

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20160324**

**Docket: A-230-15**

**Citation: 2016 FCA 94**

**CORAM: RYER J.A.  
NEAR J.A.  
BOIVIN J.A.**

**BETWEEN:**

**OPPORTUNITIES FOR THE DISABLED  
FOUNDATION**

**Appellant**

**and**

**MINISTER OF NATIONAL REVENUE**

**Respondent**

Heard at Vancouver, British Columbia, on March 15, 2016.

Judgment delivered at Ottawa, Ontario, on March 24, 2016.

**REASONS FOR JUDGMENT BY:**

**RYER J.A.**

**CONCURRED IN BY:**

**NEAR J.A.  
BOIVIN J.A.**

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**REASONS FOR JUDGMENT**

**RYER J.A.**

[1] This is an appeal by Opportunities for the Disabled Foundation (the “Appellant”), pursuant to paragraph 172(3)(a.1) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the “Act”) from a decision of the Minister of National Revenue (the “Minister”) dated October 7, 2014, in which the Minister proposed to revoke the Appellant’s registration as a charitable organization, within the meaning of subsection 149.1(1) (the “Revocation Proposal”). Unless

otherwise indicated, all statutory references in these reasons shall be to the corresponding provisions of the Act that are applicable to this appeal.

## I. BACKGROUND

[2] The Canada Revenue Agency (the “CRA”) raised concerns with respect to deficiencies in the Appellant’s books and records, failures to devote all of its resources to charitable activities, incomplete/inaccurate information returns and gifts made to non-qualified donees in three prior audits of the Appellant in respect of its 1995 to 1997 taxation years, its 1998 taxation year and its 2004 taxation years.

[3] Subsequent to the last of these three audits, on December 28, 2006, the Appellant and the CRA entered into an agreement (the “Compliance Agreement”) in which the CRA spelled out a number of its concerns and the Appellant agreed to undertake a number of corrective actions.

[4] Pursuant to the Compliance Agreement, the Appellant committed, *inter alia*, to:

- a) maintain adequate books and records that addressed a significant number of the concerns;
- b) reduce its fundraising costs in future fundraising negotiations and provide accurate allocations as between charitable and non-charitable expenditures in its annual reporting required under the Act;
- c) within two months from the date of the Compliance Agreement, with the prior approval of the CRA Charities Directorate, amend its constating documents to better reflect its objects in respect of Canadian activities and to permit it to undertake foreign activities;
- d) assuming prior receipt of CRA Charities Directorate approval to undertake foreign activities was obtained, prepare an Agency Agreement and submit it to the CRA Charities Directorate for approval, so that it could demonstrate that it had control over the foreign activities and that it would receive written reports from the foreign agent setting out the way in which resources transferred to the foreign agent were deployed; and

e) file, on a timely basis, complete and accurate information reports as required by the Act.

[5] The Revocation Proposal resulted from an audit that was conducted by the CRA in relation to the Appellant's 2010 taxation year (the "2010 Audit").

[6] By correspondence dated September 12, 2013 (the "Administrative Fairness Letter"), the CRA communicated a number of concerns that it had identified in the 2010 Audit and invited the Appellant to respond. For the most part, the Appellant declined this opportunity, insisting that the CRA answer certain questions posed by counsel to the Appellant, as a precondition to its making any submissions.

[7] The Administrative Fairness Letter referred to concerns that had been raised by the CRA in three prior audits of the Appellant and had also been spelled out in the Compliance Agreement.

[8] In the Revocation Proposal, the CRA outlined its reasons for not responding to the questions that were posed to it by Appellant's counsel and stated that the limited responses to the concerns expressed in the Administrative Fairness Letter that were provided by Appellant's counsel did not address those concerns. The CRA proposed to revoke the registration of the Appellant as a charitable organization on the basis of the following instances of non-compliance with the Act by the Appellant, which had been previously mentioned in the Administrative Fairness Letter, namely that it:

- failed to devote all of its resources to charitable activities carried on by it;
- made gifts to non-qualified donees;
- provided undue benefits to fundraisers and directors;

- failed to maintain adequate books and records; and
- failed to file an information return as required by the Act.

[9] It is apparent that a number of those concerns overlap with the commitments made by the Appellant in the Compliance Agreement.

[10] On January 5, 2015, the Appellant filed a notice of objection to the Revocation Proposal (the “Notice of Objection”), as permitted by subsection 168(4).

[11] On February 7, 2015, the Minister published the Revocation Proposal in the Canada Gazette, thereby revoking the registration of the Appellant as a charitable organization (the “Revocation”). The Appellant did not prosecute an application to this Court to defer such publication, as it was permitted to do in accordance with paragraph 168(2)(b).

[12] On May 8, 2015, the Appellant filed a notice of appeal (the “Notice of Appeal”) in respect of the Revocation Proposal, as permitted by paragraph 172(3)(a.1), notwithstanding that the Minister had not, as of that date, varied, vacated or confirmed the Revocation Proposal in accordance with subsection 165(3).

[13] In the Notice of Appeal, the Appellant requests that the Court:

- a) provide declarations that each of subsection 168(2) and sections 188 and 189 violates paragraph 2(e) of the *Canadian Bill of Rights*, S.C. 1960, c. 44 (the “*Bill of Rights*”) and is therefore of no force and effect;
- b) quash the Revocation; and
- c) quash the Revocation Proposal.

[14] In its Memorandum of Fact and Law, the Appellant changed its position to some degree, asserting that this Court lacks the jurisdiction to provide the requested declaratory relief with respect to the invalidity of subsection 168(2) and sections 188 and 189 on the basis of paragraph 2(e) of the *Bill of Rights*. In addition, the Appellant no longer contends that this Court has jurisdiction to quash the Revocation. Finally, the Appellant asserts that the order of Justice Stratas, dated September 17, 2015 (the “Appeal Book Order”), which determined that documents that were not before the Minister when the Revocation Proposal was issued ought not to be included in the Appeal Book, has deprived this Court of its jurisdiction to hear this appeal. It is noted that the Appellant did not appeal the Appeal Book Order.

## II. ISSUE

[15] The overarching issue in this appeal is whether the Minister erred in issuing the Revocation Proposal.

## III. STANDARD OF REVIEW

[16] In an appeal pursuant to paragraph 172(3)(a.1), questions of fact and mixed fact and law in respect of which there is no readily extricable question of law are reviewed on the standard of reasonableness, while questions of law are reviewed on the standard of correctness (see *Prescient Foundation v. Canada (National Revenue)*, 2013 FCA 120, 358 D.L.R. (4th) 541). Moreover, a conclusion or decision will be reasonable if it is within a range of acceptable outcomes which are defensible in respect of the facts and the law (see *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16 at paragraph 50, [2015] 2 S.C.R. 3).

#### IV. RELEVANT STATUTORY PROVISIONS

[17] The relevant statutory provisions are subsection 165(3), paragraphs 168(1)(a), (c) and (e), paragraph 168(2)(b), subsection 168(4), paragraph 172(3)(a.1), section 180, section 188, section 189 and subsections 230(2) and (3). These provisions are reproduced in the Appendix to these reasons.

#### V. DISCUSSION

[18] In keeping with Parliament's direction in subsection 180(3) that this appeal must be heard and determined in a summary way, I will deal with the six issues that were raised by the Appellant in its Memorandum of Fact and Law.

##### A. **Issue One – Did the Order of Justice Stratas deprive this Court of its jurisdiction to hear the appeal?**

[19] The Appellant asserts that this Court is without jurisdiction to hear its appeal from the Minister's decision to issue the Revocation Proposal by virtue of the Appeal Book Order, which settled the contents of the Appeal Book. This argument is difficult to fathom. The appeal right in issue is provided by paragraph 172(3)(a.1) and not by paragraph 180(1)(a). The latter provision only stipulates a time limit for the launching of an appeal where there has been a confirmation of, or other Ministerial action in respect of, a notice of objection under subsection 165(3). Where a notice of objection has been filed but there has been no such confirmation or other action, the objecting party is free to bring its appeal at any time after the expiration of 90 days from the

filing of the notice of objection. When such an appeal is launched, as was the case in the instant circumstances, it is not sanctioned by paragraph 180(1)(a), but rather by subsection 172(3), as stipulated in the opening words of subsection 180(1). Clearly, the appeal described in paragraph 172(3)(a.1) is an “appeal pursuant to subsection 172(3)”, as stipulated in subsection 180(1). The content of the appeal books has no bearing on this statutory basis for jurisdiction. Thus, it is my view that this Court has jurisdiction to hear the instant appeal.

**B. Issue Two – Does this Court lack jurisdiction to provide remedies to the Appellant after the publication of the Revocation Notice in the Canada Gazette?**

[20] In the Notice of Appeal, the Appellant purported to appeal the Revocation as well as the Revocation Proposal, asserting that the Court’s jurisdiction to deal with the Revocation springs from section 3 of the *Federal Courts Act*, R.S.C. 1985, c. F-7, Rule 300(b) of the *Federal Courts Rules*, S.O.R./98-106 and this Court’s “original jurisdiction”.

[21] In its Memorandum of Fact and Law, the Appellant changed its position and asserted that our jurisdiction only extends to the appeal from the Revocation Proposal.

[22] I agree with the Appellant that subsection 172(3) provides no appeal from a revocation of the registration of a charitable organization that results from the timely publication in the Canada Gazette of a notice given by the Minister under subsection 168(1).



[23] While this is sufficient to deal with this issue, I would observe that the Court should not be taken to have endorsed the Appellant's assertion in paragraph 25 of its Memorandum of Fact and Law that:

...the structure of subsection 168(2) operates to restrict access to a fair trial because it is almost impossible for a registered charity to obtain an order within 30 days from the Federal Court of Appeal on application under subsection 168(4)...

**C. Issue Three – Does this Court have jurisdiction in this appeal to determine if paragraph 168(2)(b) violates paragraph 2(e) of the *Bill of Rights*?**

[24] In its Memorandum of Fact and Law, the Appellant asserts that the Court lacks jurisdiction to decide this issue in an appeal under paragraph 172(3)(a.1), after having first raised it in the Notice of Appeal, where declaratory relief was requested.

[25] I agree with the Appellant. In my view, the Court lacks the jurisdiction to grant declaratory relief on mere issues of statutory interpretation that are not grounded in the actual circumstances of an appeal that is properly before the Court under paragraph 172(3)(a.1) (see *Harris v. R.*, [2000] 4 F.C. 37, [2000] 3 C.T.C. 220 (C.A.); *Universal Aide Society v. Canada (National Revenue)*, 2009 FCA 107, [2009] C.T.C. 209).

**D. Issue Four – Does this Court have jurisdiction in this appeal to determine if subsections 188 and 189 violate paragraph 2(e) of the *Bill of Rights*?**

[26] As the Appellant acknowledges that this issue should not have been included in the Notice of Appeal, there is no need for the Court to consider it. In any event, it is my view that the conclusion reached above with respect to this Court's lack of jurisdiction to grant the declaratory

relief with respect to the potential application of paragraph 2(e) of the *Bill of Rights* to paragraph 168(2)(b) has equal application with respect to this issue.

**E. Issue Five – Did the Minister violate the common law of procedural fairness and natural justice?**

[27] The Appellant asserts that the Minister has violated the common law of procedural fairness because the Minister failed to respond to the Notice of Objection with all due dispatch. In my view, this assertion is groundless.

[28] The phrase “with all due dispatch” in subsection 165(3) has been interpreted to mean within a reasonable period of time (see *Hillier v. Canada (Attorney General)*, 2001 FCA 197, 273 N.R. 245). Additionally, this Court found that where subsection 165(3) is in play, potential concerns with respect to the timeliness of the Minister’s consideration of a notice of objection can be addressed by the exercise of the appeal right that is available to the taxpayer on the 91st day after the filing of the notice of objection. (see *Bolton v. R.* [1996] 3 C.T.C. 3, 200 N.R. 303 [*Bolton*]).

[29] The Appellant chose to launch this appeal approximately one month after the expiration of the 90-day period in paragraph 172(3)(a.1). The Appellant tendered no evidence to suggest that the Appeal Division of the CRA was tardy in its consideration of the Notice of Objection or that it would not have varied, vacated or confirmed the Revocation Proposal within a reasonable time. Moreover, as contemplated in *Bolton*, the Appellant pursued its direct appeal right to this

Court within approximately one month after the expiry of the 90-day period in paragraph 172(3)(a.1).

[30] Additionally, I reject the Appellant's "suppression of evidence" argument because it is an impermissible attempt to collaterally attack or reargue the case that was before Justice Stratas when he made the Appeal Book Order. If the Appellant was displeased with that order, it could have pursued its appeal rights.

[31] The Appellant also asserts that it did not know the case it had to meet in order to stave off the revocation of its status as a charitable organization. In my view, this assertion is groundless. The Administrative Fairness Letter fully described the concerns that arose from the 2010 Audit and the Appellant was invited to make submissions in response. To a large degree, the Appellant chose not to avail itself of its right to make submissions in response to the Administrative Fairness Letter. Moreover, the Compliance Agreement, which arose out of issues raised in three audits that preceded the 2010 Audit, spelled out, to a large extent, the same concerns that the CRA described in the Administrative Fairness Letter and the Revocation Proposal.

**F. Issue Six —Did the Minister err in issuing the Revocation Proposal?**

[32] Having dealt with the preliminary issues raised by the Appellant, it is now opportune to deal with the merits of the Revocation Proposal.

[33] The Revocation Proposal is based upon five grounds. The Appellant's challenge to them raises, in each case, a question of mixed fact and law, which must be reviewed upon the standard

of reasonableness. A finding that any of one of the asserted grounds is reasonable is a sufficient basis for the Court to uphold the Revocation Proposal and dismiss the appeal (see *World Job and Food Bank Inc. v. Canada*, 2013 FCA 65, [2013] 4 C.T.C. 24, *Humane Society of Canada for the Protection of Animals and the Environment v. Canada (National Revenue)*, 2015 FCA 178, 2015 D.T.C. 5091, leave to appeal to S.C.C. refused, 36688 (March 10, 2016) [*Humane Society*]).

[34] In *Human Life International in Canada Inc. v. Minister of National Revenue*, [1998] 3 F.C. 202, [1998] 3 C.T.C. 126, the Minister proposed to revoke the registration of a charity on the basis that, by engaging in some political activities, the charity had failed to devote substantially all of its resources to charitable activity. In dismissing the charity's appeal, Justice Strayer determined that the Appellant had the onus of demonstrating that the Minister had erred in his conclusions that led to the proposed revocation.

[35] The onus is therefore on the Appellant to demonstrate that the Minister acted unreasonably in respect of each ground raised by the Minister as a justification for issuing the Revocation Proposal.

*Ground one — Failure to keep adequate books & records*

[36] The Minister identified a number of deficiencies in the Appellant's books and records. A number of these deficiencies were also addressed in the Compliance Agreement. In the Minister's view, the Appellant failed to satisfy the requirement to maintain books and records set out in subsection 230(2) and that such non-compliance warranted the Minister's issuance of the Revocation Proposal. In that regard, paragraph 168(1)(e) 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.

[37] Other than by way of a bare denial of inadequacy, the Appellant does not contest any of the Minister's claims regarding its books and records (Appellant's Memorandum of Fact and Law at paragraph 75). Instead, the Appellant argues that the Minister was not permitted by any provision of the Act to propose revocation on the basis of inadequate books and records.

[38] The Appellant bases this argument on the existence of what it considers to be a remedy in subsection 230(3), whereby the Minister may require a charitable organization that has failed to keep adequate books and records to keep such books and records as the Minister specifies. In the Appellant's view, this is the sole remedy for a failure to comply with the requirement under subsection 230(2) to keep books and records.

[39] The Appellant's submission disregards the clear language of paragraph 168(1)(e), which unambiguously permits the Minister to issue a notice that it proposes to revoke the registration of a charitable organization on the basis of noncompliance with any of sections 230 to 231.5. Moreover, this Court has already determined that non-compliance with subsection 230(2) is a proper basis upon which the Minister may issue such a notice (see *Humane Society* at paragraph 81).

[40] As the Appellant's legal argument is without basis and it has not meaningfully contested the Minister's conclusion that it failed to comply with its obligation to maintain adequate books

and records, it is my view that the Appellant has failed to demonstrate that it was unreasonable for the Minister to issue the Revocation Proposal on this ground. It follows, in my view, that this failure on the part of the Appellant is a sufficient basis for the Court to dismiss the appeal.

*Ground two — Undue benefits*

[41] The Appellant makes a similar legal argument with respect to the Minister's reliance on the provision of undue benefits as a basis for the Revocation Proposal. Because "undue benefits" is a defined term in subsections 188.1(4) and (5), the Appellant contends that it falls outside the ambit of subsection 168(1).

[42] This argument was rejected in *Humane Society* at paragraph 59. Subsection 189(7) makes it clear that the Minister is entitled to revoke registration in addition to imposing the penalties set out in Part V.

[43] Paragraph 168(1)(a) entitles the Minister to issue a notice that it proposes to revoke if the person ceases to comply with the requirements of the Act for its registration. Under subsection 149.1(1), a charitable organization is required to devote all of its resources to the charitable activities that it carries on. This requirement is necessarily breached if resources of the organization are instead devoted to the provision of undue benefits.

[44] The Appellant made no submissions with respect to the substance of the Minister's conclusion that the Appellant had provided undue benefits. Accordingly, as the Appellant's legal argument is without merit, in my view, the Appellant has failed to demonstrate that it was

unreasonable for the Minister to issue the Revocation Proposal on this ground. Once again, in my view, it follows that this failure on the part of the Appellant is a sufficient basis for the Court to dismiss the appeal.

*Ground three — Failure to file an information return as required by the Act*

[45] The Minister concluded that the Appellant's T3010 information return was significantly inaccurate and incomplete and for that reason, the Appellant had not filed an information return "as and when required under [the] Act or a regulation" within the meaning of paragraph 168(1)(c). Paragraph 68 of the Crown's Memorandum of Fact and Law delineates ten instances of errors and omissions in the Appellant's T3010 for 2010. The Minister determined that these failures on the Appellant's part constituted a reasonable basis upon which to issue the Revocation Proposal.

[46] In the Compliance Agreement, the Appellant committed to ensure that the information contained in its information returns would be complete and accurate in every respect. It argues now that merely filing the requisite form before the stipulated deadline fulfills the requirement to file as and when required under the Act and that any inaccuracies or omissions are irrelevant to that question.

[47] Notwithstanding the numerous and specific instances of inaccuracy in the return, the Appellant asserts only that these alleged inaccuracies are the result of "the arbitrary reallocation of expenditures by the CRA auditor," and claims that there were no specific material allegations that it was incomplete (Appellant's Memorandum of Fact and Law at paragraph 80).

[48] I reject the Appellant's narrow interpretation of paragraph 168(1)(c). Filing an information return "as required" by the Act or a regulation must entail filing a return that corresponds with the requirements for a return set out in the Act and in applicable regulations. The Appellant's submission essentially reads down paragraph 168(1)(c) to eliminate the word "as."

[49] On the other hand, I do not wish to be taken as having concluded that any minor inaccuracy in a T3010 will justify a Ministerial decision to issue a notice of intention to revoke the registration of a registered charity.

[50] In the circumstances, I am satisfied that the record amply demonstrates that the inaccuracies in the T3010 cited by the Minister in the Administrative Fairness Agreement are well beyond what might reasonably be viewed as minor.

[51] In light of the rejection of the Appellant's legal interpretation and in view of the significant number of inaccuracies in the T3010 information return, considered in the context of the Appellant's failure to meet its related commitment under the Compliance Agreement, in my view, it is clear that the Appellant has failed to demonstrate that it was unreasonable for the Minister to issue the Revocation Proposal on this ground. Once again it follows, in my view, that this failure on the part of the Appellant is a sufficient basis for the Court to dismiss the appeal.



*Ground four — Gifting resources to non-qualified donees*

[52] The Minister determined that the Appellant made gifts in the period under consideration to the Isabela Provincial Hospital (the “Hospital”) in the Philippines and that the Hospital was not a qualified donee, as defined in subsection 149.1(1), at the time that it received such gifts.

[53] This matter was covered by the Compliance Agreement, in which the Appellant committed to seek the prior approval of the CRA Charities Directorate in relation to any agency agreement that the Appellant wished to put in place with each foreign entity that was to receive materials from the Appellant. The purpose of such agreements is to ensure that the Appellant is and remains in control over the deployment of gifts of its property that are made outside of Canada.

[54] The Appellant refers to an agency agreement (the “Agency Agreement”) in the Appeal Book but has not established that this particular agreement was put in place in accordance with the Compliance Agreement.

[55] Moreover, the Appellant did not contend that the Agency Agreement in the Appeal Book was sufficient to establish that the Hospital was not the recipient of a gift from it. Rather, the Appellant asserts that the Administrative Fairness Letter was not decisive or clear enough in its conclusion that the Hospital received a gift from the Appellant when it was not a qualified donee. Additionally, the Appellant invokes “unfairness” on the part of the Minister in failing to analyze the Agency Agreement in the Appeal Book.

[56] In my view, these bare assertions are inconsequential in light of the fact that the Appellant has the onus of establishing the unreasonableness of the position taken by the Minister.

[57] As a result, I conclude that the Appellant has failed to demonstrate that it was unreasonable for the Minister to base the Revocation Proposal on the Appellant's having made gifts to the Hospital when it was not a qualified donee. Once again, in my view, it follows that this is a sufficient basis for the Court to allow the appeal.

*Ground five — Failure to devote all resources to charitable activities*

[58] The Minister determined that the Appellant had failed to devote all of its resources to charitable activities, as required under subsection 149.1(1). The Minister made this determination on the basis that only one percent of the funds raised by the Appellant was deployed towards charitable activities in the period under review. This led the Minister to determine that fundraising itself was the Appellant's primary activity during this period.

[59] The Minister calculated that approximately 70% of the Appellant's revenues for the relevant period were expended on fundraising. This percentage was slightly higher than it was in the period that led to the Compliance Agreement, notwithstanding that the Appellant had committed in that agreement to reduce the percentage of its funds that was spent on fundraising.

[60] The Appellant contested this 70% determination arguing that amounts paid to fundraisers who were disabled constitute charitable expenditures. In my view, this argument is unpersuasive.

Regardless of who was engaged in the fundraising, fundraising was nonetheless being undertaken.

[61] An element of fundraising is commonplace in the charitable world, but fundraising itself cannot become a *raison d'être* for a charity. In the circumstances, I am of the view that the high level of fundraising activities undertaken by the Appellant in the period in question, especially in light of its commitment in the Compliance Agreement to reduce those activities, can reasonably be regarded as having become an end in itself.

[62] The Appellant asserts that if its fundraising activities were business activities and not charitable activities, it was unreasonable for the CRA not to have determined that those fundraising activities constituted a related business, within the meaning of paragraph 149.1(1) and for the purposes of paragraph 149.1(6)(a), which provides that a charitable organization will be considered to have devoted its resources to charitable activities to the extent that it carries on a related business.

[63] The Appellant offered no evidence or jurisprudence-based arguments on this point, beyond its assertion of “unreasonableness”, once again failing to recognize the onus that it bears in this appeal.

[64] In response, the Crown referred to its “What is a Related Business?”, Policy Statement CPS-019 (March 31, 2003), asserting that the Appellant’s fundraising activities do not constitute a related business as contemplated by that publication.

[65] In my view, the Appellant's bare assertion that it was unreasonable for the CRA not to have concluded its fundraising activities constituted a related business does not warrant a determination by the Court on this point. In the absence of detailed argument from either the Appellant or the Crown, I would leave the interpretation of the term "related business" for another day.

[66] The Appellant has not demonstrated that it was unreasonable for the Minister to have determined that the Appellant's extensive fundraising activities in the period under consideration meant that it was not devoting all of its resources to charitable purposes and to have based the Revocation Proposal on that determination. Once again, in my view, it follows that this is a sufficient basis for the Court to dismiss the appeal.

## VI. DISPOSITION

[67] For the foregoing reasons, I would dismiss the appeal with costs.

"C. Michael Ryer"

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J.A.

"I agree  
D.G. Near J.A."

"I agree  
Richard Boivin"



## ANNEX A – RELEVANT STATUTORY PROVISIONS

*Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.)

**165.** (3) On receipt of a notice of objection under this section, the Minister shall, with all due dispatch, reconsider the assessment and vacate, confirm or vary the assessment or reassess, and shall thereupon notify the taxpayer in writing of the Minister's action.

**168.** (1) 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

...

(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;

...

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

*Loi de l'impôt sur le revenu*, L.R.C. 1985, c. 1 (5e suppl.)

**165.** (3) Sur réception de l'avis d'opposition, le ministre, avec diligence, examine de nouveau la cotisation et l'annule, la ratifie ou la modifie ou établit une nouvelle cotisation. Dès lors, il avise le contribuable de sa décision par écrit.

[...]

**168.** (1) Le ministre peut, par lettre recommandée, aviser une personne visée à l'un des alinéas a) à c) de la définition de « donataire reconnu » au paragraphe 149.1(1) de son intention de révoquer l'enregistrement si la personne, selon le cas :

[...]

b) cesse de se conformer aux exigences de la présente loi relatives à son enregistrement;

c) dans le cas d'un organisme de bienfaisance enregistré ou d'une association canadienne enregistrée de sport amateur, omet de présenter une déclaration de renseignements, selon les modalités et dans les délais prévus par la présente loi ou par son règlement;

[...]

e) omet de se conformer à l'un des articles 230 à 231.5 ou y contrevient;

...

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

[...]

(2) Le ministre doit, dans le cas de l'alinéa *a*), et peut, dans les autres cas, publier dans la *Gazette du Canada* copie de l'avis prévu au paragraphe (1). Sur publication de cette copie, l'enregistrement de l'organisme de bienfaisance ou de l'association canadienne de sport amateur est révoqué. La copie de l'avis doit être publiée dans les délais suivants :

...

(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*,

[...]

*b*) dans les autres cas, soit 30 jours après la mise à la poste de l'avis, soit à l'expiration de tout délai supérieur à 30 jours courant de la mise à la poste de l'avis que la Cour d'appel fédérale ou l'un de ses juges fixe, sur demande formulée avant qu'il ne soit statué sur tout appel interjeté en vertu du paragraphe 172(3) au sujet de la signification de cet avis.

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

...

(4) 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

[...]

(4) Une personne peut, au plus tard le quatre-vingt-dixième jour suivant la date de mise à la poste de l'avis, signifier au ministre, par écrit et de la manière autorisée par celui-ci, un avis d'opposition exposant les motifs de l'opposition et tous les faits pertinents, et les paragraphes 165(1), (1.1) et (3) à (7) et les articles 166, 166.1 et 166.2 s'appliquent, avec les adaptations nécessaires, comme si l'avis était un

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) Where the Minister**

...

(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

avis de cotisation établi en vertu de l'article 152, si :

a) dans le cas d'une personne qui est ou était enregistrée à titre d'organisme de bienfaisance enregistré ou qui a présenté une demande d'enregistrement à ce titre, elle s'oppose à l'avis prévu au paragraphe (1) ou à l'un des paragraphes 149.1(2) à (4.1), (6.3), (22) et (23);

b) dans le cas d'une personne qui est ou était enregistrée à titre d'association canadienne enregistrée de sport amateur ou qui a présenté une demande d'enregistrement à ce titre, elle s'oppose à l'avis prévu aux paragraphes (1) ou 149.1(4.2) ou (22);

c) dans le cas d'une personne visée à l'un des sous-alinéas a)(i) à (v) de la définition de « donataire reconnu » au paragraphe 149.1(1) qui est ou a été enregistrée par le ministre à titre de donataire reconnu ou qui a présenté une demande d'enregistrement à ce titre, elle s'oppose à l'avis prévu aux paragraphes (1) ou 149.1(4.3) ou (22).

[...]

**172. (3) Lorsque le ministre :**

[...]

a.1) soit confirme toute intention, décision ou désignation à l'égard de laquelle le ministre a délivré, en vertu de l'un des paragraphes 149.1(2) à (4.1), (6.3), (22) et (23)

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,

et 168(1), un avis à une personne qui est ou était enregistrée à titre d'organisme de bienfaisance enregistré ou qui a demandé l'enregistrement à ce titre, soit omet de confirmer ou d'annuler cette intention, décision ou désignation dans les 90 jours suivant la signification, par la personne en vertu du paragraphe 168(4), d'un avis d'opposition concernant cette intention, décision ou désignation;

...

[...]

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.

la personne, dans le cas visé aux alinéas a), a.1) ou a.2), le demandeur, dans le cas visé aux alinéas b), e) ou g), le fiduciaire du régime ou l'employeur dont les employés sont bénéficiaires du régime, dans le cas visé à l'alinéa c), le promoteur, dans le cas visé à l'alinéa e.1), l'administrateur du régime ou l'employeur qui participe au régime, dans le cas visé aux alinéas f) ou f.1), ou l'administrateur du régime, dans le cas visé aux alinéas h) ou i), peuvent interjeter appel à la Cour d'appel fédérale de cette décision ou de la signification de cet avis.

...

[...]

**180.** (1) 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

**180.** (1) Un appel à la Cour d'appel fédérale prévu au paragraphe 172(3) est introduit en déposant un avis d'appel à la cour dans les 30 jours suivant, selon le cas :

(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

a) la date à laquelle le ministre avise une personne, en application du paragraphe 165(3), de sa décision concernant l'avis d'opposition signifié aux termes du



filed under subsection 168(4),

paragraphe 168(4);

...

[...]

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.

ou dans un autre délai que peut fixer ou accorder la Cour d'appel ou l'un de ses juges, avant ou après l'expiration de ce délai de 30 jours.

(2) Neither the Tax Court of Canada nor the Federal Court has jurisdiction to entertain any proceeding in respect of a decision of the Minister from which an appeal may be instituted under this section.

(2) La Cour canadienne de l'impôt et la Cour fédérale n'ont, ni l'une ni l'autre, compétence pour connaître de toute affaire relative à une décision du ministre contre laquelle il peut être interjeté appel en vertu du présent article.

(3) An appeal to the Federal Court of Appeal instituted under this section shall be heard and determined in a summary way.

(3) Un appel dont est saisie la Cour d'appel fédérale, en vertu du présent article, doit être entendu et jugé selon une procédure sommaire.

...

[...]

**188.** (1) 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,

**188.** (1) Si un avis d'intention de révoquer l'enregistrement d'un contribuable comme organisme de bienfaisance enregistré est délivré par le ministre en vertu de l'un des paragraphes 149.1(2) à (4.1) et 168(1) ou si, compte tenu des renseignements et des autres éléments de preuve disponibles, un certificat signifié à l'égard de l'organisme en vertu du paragraphe 5(1) de la *Loi sur l'enregistrement des organismes de bienfaisance (renseignements de sécurité)* est jugé raisonnable au titre du paragraphe 7(1) de cette loi, les règles suivantes s'appliquent :

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

a) l'année d'imposition de l'organisme qui aurait compris par ailleurs le jour où l'avis est délivré ou le jugement, rendu, est réputée prendre fin à la fin de ce jour;

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

b) une nouvelle année d'imposition de l'organisme est réputée commencer immédiatement après ce jour;

(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.

c) pour ce qui est de déterminer l'exercice de l'organisme après ce jour, l'organisme est réputé ne pas avoir établi d'exercice avant ce jour.

(1.1) 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

(1.1) L'organisme de bienfaisance visé au paragraphe (1) est redevable, pour l'année d'imposition qui est réputée avoir pris fin, d'un impôt égal au montant obtenu par la formule suivante :

$A - B$

$A - B$

where

où :

A

A

is the total of all amounts, each of which is

représente le total des montants représentant chacun :

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

a) la juste valeur marchande d'un bien de l'organisme à la fin de l'année;

(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

b) le montant d'un crédit, au sens du paragraphe (2), relatif à un bien transféré à une autre personne au cours de la période de 120 jours s'étant terminée à la fin de l'année;

(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

c) le revenu de l'organisme pour sa période de liquidation, y compris les dons qu'il a reçus de toute source au cours de cette période ainsi que le revenu qui serait calculé selon l'article 3 si cette période était une année d'imposition;

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.

(1.2) 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

B

le total des montants (sauf le montant d'une dépense qui a fait l'objet d'une déduction dans le calcul du revenu pour la période de liquidation selon l'alinéa c) de l'élément A) représentant chacun :

- a) toute somme dont l'organisme est débitrice à la fin de l'année;
- b) toute dépense effectuée par l'organisme au cours de la période de liquidation au titre de ses activités de bienfaisance;
- c) toute somme relative à un bien que l'organisme a transféré au cours de la période de liquidation et au plus tard un an après la fin de l'année ou, s'il est postérieur, le jour visé à l'alinéa (1.2)c), à une personne qui, au moment du transfert, était un donataire admissible relativement à l'organisme, égale à l'excédent éventuel de la juste valeur marchande du bien au moment de son transfert sur la contrepartie donnée par la personne pour le transfert.

(1.2) Pour l'application de la présente partie, la période de liquidation d'un organisme de bienfaisance correspond à la période commençant le lendemain du jour où le ministre délivre un avis d'intention de révoquer l'enregistrement d'un contribuable comme organisme de bienfaisance enregistré en vertu de l'un des paragraphes 149.1(2) à (4.1) et 168(1) ou, s'il est antérieur, le lendemain du jour où un certificat signifié à l'égard

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.

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

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

de l'organisme en vertu du paragraphe 5(1) de la *Loi sur l'enregistrement des organismes de bienfaisance (renseignements de sécurité)* est jugé raisonnable au titre du paragraphe 7(1) de cette loi, compte tenu des renseignements et des autres éléments de preuve disponibles, et se terminant au dernier en date des jours suivants :

a) le jour où l'organisme produit une déclaration de revenu en vertu du paragraphe 189(6.1) pour l'année d'imposition qui est réputée, par le paragraphe (1), avoir pris fin, mais au plus tard le jour où l'organisme est tenu de produire cette déclaration;

b) le jour où le ministre délivre le dernier avis de cotisation concernant l'impôt payable par l'organisme pour l'année en vertu du paragraphe (1.1);

c) si l'organisme a produit un avis d'opposition ou d'appel relativement à cette cotisation, le jour où le ministre peut prendre une mesure de recouvrement en vertu de l'article 225.1 relativement à cet impôt payable.

(1.3) Pour l'application de la présente partie, est donataire admissible relativement à un organisme de bienfaisance donné l'organisme de bienfaisance enregistré qui répond aux conditions suivantes:

a) plus de 50 % des membres de son conseil d'administration n'ont aucun lien de dépendance avec les membres du conseil d'administration de l'organisme donné;

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

b) il ne fait pas l'objet d'une suspension en vertu du paragraphe 188.2(1);

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

c) il n'a aucune somme impayée sous le régime de la présente loi ou de la *Loi sur la taxe d'accise*;

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

d) il a produit toutes les déclarations de renseignements exigées aux termes du paragraphe 149.1(14);

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

e) il ne fait pas l'objet d'un certificat en vertu du paragraphe 5(1) de la *Loi sur l'enregistrement des organismes de bienfaisance (renseignements de sécurité)*; dans le cas contraire, le certificat n'a pas été jugé raisonnable au titre du paragraphe 7(1) de cette loi.

(1.4) In this Part, an eligible donee in respect of a particular Canadian amateur athletic association is a registered Canadian amateur athletic association

(1.4) Pour l'application de la présente partie, est un donataire admissible relativement à une association canadienne de sport amateur donnée toute association canadienne enregistrée de sport amateur qui remplit les conditions suivantes :

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

a) plus de 50 % des membres de son conseil d'administration n'ont aucun lien de dépendance avec les membres du conseil d'administration de l'association donnée;

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

b) elle ne fait pas l'objet de la suspension prévue au paragraphe 188.2(1);

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

c) elle n'a aucune somme impayée sous le régime de la présente loi ou de la *Loi sur la taxe d'accise*;

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

d) elle a produit toutes les déclarations de renseignements exigées aux termes du paragraphe 149.1(14).

(2) 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.

(2) La personne qui reçoit un bien d'un organisme de bienfaisance, après le moment qui précède de 120 jours la fin de l'année d'imposition de l'organisme qui est réputée par le paragraphe (1) avoir pris fin, est solidairement tenue, avec l'organisme, au paiement de l'impôt payable par celui-ci en vertu du paragraphe (1.1) pour cette année, jusqu'à concurrence du total des crédits représentant chacun l'excédent de la juste valeur marchande du bien au moment où il a été ainsi reçu par la personne sur la contrepartie donnée par celle-ci relativement au bien.

(2.1) 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

(2.1) Les paragraphes (1) et (1.1) ne s'appliquent pas à un organisme de bienfaisance pour ce qui est d'un avis d'intention délivré en vertu de l'un des paragraphes 149.1(2) à (4.1) et 168(1), si le ministre renonce à l'intention et en avise l'organisme ou si, à la fois :

(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

a) dans la période d'un an commençant immédiatement après l'année d'imposition de l'organisme qui est réputée par le paragraphe (1) avoir pris fin, le ministre a enregistré l'organisme comme oeuvre de bienfaisance, fondation privée ou fondation publique;

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

b) l'organisme a, avant le moment où il a été ainsi enregistré, à la fois :

(i) paid all amounts, each of which is an amount for which the charity is liable under this

(i) payé les sommes dont chacune représente une somme dont il est redevable en vertu

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.

(3) 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.

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

(4) If property has been transferred to a charitable organization in circumstances described in subsection (3) and it may reasonably be

des dispositions de la présente loi, sauf le paragraphe (1.1), ou de la *Loi sur la taxe d'accise* au titre des impôts, taxes, pénalités et intérêts,

(ii) produit les déclarations de renseignements qu'il est tenu de produire sous le régime de la présente loi au plus tard à ce moment.

(3) Un organisme de bienfaisance enregistré qui est une fondation de bienfaisance qui, par une opération ou une série d'opérations, transfère, avant la fin d'une année d'imposition directement ou indirectement, à une oeuvre de bienfaisance un bien lui appartenant d'une valeur nette supérieure à 50 % du montant de son actif net immédiatement avant l'opération ou la série d'opérations doit payer un impôt, pour l'année, au titre de la présente partie, équivalant à l'excédent de 25 % de la valeur nette du bien en question, déterminée au jour de son transfert, sur le total des montants dont chacun représente l'impôt auquel il est tenu, au titre du présent paragraphe, pour une année d'imposition précédente à l'égard de l'opération ou de la série d'opérations, selon le cas, s'il est raisonnable de considérer que la raison principale du transfert est de réduire son contingent des versements.

(3.1) Le paragraphe (3) ne s'applique pas au transfert qui consiste en un don visé aux paragraphes 188.1(11) ou (12).

(4) L'oeuvre de bienfaisance qui reçoit un bien d'une fondation de bienfaisance, dans des circonstances énoncées au paragraphe (3), s'il est

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.

(5) 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

$$A - B$$

A

is the fair market value of the

raisonnable de considérer qu'elle a agi de concert avec la fondation en vue de réduire le contingent des versements de celle-ci, est solidairement responsable avec elle de l'impôt dont elle est frappée, au titre de ce paragraphe, jusqu'à concurrence de la valeur nette du bien.

(5) Les définitions qui suivent s'appliquent au présent article

« montant de l'actif net » S'agissant du montant de l'actif net, à un moment donné, d'une fondation de bienfaisance, le montant calculé selon la formule suivante :

$$A - B$$

où :

A

représente la juste valeur marchande à ce moment des biens appartenant à la fondation à ce moment;

B

le total des montants dont chacun représente une dette ou toute autre obligation de la fondation exigible à ce moment.

« valeur nette » S'agissant de la valeur nette d'un bien d'une fondation de bienfaisance au jour du transfert de celui-ci, le montant calculé selon la formule suivante

$$A - B$$

A

représente la juste valeur marchande



property on that day, and

ce jour-là du bien;

B

B

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

le montant de toute contrepartie reçue par la fondation pour le transfert.

...

[...]

**189.** (1) Where at any particular time in a taxation year a debt (other than a debt in respect of which subsection 80.4(1) applies or would apply but for subsection 80.4(3)) is owing by a taxpayer to a registered charity that is a private foundation and at that time the debt was a non-qualified investment of the foundation, the taxpayer shall pay a tax under this Part for the year equal to the amount, if any, by which

**189.** (1) Le contribuable qui, au cours d'une année d'imposition, a une dette — autre qu'une dette à laquelle le paragraphe 80.4(1) s'applique ou s'appliquerait si ce n'était du paragraphe 80.4(3) — envers un organisme de bienfaisance enregistré qui est une fondation privée, qui constitue un placement non admissible de celle-ci, doit payer un impôt pour l'année, au titre de la présente partie, égal à l'excédent éventuel du montant visé à l'alinéa *a*) sur le montant visé à l'alinéa *b*):

(*a*) the amount that would be payable as interest on that debt for the period in the year during which it was outstanding and was a non-qualified investment of the foundation if the interest were payable at such prescribed rates as are in effect from time to time during the period

*a*) le montant qui serait payable à titre d'intérêt sur cette dette pour la période de l'année où elle était due et ne constituait pas un placement non admissible de la fondation, si un tel intérêt, calculé selon les différents taux prescrits au cours de la période, était exigible;

exceeds

(*b*) the amount of interest for the year paid on that debt by the taxpayer not later than 30 days after the end of the year.

*b*) le montant d'intérêt pour l'année payé sur la dette par le contribuable, au plus tard 30 jours après la fin de l'année.

(2) For the purpose of paragraph 189(1)(*a*), where a debt in respect of which subsection 189(1) applies (other than a share or right that is deemed by subsection 189(3) to be a debt) is

(2) Pour l'application de l'alinéa (1)*a*), l'intérêt sur une dette d'un contribuable à laquelle le paragraphe (1) s'applique (autre qu'une action ou un droit assimilé à une dette au titre du

owing by a taxpayer to a private foundation, interest on that debt for the period referred to in that paragraph shall be computed at the least of

(a) such prescribed rates as are in effect from time to time during the period,

(b) the rate per annum of interest on that debt that, having regard to all the circumstances (including the terms and conditions of the debt), would have been agreed on, at the time the debt was incurred, had the taxpayer and the foundation been dealing with each other at arm's length and had the ordinary business of the foundation been the lending of money, and

(c) where that debt was incurred before April 22, 1982, a rate per annum equal to 6% plus 2% for each calendar year after 1982 and before the taxation year referred to in subsection 189(1).

(3) For the purpose of subsection 189(1), where a share, or a right to acquire a share, of the capital stock of a corporation held by a private foundation at any particular time during the corporation's taxation year was at that time a non-qualified investment of the foundation, the share or right shall be deemed to be a debt owing at that time by the corporation to the foundation

(a) the amount of which was equal to,

(i) in the case of a share or right

paragraphe (3)) envers une fondation privée est calculé, pour la période visée à cet alinéa, au moins élevé des taux suivants :

a) les différents taux prescrits au cours de la période;

b) le taux annuel d'intérêt sur une telle dette qui, compte tenu des circonstances (y compris les conditions de la dette), aurait été convenu au moment où la dette a été contractée, si le contribuable et la fondation n'avaient eu aucun lien de dépendance entre eux et si l'activité d'entreprise habituelle de la fondation consistait à prêter de l'argent;

c) lorsqu'une telle dette a été contractée avant le 22 avril 1982, un taux annuel égal à 6 % plus 2 % pour chaque année civile postérieure à 1982 et antérieure à l'année d'imposition visée au paragraphe (1).

(3) Pour l'application du paragraphe (1), lorsqu'une action ou un droit d'acquérir une action du capital-actions d'une société détenu par une fondation privée à un moment donné de l'année d'imposition de la société était, à ce moment, un placement non admissible de la fondation, l'action ou le droit est assimilé, à ce moment, à une dette de la société envers la fondation :

a) dont le montant est égal :

(i) dans le cas d'une action ou

last acquired before April 22, 1982, the greater of its fair market value on April 21, 1982 and its cost amount to the foundation at the particular time, or

(ii) in any other case, its cost amount to the foundation at the particular time,

(b) that was outstanding throughout the period for which the share or right was held by the foundation during the year, and

(c) in respect of which the amount of interest paid in the year is equal to the total of all amounts each of which is the amount of a dividend received on the share by the foundation in the year,

and the reference in paragraph 189(1)(a) to "such prescribed rates as are in effect from time to time during the period" shall be read as a reference to "2/3 of such prescribed rates as are in effect from time to time during the period".

(4) For the purposes of subsection 189(3), where a share or right in respect of which that subsection applies was last acquired before April 22, 1982, the reference therein to "2/3 of such prescribed rates as are in effect from time to time during the period" shall be read as a reference to "the lesser of

(a) a rate per annum equal to 4% plus 1% for each 5 calendar years contained in the period commencing after 1982 and ending

d'un droit acquis pour la dernière fois avant le 22 avril 1982, au plus élevé de sa juste valeur marchande le 21 avril 1982 et de son coût indiqué pour la fondation au moment donné,

(ii) dans les autres cas, à son coût indiqué pour la fondation au moment donné;

b) qui était exigible tout au long de la période de l'année où l'action ou le droit était détenu par la fondation;

c) à l'égard de laquelle le montant d'intérêt payé au cours de l'année est égal au total des montants dont chacun est un dividende reçu par la fondation à l'égard de l'action au cours de l'année.

En outre, la mention, à l'alinéa (1)a), de « les différents taux prescrits au cours de la période » vaut mention de « les 2/3 des différents taux prescrits au cours de la période ».

(4) Pour l'application du paragraphe (3), lorsqu'une action ou un droit auquel ce paragraphe s'applique a été acquis pour la dernière fois avant le 22 avril 1982, la mention à ce paragraphe de « les 2/3 des différents taux prescrits au cours de la période » vaut mention de « le moins élevé des taux suivants :

a) le taux annuel égal à 4 % plus 1 % pour chacune des 5 années civiles commençant après 1982 et se terminant avant le moment

before the particular time, and

donné;

(b) a rate per annum equal to 2/3 of such prescribed rates as are in effect from time to time during the year”.

b) le taux annuel égal aux 2/3 des différents taux prescrits en vigueur au cours de l’année ».

(5) For the purpose of subsection 189(3), where a share or right is acquired by a charity in exchange for another share or right in a transaction after April 21, 1982 to which section 51, 85, 85.1, 86 or 87 applies, it shall be deemed to be the same share or right as the one for which it was substituted.

(5) Pour l’application du paragraphe (3), lorsqu’une action ou un droit est acquis par un organisme de bienfaisance en échange d’une autre action ou d’un droit lors d’une opération postérieure au 21 avril 1982 et visée par l’article 51, 85, 85.1, 86 ou 87, cette action ou ce droit est réputé être la même action ou le même droit que celle ou celui qui lui a été substitué.

(6) 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,

(6) Chaque contribuable redevable d’un impôt au titre de la présente partie (sauf un organisme de bienfaisance qui est redevable de l’impôt prévu au paragraphe 188(1)) pour une année d’imposition doit, au plus tard le jour où il est tenu de produire une déclaration de revenu ou une déclaration de renseignements en vertu de la partie I pour l’année, ou serait tenu d’en produire une s’il avait un impôt à payer au titre de cette partie pour l’année :

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

a) produire auprès du ministre, sans avis ni mise en demeure, une déclaration pour l’année, selon le formulaire prescrit et contenant les renseignements prescrits;

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

b) estimer dans la déclaration le montant d’impôt qu’il doit payer au titre de la présente partie pour l’année;

(c) pay to the Receiver General the

c) verser au receveur général le

amount of tax payable by the taxpayer under this Part for the year.

montant d'impôt qu'il doit payer au titre de la présente partie pour l'année.

(6.1) 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,

(6.1) Tout contribuable redevable de l'impôt prévu au paragraphe 188(1.1) pour une année d'imposition doit, sans avis ni mise en demeure et au plus tard le jour qui suit d'un an la fin de l'année :

(a) file with the Minister

a) présenter les documents suivants au ministre :

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

(i) une déclaration pour l'année, selon le formulaire prescrit et contenant les renseignements prescrits,

(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

(ii) une déclaration de renseignements et une déclaration publique de renseignements pour l'année, chacune selon le formulaire prescrit pour l'application du paragraphe 149.1(14);

(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

b) estimer dans la déclaration visée au sous-alinéa a)(i) le montant d'impôt à payer en vertu du paragraphe 188(1.1) pour l'année;

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

c) verser ce montant au receveur général.

(6.2) 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

(6.2) Si la somme à payer par une personne au titre de l'impôt prévu au paragraphe 188(1.1) pour une année d'imposition a fait l'objet d'une cotisation au cours de la période d'un an commençant immédiatement après la fin de l'année et que cette somme

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

excède 1 000 \$ et n'a pas fait l'objet d'une nouvelle cotisation après l'expiration de cette période, le total des montants suivants est appliqué en réduction de cette somme à un moment donné :

(a) the amount, if any, by which

a) l'excédent éventuel du total visé au sous-alinéa (i) sur le montant visé au sous-alinéa (ii) :

(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

(i) le total des montants représentant chacun une somme dépensée par l'organisme pour ses activités de bienfaisance avant le moment donné et au cours de la période (appelée « période postérieure à la cotisation » au présent paragraphe) commençant immédiatement après l'envoi de l'avis concernant la dernière de ces cotisations et se terminant à la fin de la période d'un an,

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

(ii) le revenu de l'organisme pour la période postérieure à la cotisation, y compris les dons qu'il a reçus de toute source au cours de cette période ainsi que le revenu qui serait calculé selon l'article 3 si cette période était une année d'imposition;

(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,

b) le total des montants représentant chacun une somme relative à un bien que l'organisme a transféré, avant le moment donné et au cours de la période postérieure à la cotisation, à une personne qui, au moment du transfert, était un donataire admissible relativement à l'organisme, égale à l'excédent

exceeds the consideration given by the person for the transfer.

éventuel de la juste valeur marchande du bien au moment de son transfert sur la contrepartie donnée par la personne pour le transfert.

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

(6.3) Si la somme à payer par une personne donnée au titre des pénalités prévues à l'article 188.1 pour une année d'imposition a fait l'objet d'une cotisation et qu'elle excède 1 000 \$, est appliqué en réduction de cette somme à un moment donné le total des sommes représentant chacune une somme, relative à un bien que la personne donnée a transféré, après la date de la première cotisation concernant cette somme et avant le moment donné, à une autre personne qui, au moment du transfert, était un donataire admissible relativement à la personne donnée, égale à l'excédent de la juste valeur marchande du bien au moment de son transfert sur le total des sommes suivantes :

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

a) la contrepartie donnée par l'autre personne pour le transfert;

(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).

b) la partie de la somme relative au transfert qui a entraîné la réduction d'une somme à payer par ailleurs en vertu du paragraphe 188(1.1).

(7) 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.

(7) Sans qu'il soit porté atteinte à son pouvoir de révoquer l'enregistrement d'un organisme de bienfaisance enregistré ou d'une association canadienne enregistrée de sport amateur, le ministre peut établir à l'égard d'un contribuable une cotisation concernant toute somme dont celui-ci est redevable en vertu de

la présente partie.

(8) Subsections 150(2) and (3), sections 152 and 158, subsection 161(11), sections 162 to 167 and Division J of Part I apply in respect of an amount assessed under this Part and of a notice of suspension under subsection 188.2(1) or (2) as if the notice were a notice of assessment made under section 152, with any modifications that the circumstances require including, for greater certainty, that a notice of suspension that is reconsidered or reassessed may be confirmed or vacated, but not varied, except that

(a) section 162 does not apply in respect of a return required to be filed under paragraph (6.1)(a); and

(b) the reference in each of subsections 165(2) and 166.1(3) to the expression “Chief of Appeals in a District Office or a Taxation Centre” is to be read as a reference to the expression “Assistant Commissioner, Appeals Branch”.

(8.1) For greater certainty, in applying the provisions referred to in subsection (8), with any modifications that the circumstances require,

(a) a notice of objection referred to in subsection 168(4) does not constitute a notice of objection to a tax assessed under subsection 188(1.1); and

(b) an issue that could have been the subject of a notice of objection referred to in subsection 168(4) may not be appealed to the Tax

(8) Les paragraphes 150(2) et (3), les articles 152 et 158, le paragraphe 161(11), les articles 162 à 167 et la section J de la partie I s’appliquent, avec les adaptations nécessaires, à toute somme qui fait l’objet d’une cotisation en vertu de la présente partie, ainsi qu’à tout avis de suspension prévu aux paragraphes 188.2(1) ou (2) comme si cet avis était un avis de cotisation établie en vertu de l’article 152. À cet égard, il est entendu que l’avis de suspension qui fait l’objet d’un nouvel examen peut être ratifié ou annulé, mais non modifié. Toutefois :

a) l’article 162 ne s’applique pas à la déclaration à produire en vertu de l’alinéa (6.1)a);

b) la mention « chef des Appels d’un bureau de district ou d’un centre fiscal » aux paragraphes 165(2) et 166.1(3) vaut mention de « Sous-commissaire de la Direction générale des appels ».

(8.1) En ce qui concerne l’application, avec les adaptations nécessaires, des dispositions mentionnées au paragraphe (8), il est entendu :

a) d’une part, que l’avis d’opposition visé au paragraphe 168(4) ne constitue pas un avis d’opposition à l’impôt prévu au paragraphe 188(1.1);

b) d’autre part, que toute question qui aurait pu faire l’objet d’un avis d’opposition en vertu du paragraphe 168(4) ne peut faire



Court of Canada under subsection 169(1).

l'objet d'un appel à la Cour canadienne de l'impôt en vertu du paragraphe 169(1).

(9) Subsection 161(11) does not apply to a liability of a taxpayer for a taxation year

(9) Le paragraphe 161(11) ne s'applique pas à la somme dont un contribuable est redevable pour une année d'imposition :

(a) under subsection 188(1.1) to the extent that the liability is reduced by subsection (6.2), or paid, before the end of the one-year period that begins immediately after the end of the taxation year deemed to have ended by paragraph 188(1)(a); or

a) en vertu du paragraphe 188(1.1), dans la mesure où elle est réduite par l'effet du paragraphe (6.2) ou payée, avant la fin de la période d'un an commençant immédiatement après la fin de l'année d'imposition qui est réputée avoir pris fin par l'effet de l'alinéa 188(1)a);

(b) under section 188.1 to the extent that the liability is reduced by subsection (6.3), or paid, before the end of the one-year period that begins immediately after the liability was first assessed.

b) en vertu de l'article 188.1, dans la mesure où elle est réduite par l'effet du paragraphe (6.3) ou payée, avant la fin de la période d'un an commençant immédiatement après l'établissement de la première cotisation la concernant.

...

[...]

**230.** (2) Every qualified donee referred to in paragraphs (a) to (c) of the definition "qualified donee" in subsection 149.1(1) shall keep records and books of account — in the case of a qualified donee referred to in any of subparagraphs (a)(i) and (iii) and paragraphs (b) and (c) of that definition, at an address in Canada recorded with the Minister or designated by the Minister — containing

**230.** (2) Chaque donataire reconnu visé aux alinéas a) à c) de la définition de « donataire reconnu » au paragraphe 149.1(1) doit tenir des registres et des livres de comptes — à une adresse au Canada enregistrée auprès du ministre ou désignée par lui, s'il s'agit d'un donataire reconnu visé aux sous-alinéas a)(i) ou (iii) ou aux alinéas b) ou c) de cette définition — qui contiennent ce qui suit :

(a) information in such form as will enable the Minister to determine whether there are any

a) des renseignements sous une forme qui permet au ministre de déterminer s'il existe des motifs de

grounds for the revocation of its registration under this Act;

révocation de l'enregistrement de l'organisme ou de l'association en vertu de la présente loi;

(b) a duplicate of each receipt containing prescribed information for a donation received by it; and

b) un double de chaque reçu, renfermant les renseignements prescrits, visant les dons reçus par l'organisme ou l'association;

(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.

c) d'autres renseignements sous une forme qui permet au ministre de vérifier les dons faits à l'organisme ou à l'association et qui donnent droit à une déduction ou à un crédit d'impôt aux termes de la présente loi.

...

[...]

(3) Where a person has failed to keep adequate records and books of account for the purposes of this Act, the Minister may require the person to keep such records and books of account as the Minister may specify and that person shall thereafter keep records and books of account as so required.

(3) Le ministre peut exiger de la personne qui n'a pas tenue les registres et livres de compte voulus pour l'application de la présente loi qu'elle tienne ceux qu'il spécifie. Dès lors, la personne doit tenir les registres et livres de compte qui sont ainsi exigés d'elle.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-230-15

**(APPEAL FROM A DECISION OF THE MINISTER OF NATIONAL REVENUE  
DATED OCTOBER 7, 2014)**

**STYLE OF CAUSE:** OPPORTUNITIES FOR THE  
DISABLED FOUNDATION v.  
MINISTER OF NATIONAL  
REVENUE

**PLACE OF HEARING:** VANCOUVER, BRITISH  
COLUMBIA

**DATE OF HEARING:** MARCH 15, 2016

**REASONS FOR JUDGMENT BY:** RYER J.A.

**CONCURRED IN BY:** NEAR J.A.  
BOIVIN J.A.

**DATED:** MARCH 24, 2016

**APPEARANCES:**

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