificial manipulation of the tax incentives available rather than a desire to enrich the participating charity. In our view, these transactions, given the combination of the tax credits and other benefits received, lack the requisite *animus donandi* to be considered gifts.

Property donated

Existence of the property:

It is our view that the property represented as being donated is not actually property that has been donated to the Charity.

As above, and as detailed in Appendix "A", the Donation Program Supporting Canadian Amateur Athletics, Foundations and Charities donation arrangement involved participants themselves contributing out of pocket funds of 28% of the property purportedly donated to the Charity with the remainder consisting of a loan. The Charity receives the funds

in its segregated bank account but is required to transfer 99% of the funds to an offshore entity; 93% of which is reportedly "investment" and 6% paid as referral fees.

In fact, it appears the funds reportedly "invested" are not actually held as investments on behalf of the Charity but the majority of the funds were, in fact, immediately returned to the original lender or paid out as fees to the participant promoters and companies. As such, it is our view that the Charity has issued receipts for property that was not donated to it but that exists as little more than notations on paper as investments "owned" by the Charity. The Charity participated in schemes that, through a circular series of transactions, were designed to create the illusion of property being donated to the Charity while in actuality, the majority of the funds were either consumed by fees to be paid to the participants or returned to the lender.

The Charity's part in these schemes were, as before, to receive funds from participants, issue tax receipts for the full amount of the property transferred to its bank account, and to immediately transfer these funds received to an offshore bank account. The Charity had no control over the property "donated" other than the 1% it retained and had no access to the investments. The Charity has not demonstrated it had control over or access to the remaining 99% of the funds allegedly donated to it or invested on its behalf. By example, the Charity's external auditors were unable to verify, for the purposes of its financial audit, the values associated with the offshore investment as evidenced by the notes to the financial statements. The Charity's auditors have written down the off-shore investments to $1 per agreement. Rather than reasonably seek out prudent investments with the property donated to it, the Charity was obligated to send money to an offshore investment with uncertain and low rates of return.

In our view the Charity participated in schemes designed to create the illusion of property being donated and issued receipts for property, which was not beneficially transferred to it. The Charity was either aware, or ought to have been aware, of the fact that its role in the arrangements whereby it issued receipts for property which would flow through its accounts but to which it had no present or even future ownership of. The funds that are represented as donated, owned and invested by the Charity were, in fact, circuitously returned to the lender. As such, the Charity was not entitled to issue a receipt for the amounts contributed (in this case with reference to the insurance policy and loan or the trust units). It is in this regard that our view is the Charity has issued receipts for gifts otherwise than in accordance with the ITA, which is cause for revocation by virtue of paragraph 168(1)(d).

Nature of the Property:

As above, it is our view that the Charity improperly issued receipts for transactions that were not gifts and for property to which, in fact, it was not beneficially entitled. We are of the view that the offshore investments that the Charity purports to have exist largely only notionally on paper. A fact seemingly confirmed by the Charity's own external auditors. However, even were we to agree that the gifts were valid gifts to the Charity, and the property held in investments existed, it would still be our view that the Charity issued receipts other than in accordance with the ITA.

As above, the property that was donated to the Charity was immediately transferred to an offshore investment company. Based on our review, there is no indication that the principal

amount of this property will ever revert to the Charity. As such, it appears that the Charity is only entitled to a potential "income stream" associated with the property.

In our view, even if we were to accept that the property was validly donated to the Charity (which we do not), it is the income interest in the property, which should have been tax receipted and not the full value of the funds transferred to the Charity. While the Charity does receive certain funds from participants, other than the immediate 1% to which it is entitled, it is required to transfer these funds to the offshore investment company. The Charity is never entitled to the property itself but to the income from the property – if there is any. In our view, while it is being represented that the full value of the property is being donated, it is simply a limited income interest in the property that is being donated.

We acknowledge that the restriction on access to the property is a condition of the Charity's participation in the Donation Program Supporting Canadian Amateur Athletics, Foundations and Charities donations program, and not one explicitly set by the participant. However, viewing the "donation" as a pre-arranged transaction, the restrictions so imposed make it clear that it is the income stream, which is donated and to which the Charity is entitled, not the full value of the property. Participants pay a fee to participate in the donation programs. The participants have no interaction with the Charity. Participants obtain a loan from a non-arm's length company knowing fully that, provided they follow the instructions, they will not have to repay the "loan" or obtain sub-trust units freely. One of the instructions is that they transfer these funds and sub-trust units to a participating organization. The participating organization is obligated through the agreement to transfer 99% of these funds to the offshore investment company. The participating organization is thereafter entitled to income from the investments (when there is any) but not the principal amount.

As such, it is our view that, were we to accept this as a valid gift of property, due to the nature of the pre-arranged transaction that what has, in fact, been gifted to the Charity would not be the full value of the property temporarily transferred to its account, but the investment income.

In our view, if the Charity was receiving a donation of an "income stream" from the property, a professional valuator should have valued this income stream and the tax receipts issued accordingly. In this regard, even if the Charity had issued a receipt for the valuation amount, it would not have been in accordance with proposed subsections 248(31), (32) and (34).

Application of proposed subsections 248(31), (32) and (34)

Even without reference to the common law definition of a gift, it is clear that proposed section 248(32) of the ITA applies to all transactions occurring after December 5, 2003 as well. While this legislation is still proposed, once passed into law, it applies to most, if not all transactions covered by the audit period under review. The proposed legislation permits a taxpayer to make a gift to the Charity and receive some advantage in return; however, the value on the receipt must reflect the eligible amount of the gift made (i.e., the value of the receipt must reflect the gift less any advantage received by the donor). This new legislation also outlines rules particular to gifts where a taxpayer incurs a limited recourse debt. We would note that, although still proposed, once passed into law, these subsections apply retroactively to the fiscal periods currently under review.

It is our view the participant received an advantage, as defined at proposed subsection 248(32), as a result of the cash contribution to the Charity, in the form of receiving a limited-recourse, low-interest debt or sub trust units. A limited-recourse debt is broadly defined to include any unpaid amounts if there is a guarantee, security, or similar indemnity or covenant in respect of the debt. The value of the advantage (the limited recourse debt or sub trust units) should have been deducted from the eligible amount of the gift. As the purported value of the loans and sub-trust units exceeded the participant's cash outlay, under the proposed legislation, the Charity was not entitled to issue receipts for these "donations". Further, even if the loans and distribution from the trust were found not to be consideration for participant's cash contributions, the proposed legislation has broad applications and also includes advantages that are "in any other way related to the gift".[5] As such, it is our view that the Charity, under the proposed legislation should not have issued tax receipts for the participant's out-of-pocket cash outlay.

In addition, proposed subsection 248(34) generally provides that the gift portion of any transaction involving a limited recourse debt is deemed to be no more than the amount of the initial cash payment. A taxpayer may additionally claim a gift with respect to a repayment of the principal amount of the limited-recourse debt in the year it is paid. As such, the Charity was not entitled to issue a receipt associated with the limited recourse debt (in this case, the loans). There was no indication during our review that the Charity took these provisions into account when issuing receipts on behalf of the tax shelter arrangements.

Seriousness of the Offence:

As above, the CRA is greatly concerned about the participation of the Charity in these arrangements. It is the CRA's view that these donation arrangements provide minimal benefit for the programs of the Charity as compared to the values of tax receipts being issued. The *Income Tax Act* provides registered charities the privilege of issuing tax receipts to allow them to solicit donations from taxpayers for use in their programs. However, in the case at hand, it appears that the Charity participated in tax shelter arrangements by lending its tax receipting privileges in return for a small percentage of the face value of the receipts so issued. It is interesting to note that since its participation in the program, its issuance of receipts have increased from approximately $22,450 in fiscal year 2003 to $10,856,950 in 2004, $33,266,615 in 2005.[6]

We would note, in this regard that the effects of the Charity's participation in these programs have resulted in the Charity issuing receipts for $44,123,565 in fiscal years 2004 and 2005 yet actually initially retaining only $464,181 from their "investments". The Charity has also reported cumulative interest and investment income of $378,256, or a 0.8% cumulative return on investment, during the fiscal periods ending 2005 to 2008. In our view, this represents a serious abuse of the Charity's receipting privileges.

Furthermore, issuing donation receipts for amounts that are not gifts, or that contain inaccurate values or false information, is a serious offence. As above, this situation is

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[5] Ss. 248(32)

[6] For fiscal periods ending 2006, 2007 and 2008, the Charity has cumulatively reported $14,224 in tax-receipted gifts.

compounded by the fact that based on our review, the majority of funds represented as "investments" exist only notionally on paper and the Charity has not sufficiently demonstrated otherwise.

Under paragraphs 168(1)(d), the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the ITA and its Regulations. It is our position that the Charity has issued receipts otherwise than in accordance with the ITA and the Regulations. For each reason identified above, there may be grounds for revocation of Henvey Inlet First Nation Community Support Organization's charitable status.

2. Failure to maintain adequate books and records

As per ITA subsection 230(2), every registered charity and registered Canadian amateur athletic association shall keep records and books of account at an address in Canada recorded with the Minister or designated by the Minister containing

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

During our audit, we were unable to get access to a significant amount of documents that would enable us to determine the Charity's compliance with the ITA. For example, we were unable to obtain:

- Minutes and resolutions from board meetings;
- Bank records of the Winnipeg Scotiabank account for periods after March 31, 2006;
- Official donation receipts for funds received through tax shelter donation arrangements issued after December 31, 2004; or
- Adequate supporting documents for the expenditures reported. Refer to our discussion below.

In addition, the general ledgers and trial balances were kept at the external accountant's office in Winnipeg instead of the Charity's address as registered with CRA. The failure to retain books and records at an address recorded with CRA contravenes ITA 230(2), which is a cause for revocation of its charitable status under ITA 168(1)(e).

3. Failure to devote all resources to charitable activities

Under ITA 149.1(1), a charitable foundation must be operated exclusively for charitable purposes and no part of its income should be paid to or made available for the personal benefit of any proprietor, member, shareholder, trustee, etc., that is not a charitable organization.

Our audit revealed that the Charity had paid significant amounts of travel expense reimbursements and consulting fees to its directors, most notably Mr. Seech Gajadharsingh person(s) related to him. Of the limited records provided, we observed at least $172,022 being paid to or made available to Mr. Gajadharsingh and/or persons related to him. The amounts paid to or made available may be higher; however, based on the records the Charity has been unable to obtain, we cannot ascertain the true amount. We reviewed a sample of these disbursements and found that they generally lack adequate documentation to show that the expenses were incurred for the charitable programs of the Charity. In some cases, there were no receipts to show that the expenses had incurred, as the payments were only supported by a cheque requisition listing the amounts to be paid.

Based on information provided by the Charity, the Henvey Inlet First Nation held a referendum during the audit period to decide whether to convert a parcel of land on the reserve for commercial use. The proposed commercial use included the construction of an Eco Tourism Resort and a youth camp. In September 2006, the Charity wrote to CRA requesting permission to accumulate funds for the construction of the eco-tourism resort and the development of a children's camp. CRA responded to the Charity stating that permission to accumulate funds cannot be granted for projects that are not completely charitable at law. Funding an eco-tourism resort is not a charitable purpose recognized by the Canadian courts nor is the referendum campaign and eco-tourism resort operation consistent with the Charity's approved charitable objectives.

The accounting records provided indicate the Charity incurred significant expenses in support of the referendum campaign, project costs for the Eco Tourism Resort and the youth camp. The Charity devoted $149,788, $48,767 and $44,155 to these campaigns/projects respectively. We also do not consider the proposed measure, the conversion of land into commercial use, to be a charitable activity based on the available information. As such, these expenses are not considered to have been incurred for charitable purposes.

Finally, we noted significant amounts of funds (e.g. $25,000 on March 8, 2005) being paid by the Charity to the Henvey Inlet First Nation during the audit period under the heading of "capital infrastructure". We were unable to verify the true nature of these payments due to the lack of information and supporting documents. Regardless, the Charity must not make a gift of property or funds to the Henvey Inlet First Nation, since the latter is not a qualified donee. On the other hand, the Charity may provide financial support for activities undertaken by the Henvey Inlet First Nation in a joint-venture or agency arrangement. In these instances, the Charity must demonstrate that the activities are consistent with its charitable objectives, and the financial resources remained under the full control of the Charity. The Charity has been unable to demonstrate this is the case.

It is our view that by pursuing these activities, the Charity has failed to demonstrate that it meets the test for continued registration under 149.1(1) as a charitable organization "all the resources of which are devoted to charitable activities". For this reason, it appears to us that there may be grounds for revocation of the charitable status of Henvey Inlet First Nation Community Support Organization under subparagraph 168(1)(b) of the ITA.

Due Diligence

We note with concern that the directors of the Charity did not exercise due diligence with respect to the non-compliance issues identified in our audit. While this is not a ground for revocation itself, it is relevant to our decision on the appropriate measures CRA should take to address these compliance issues.

As noted previously, the Charity failed to provide any board meeting minutes in the course of the audit. Based on conversations with various directors and advisors, it seemed likely that no formal board meeting were ever held and that the matters involving the Charity were usually decided as an agenda item during band council meetings of the Henvey Inlet First Nation. This indicates a lack of oversight on the part of the board of directors of the Charity and, as a result, led to a situation where one or two individual directors assumed control over the finances of the Charity. In support of this assertion, we submit the following:

- All contracts pertaining to the tax shelter arrangements earlier in this letter were signed by Mr. Gajadharsingh and Mr. Bruce Ashawasagai.
- All donation receipts issued for funds generated through the tax shelters were signed by Mr. Gajadharsingh.
- Three bank accounts that held the majority of the Charity's funds were opened by Mr. Gajadharsingh and Mr. Ashawasegai. All three accounts were opened in Winnipeg, Manitoba. Although Mr. Ashawasegai and Mr. Gajadharsingh were ousted as directors in 2007, the signing authorities of these bank accounts remain in their hands to this day.
- The audited financial statements were accepted on behalf of the board by Mr. Gajadharsingh. The financial statements do not appear to have been formally presented to the full board of directors.

The preceding indicates that the issues of non-compliance identified in our audit occurred without the full knowledge or understanding of the directors beside Mr. Gajadharsingh and Mr. Ashawasegai. The board of directors should have and could have exercised more oversight on the operations and control over the financial resources, such as holding regular board meetings, reviewing financial records, and having a person other than the payee to authorize payments (as in the disbursements to Mr. Gajadharsingh identified earlier in this letter). The failure of the directors to exercise due diligence had in part enabled the non-compliance issues to occur.

The Charity's Options

a) No Response

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

b) Response

Should you choose to respond, please provide your written representations and any additional information regarding the findings outlined above within 30 days from the date of this letter. After considering the representations submitted by the Charity, the Director General of the Charities Directorate will decide on the appropriate course of action.

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

If you have any questions or require further information or clarification, please do not hesitate to contact the undersigned at the numbers indicated below.

Yours sincerely,

Long Ip
Audit Advisor
Charities Directorate
Telephone: 613-957-2125
Facsimile: 613-946-7646
Address: 320 Queen St, Ottawa
ON, K1A 0L5

Appendix "A"

2004 Donation Program Supporting Canadian Amateur Athletics Foundations and Charities ("Donation Program") (Tax Shelter #TS069260)

Registration as a Tax Shelter

1. A T5001 Application for Tax Shelter Number was submitted to Canada Revenue Agency in respect of the above Donation Program by the promoter on Jan. 9, 2004. A tax shelter number was assigned by CRA. The promoter was named on the application form as 1602628 Ontario Inc., of Burlington, Ontario. A corporation at the same address, ParkLane Financial Group Limited ("ParkLane Financial"), along with another company there, Trafalgar Associates Limited, carry out the promoter functions. The shareholder of the latter two companies as of the end of 2004 was Trafalgar Securities Limited of Bermuda. The controlling shareholder of the numbered company is the Canadian president of all three companies.

2. ParkLane Financial markets the Donation Program to financial advisors and other advisors in Canada.

Signing Documents and Procedure for Signing Up

3. A donor contributed his own funds to Aylesworth Thompson Phelan O'Brien LLP, In Trust ("Aylesworth") of $279.00 per $1,000 of donation. Per the promotional literature this $279 per thousand was "with regard to an arrangement fee and pre-payment of loan interest".

4. A donor completed a Loan Application and Power of Attorney in favour of Plaza Capital Corporation ("Plaza Capital"), the lender, located in Canada. The amount of the loan was $1,120 per $1,000 donation.

5. A donor completed a "Promissory Note" in favour of Plaza Capital due in 10 years in the amount of $1,120 per $1,000 donation.

6. A donor completed a Pledge, indicating an intention to make a donation in favour of a particular registered charity or charities ("the charity") pledging $1,000 per $1,000 donation. (This charity could include a registered Canadian amateur athletic association.)

7. A donor completed a Direction to Aylesworth, directing $1,000 per $1,000 donation to the RCAAA, and $365.40 per $1,000 to Specialty Insurance Limited ("Specialty Insurance"), and $33.60 per $1,000 to Plaza Capital.

8. A donor completed a Donor Declaration Letter. Point 5 says:
I understand that the Insurance Contract (the "Insurance") issued by an insurance company (the "Insurance Company") in respect of the Program is optional and that I could have declined coverage of Insurance by sending written notice to that effect to ParkLane Financial Group Limited. I hereby confirm and agree to an allocation of

the fee payable to the Insurance Company towards the purchase of Insurance.

9. The $279.00 "with regard to an arrangement fee and pre-payment of loan interest" consisted of $33.60 for one year's prepaid interest, and $245.40 as the donors' unfinanced portion of their arrangement fee. The total arrangement fee was $365.40 per $1,000 donation.

10. The donors' $279 contribution above included $33.60 of prepaid interest at 3% which was the rate prescribed by CRA.

11. The total arrangement fee of $365.40 consists of the amount to be paid to Specialty Insurance in Bermuda for:

an insurance policy	$115.00 per $1,000 donation
an investment contract	240.00 per $1,0000 donation
administrative fee	10.40 per $1,000 donation
	$365.40 per $1,000 donation

12. A donor completed a Direction to Plaza Capital, directing the loan proceeds of $1,120 per $1,000 donation to be paid to Aylesworth.

Contracts Received by Donor

13. A donor received a document entitled "Policy of Insurance" in which the donor is the "Policyholder/Insured". Specialty Insurance is the sole issuer of this Policy of Insurance and is guarantor of any and all provisions contained therein. The insurance provided is described as being for the purpose of providing the donor (the Insured) with a certain rate of growth from "The Trafalgar Global Index Futures Program" ("TGIFP") agreement attached to the Policy of Insurance. The donor is to receive, as insurance, a payment at the end of 10 years, representing the difference between the expected rate of growth of 6.04% and the actual rate of growth under this agreement. The amount shown as the premium paid for this policy is $115.00 per $1,000 donation.

14. The TGIFP agreement is between Trafalgar Trading and Specialty Insurance, for the donors' benefit. Specialty Insurance is to receive, on the donors' behalf, a profit distribution from Trafalgar Trading at the end of 10 years. The cost of this TGIFP investment, provided by the donor, was $240 per $1,000 donation, being part of their arrangement fee of $365.40 per $1,000 donation. A donor directed Aylesworth to pay this $365.40 to Specialty Insurance.

Source and Uses of Funds

15. The sources of funds per $1,000 donation were:

Amount borrowed from Plaza	$1,120.00
Amount contributed by donor	279.00
Total Sources of Funds	$1,399.00

16. The donors' uses of funds per $1,000 donation were:

Payment directed to RCAAA		$1,000.00
One year of prepaid loan interest		33.60
Payment directed by donor to Specialty Insurance but re-directed to Trafalgar Trading pertaining to:		
Investment Contract with Trafalgar Trading	240.00	
Loan or other amount from Specialty Insurance	115.00	
Fee charged by Specialty Insurance	.40	355.40
Payment actually received by Specialty Insurance		10.00
Total Uses of Funds		$1,399.00

Source of Funds for the Donor Loan

17. An executive of a commercial lending corporation was approached to provide funding for this donation program. A separate financing corporation (located in Canada) was set up to assemble funds from various investors.

18. Plaza Capital Finance Corporation ("Plaza Capital Finance"), a sister company of Plaza Capital, and also located in Canada, borrowed these funds from the financing corporation, as documented by a Promissory Note issued by Plaza Capital Finance to that corporation. These funds were transferred directly by the financing corporation to Aylesworth.

19. A donor obtained his loan from Plaza Capital, as documented by a Promissory Note issued by the donor to Plaza Capital. This Promissory Note was assigned to Plaza Capital Finance.

Flow of Funds pertaining to Donations Claimed by the Donor

20. Per Direction from the donor, Aylesworth issued a cheque to the RCAAA, which received the full amount of the funds, which the donor pledged. The RCAAA deposited these cheques into its bank account.

21. A donation receipt was issued after year-end by the RCAAA to the donors in an amount corresponding to the amount deposited by the RCAAA.

22. Per Direction from the RCAAA to its bank, the bank made an immediate payment of 99% of the total donated funds to the bank account of Trafalgar Trading in respect of the Royalty Agreement Purchase Price and Referral Fee. From this payment, Trafalgar Trading Limited directs an amount equal to approximately 6% of the amount received by the RCAAA from its account to Parklane Financial for a donation referral fee used to pay referrers of the donors to the program. The RCAAA retained 1% of the donation amounts received by it.

23. As seen above, the RCAAA paid 93% (99% less 6%) directed to Trafalgar Trading purportedly as the purchase price of a "2004 Series A Royalty Agreement". However, as explained in more detail at Fact 24 below, Trafalgar Trading had to use these, or other funds, to repay the financing corporation $1,125.60 per $1,120 of loan amount. The RCAAA's royalty agreement with Trafalgar is to earn for the RCAAA revenue over 20 years through the use of Trafalgar Trading's use of Trading Software to trade S&P 500 and other international stock futures contracts. Trafalgar Trading issued monthly statements to the RCAAA showing the investment's performance, after deduction of the monthly trading fee. Actual cheques were issued to the your RCAAA for months when there was a net profit due to you. The amounts of these cheques issued to the RCAAA in calendar 2005 totaled less than 2.5% of the amount paid to Trafalgar Trading by the RCAAA for the investment in their "2004 Series A Royalty Agreement". In calendar 2006 such cheques issued to RCAAA were less than 2.0% of this amount.

Flow of Funds pertaining to Arrangement Fees

24. Per the donors' Direction at Fact 7 above, the $365.40 per $1,000, which was paid to Aylesworth, was then to be sent to Specialty Insurance. However, Specialty Insurance issued a Direction to Aylesworth directing Aylesworth to pay Specialty Insurance only 1% of the donation amount, and to pay the balance to Trafalgar Trading. Hence Trafalgar Trading received $355.40 per $1,000 donation while Specialty Insurance received $10.00 per this $1,000.

Repayment to the Financing Corporation

25. Trafalgar Trading immediately made a payment to the financing corporation equal to the funds that the financing corporation loaned earlier in the day to Plaza Capital Finance (which were provided directly to Aylesworth). This represented a repayment of $1,120 per $1,000 of donation. In addition, a fee of 0.5% to the financing corporation was included, for a repayment of $1,125.60 for each $1,120 provided earlier in the day.

26. To pay for this $1,125.60 (per 1,000 of donation) to the financing corporation, Trafalgar Trading had funds available to it from the Donation Program from two sources. These were:

Amount provided by the charities after Trafalgar Trading paid the 6% referral fee ($990 - $60)	$930.00
Amount from Specialty Insurance being $355.40 (being $365.40 less $10 retained by Specialty)	355.40
Sources of funds available to repay the financing company	1,285.40
Less: Repayment to the financing company	1,125.60
Balance of funds from the Donation Program available for both Total investments of the donor and the RCAAA	$159.80

27. ***Sources and Uses of Funds from the Donation Program***

The only funds that were injected into the Donation Program for longer than one day were the $279 cash per $1,000 of donation. This $279 could be considered to have been used as follows:

Amount of taxpayer's own funds contributed per $1,000 of donation		$279.00
Deduct: Uses of funds per $1,000 of donation:		
(a) One year's prepaid interest on taxpayer loan of $1,120 at 3%	$33.60	
(b) Amount of donation that the RCAAA was permitted to retain	10.00	
(c) Donation referral fee paid to party who referred the taxpayer	60.00	
(d) Amount that Specialty Insurance actually received for its services	10.00	
(e) Fee paid to the finance corporation for providing loan for 1 day	5.60	$119.20
Remaining portion of their contribution available for investment		$159.80

Donor Assignment of their Promissory Note and Release from their Obligations

28. The donors were to request from Plaza Capital Finance that they assign their Promissory Note to Trafalgar Trading and that Trafalgar Trading accept assignment of their insurance policy and investment contract in return for their release from their obligation under their Promissory Note. An Assignment Agreement was signed at the time of the donors' request, and the donor would have been then issued a Release by Trafalgar Trading.

29. The donor Promissory Note was assigned and the donor Release form was issued some time between May 2005 and June 2006.