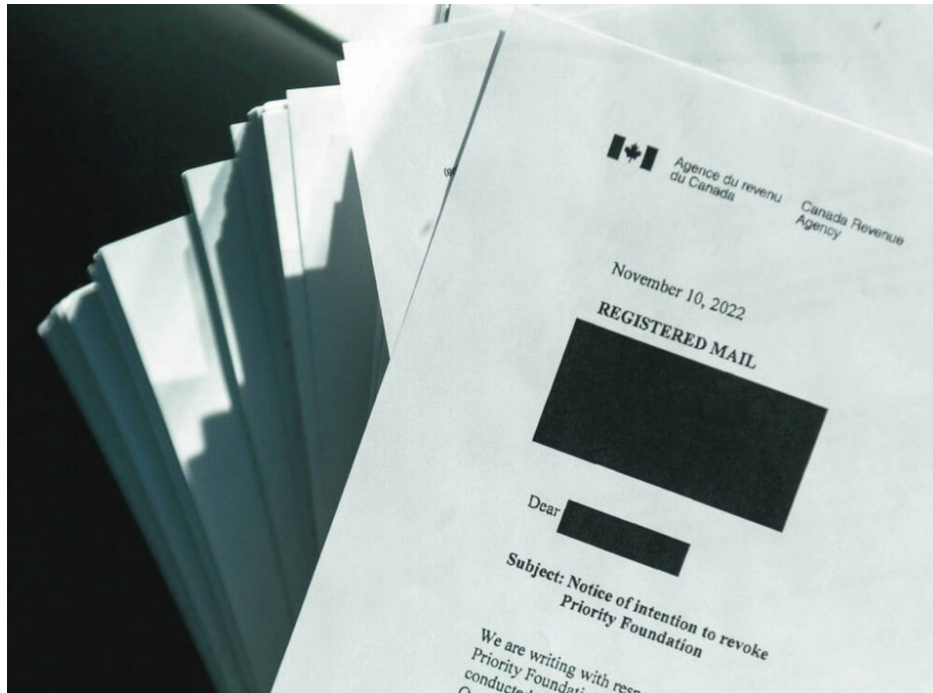


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Charitable status revoked for 12 B.C. charities linked to single Vancouver company

Dan Fumano, Vancouver Sun
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CRA documents pertaining to revoked B.C. charities. JASON PAYNE, VANCOUVER SUN

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The Canada Revenue Agency revoked the status of 12 B.C.-based charities between July 2022 and January 2023, all of them connected to a recently retired Vancouver lawyer and his former company.

The revocations follow a series of multi-year audits by the taxation agency, which alleged several breaches of tax law.

The CRA allegations have not been proven in court, and the now-retired lawyer whose firm set up the charities says the “unfortunate and unjustified” revocations could discourage other Canadians from making large charitable donations.

Most of the charities, the CRA alleges, failed to devote their resources exclusively to charitable purposes, as required by law. Instead, the agency alleged, some of the charities operated primarily as “private tax planning arrangements” for the benefit of the organizations’ directors and donors, who include high-profile and wealthy British Columbians.

Revoking a charity’s status after an audit is a rare step for the CRA. In recent years, less than half of one per cent of Canada’s 86,000 registered charities have met such a fate. CRA records show that out of the 14 B.C.-based charities to have their status revoked following audits between July 2022 and January 2023, 12 can be traced back to a single office tower in downtown Vancouver and a company called Benefic Group.

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Following the audits, the CRA alleged the charities were responsible for a variety of violations outlined in hundreds of pages of documents reviewed by Postmedia News. In some cases, the CRA tracked what it alleged were “preordained circular transactions among related persons and charities,” where millions of dollars in assets were transferred among a series of related charities, in some cases ending up back in the original donor’s possession.

In one case, the CRA alleged a series of transactions was “entirely orchestrated for the purpose of earning tax credits from the donation” and “protecting the donor from public scrutiny.” The CRA alleged another series of transactions involving a different group of charities was undertaken to help a wealthy donor with tax planning and “had no apparent charitable purpose or public benefit.”

The audits focused on specific years for each charity and not every transaction was found to be problematic. But these charitable foundations were handling significant amounts of money. CRA filings show the charities, combined, issued tax receipts valued well over \$100 million in the past decade.

The CRA said ensuring compliance with tax rules is a priority because “the charitable sector is supported by all Canadian taxpayers.”

Whenever a Canadian donates to a federally registered charity — whether it’s \$50 million or \$50 — and receives an official receipt, it can reduce the donor’s income tax.

The tax savings can be substantial, said Kate Bahen, managing director of Charity Intelligence, which researches and analyzes Canadian charities.

Canada’s tax benefits for philanthropic donations are more generous than many other countries, Bahen said. Most Canadians can support this idea because it encourages charitable giving, she said, but the system should be closely monitored for any potential abuse.

When wealthy people use charities primarily for the purpose of reducing their tax owing, the net result for Canadians is “millions of dollars ... that wasn’t paid in taxes,” Bahen said. “So that means that there’s less money to pay for schools, to pay for roads, hospitals, health care, elderly supports, military veterans, social services, disability insurance.

“Canadians want better oversight of the charity sector.”

The 12 recently revoked charities — plus a 13th, which the CRA has decided to revoke but is still registered — were all linked to Benefic Group, which was run for 15 years by its founder, the now-retired lawyer Blake Bromley, and recently shuttered.

Bromley is a high-profile figure in Canada’s charitable sector. He has described himself as “one of the world’s foremost experts in charity law and the recognized pioneer of charitable law and gifting in Canada.” He has handled charitable gifts for some of B.C.’s richest people.

Those linked to Bromley and Benefic who have directed or received tax receipts from the now-revoked charities include an Order of Canada recipient, a mining tycoon, the founder of a high-end condo development company, and a software magnate.

There are two kinds of charitable organizations in Canada: charities, which are organizations that carry out charitable activities, and foundations, which do not do charitable work but exist primarily to donate funds to qualified charities. The revoked charities linked to Benefic are foundations.

Bromley told Postmedia News the new director general of the CRA’s charities directorate, which oversees the sector, “has chosen to clear her predecessor’s backlog of audits by simply revoking charities with little regard to the seriousness of transactions,” adding that this “draconian approach has substantially increased the number of revocations” but also resulted in several “erroneous” revocations being reversed.

In an email, Bromley pointed to the Canada Gazette — the federal government’s official publication for announcements — which last month reported that the CRA’s revocations of nine charities had been reversed.

None of the recent revocations linked to Benefic have been reversed. But Bromley said several of the revoked charities will fight back.

Bromley said that before his retirement five years ago, his primary focus was encouraging donors make large gifts to fund charities.

“By reaching back 23 years, the new director general has been able to string together a dozen ‘Bromley-related’ revocations. Those revocations are unfortunate and unjustified,” Bromley wrote before the most recent revocations. “However, that is a less-important statistic than the fact that only five ‘Bromley-related’ donations were overturned in my 40 years of practice.”

"CRA is trying to frighten charities into not issuing charitable gift receipts for complicated gifts because those gifts reduce CRA's revenue. And they are choosing revocation as the method because it avoids fighting with donors in the Tax Court of Canada. Donors are far more likely to challenge CRA in the courts than are charities. In fact, more than 40 years have passed since any charity has won an appeal of a revocation in the Federal Court of Appeal," Bromley said.

Bromley cited one recently revoked charity, Stewards' Charitable Foundation, where the CRA focused on an alleged breach involving a donation more than a decade old. With this "aggressive action," Bromley said, the CRA's charities directorate is "sending the message to both charities and donors that it does not like large tax-efficient gifts of public shares. It is silent on the fact that the gift stood as filed by the donor."

The CRA said it would not confirm which charities were appealing revocation and which were winding down and paying a so-called revocation tax.

Bromley said that while he is retired and no longer acts for most of the revoked charities, he believes "all or most will fight the revocations because, if the reasons for these revocations apply to all charities, there is a tidal shift coming to charity law and thousands of charities will face harmful revocations for transactions that have otherwise always been allowed."

The CRA only audits a small fraction of Canada's more than 86,000 registered charities every year, using what it calls a "risk-based model" to identify "organizations at higher risk of non-compliance."

If the CRA decides its audits have uncovered non-compliance, it can revoke a charity's status. Revoked charities can appeal, first to the CRA's appeals department, and if that is unsuccessful, to the courts.

The CRA's charities auditors often make mistakes in their interpretation of law or policy, says Sebastian Elawny, a Calgary lawyer who has helped several charities navigate CRA audits. And the CRA's allegations are not always upheld.

In his experience, Elawny said, the CRA wants to avoid revocation and tries to work with charities to bring them into compliance. It seems noteworthy, he said, that the CRA revoked a dozen charities in a span of a few months, all connected to a single company, for alleged non-compliance, following audits.

"There's clearly a common thread between them that the charities directorate has concluded makes them not exclusively charitable," Elawny said.

But Bromley contends the "thread upon which CRA relies in its new approach is very long and extremely thin."

The revocations facing the 12 charities is an administrative penalty. The CRA also can, and does, pursue criminal charges where it considers that warranted. CRA figures show there were 23 convictions for tax evasion in Canada between April 2021 and March 2022, with 10 individuals sentenced to jail.

The CRA does not suggest any of the conduct alleged against any of the B.C. charities is criminal conduct.

Most Canadians try to reduce their taxes where they can, and charitable donations are one of several methods that Canada allows to legally do so.

"There's a fine line, when you're sitting in the adviser's chair or the lawyer's or accountant's chair, between good planning and good tax avoidance, extremely aggressive tax avoidance, and tax evasion," said Kim **Moody**, an accountant and past chair of the Canadian Tax Foundation and co-chair of the joint committee on taxation of the Canadian Bar Association and CPA Canada. "Tax evasion is criminal, but all the rest is not. But is there something morally wrong about vanilla tax avoidance? No, there's not."

Issuing tax receipts for donations is a huge "carrot" for the charitable sector, said **Moody**, who runs a practice with offices in Ontario and Alberta doing tax planning for wealthy clients. "And non-compliance comes at a huge societal cost — because it costs the government of Canada a ton of money to issue these tax credits."

Christopher Richardson, a chartered accountant who worked with Bromley for decades, called Bromley a "guru" who has done innovative work in arranging charitable donations, often involving very large gifts from wealthy individuals and families.

Richardson said he is disappointed and bewildered by the recent revocations, calling the CRA's approach aggressive.

Richardson has been a director of several charities, including at least two of those recently revoked by the CRA. He is listed as one of four directors of Headwaters Foundation, which the CRA revoked in July, after an audit alleged, among other things, that the organization failed to devote resources to a charitable purpose.

Richardson is also a Vancouver school board trustee. He was initially running for office last year with ABC Vancouver, but the party dropped him after they learned about Headwaters' trouble with CRA. He now sits on

the board as an independent.

The CRA alleged Headwaters engaged in a series of “circular transactions” involving millions of dollars in shares, cash and real estate that did not produce any benefit for the charitable sector. Instead, the transactions benefited a person whose name is redacted because they received a tax credit for donating assets, “despite the fact that the assets were ultimately returned to (redacted) as part of the pre-arranged series of transactions,” the CRA alleged, “that is, the tax-planning arrangement.”

Headwaters is appealing the revocation, said Richardson.

“I assume CRA is trying to put a negative spin on situations when a donor buys back property she has donated to a private foundation by calling it a ‘circular transaction,’” said Bromley. “Charitable purpose and public benefit are determined by the price paid for the asset, not the identity of the buyer.”

“You’re able to arrange your affairs in such a manner to get a more positive tax outcome, you know, there’s nothing that says you can’t do that,” Richardson said. But doing that can be complicated and highly technical, he said, and sometimes “it’s only rich people that can afford the lawyers and accountants that can advise them how to arrange that.”

Under the Income Tax Act, revoked charities are required to pay a revocation tax within one year of the notice of the agency’s intention to revoke. The CRA said privacy rules prevented it from revealing the amount of those revocation taxes or whether any of the recently revoked charities had paid so far.

Bromley recently retired from practising law after a long and successful career. He estimates he registered about 700 charities and, including charitable bequests, arranged billions of dollars in donations.

None of CRA’s allegations concerning these revocations have been tested or proven in court.

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