



REGISTERED MAIL

Nesathurai & Luk LLP
Barristers and Solicitors
Munich Re Centre
390 Bay Street, Suite 802
Toronto ON M5H 2Y2

BN: 11883 1510 RR0001

Attention: Mr. Hari S. Nesathurai

File #: 0732412

December 12, 2011

Subject: Revocation of Registration
Canadian Foundation for Tamil Refugee Rehabilitation

Dear Mr. Nesathurai:

The purpose of this letter is to inform you that a notice revoking the registration of Canadian Foundation for Tamil Refugee Rehabilitation (the Foundation) was published in the *Canada Gazette* on December 10, 2011. Effective on that date, the Foundation ceased to be a registered charity.

Consequences of Revocation:

- a) The Foundation is no longer exempt from Part I Tax as a registered charity and **is no longer permitted to issue official donation receipts**. This means that gifts made to the Foundation are no longer allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the *Income Tax Act* (the Act), respectively.
- b) By virtue of section 188 of the Act, the Foundation will be required to pay a tax within one year from the date of the Notice of Intention to Revoke. This revocation tax is calculated on prescribed form T-2046, *Tax Return Where Registration of a Charity is Revoked* (the Return). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the Notice of Intention to Revoke. A copy of the Return is enclosed. The related Guide RC-4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, is available on our website at www.cra-arc.gc.ca/E/pub/tg/rc4424.

Section 188(2) of the Act stipulates that a person (other than a qualified donee) who receives an amount from the Foundation is jointly and severally liable with the Foundation for the tax payable under section 188 of the Act by the Foundation.

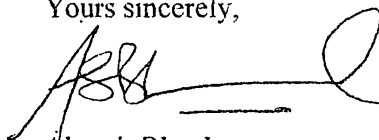
- c) The Foundation no longer qualifies as a charity for purposes of subsection 123(1) of the *Excise Tax Act* (ETA). As a result, the Foundation may be subject to obligations and entitlements under the ETA that apply to organizations other than charities. If you have any questions about your GST/HST obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

In accordance with *Income Tax Regulation* 5800, the Foundation is required to retain its books and records, including duplicate official donation receipts, for a minimum of two years after the Foundation's effective date of revocation.

Finally, we wish to advise that subsection 150(1) of the Act requires that every corporation (other than a corporation that was a registered charity throughout the year) file a *Return of Income* with the Minister of National Revenue (the Minister) in the prescribed form, containing prescribed information, for each taxation year. The *Return of Income* must be filed without notice or demand.

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

Yours sincerely,

A handwritten signature in black ink, appearing to read 'ABL', followed by a horizontal line and a large, stylized loop.

Alastair Bland

Director

Review and Analysis Division

Charities Directorate

Toll free: 1-800-267-2384



Canada Revenue
Agency

Agence du revenu
du Canada

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NOV 07 2011

Nesathurai & Luk LLP
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Munich Re Centre
390 Bay Street, Suite 802
Toronto ON M5H 2Y2

BN: 11883 1510 RR0001
File No.: 0732412

Attention: Mr. Hari S. Nesathurai

**Subject: Notice of Intention to Revoke
Canadian Foundation For Tamil Refugee Rehabilitation**

Dear Mr. Nesathurai:

I am writing further to our letter dated November 19, 2009 (copy enclosed), in which you were invited to submit representations as to why the registration of the Canadian Foundation for Tamil Refugee Rehabilitation (the Foundation) should not be revoked in accordance with subsection 168(1) of the *Income Tax Act*.

We have now reviewed and considered your written response dated January 19, 2010 (copy enclosed). For the reasons set out in Appendix A, attached, these representations do not overcome the issues raised by our audit findings.

Conclusion:

On the basis of the Canada Revenue Agency (CRA) audit, we have concluded that the Foundation has ceased to comply with the requirements of the Act for its continued registration in that it: failed to maintain adequate books and records; improperly issued tax receipts on behalf of a third party; failed to maintain adequate direction and control over the use of its funds; and provided funding to non-qualified donees outside of Canada.

This funding included \$722,930 provided to organizations which, on the basis of publicly available information detailed in our letter of November 19, 2009, the CRA believes operate as part of the support network for the Liberation Tigers of Tamil Eelam (LTTE), a listed entity under the *United Nations Suppression of Terrorism Regulations* and the *Criminal Code of Canada*.

Consequently, and for each of the reasons set out in our letter dated November 19, 2009, I wish to advise you that, pursuant to subsection 168(1) of the Act, I propose to revoke the

Canada

registration of the Foundation. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

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

Business Number
118831510RR0001

Name
Canadian Foundation for Tamil Refugee Rehabilitation
Mississauga ON

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

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

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

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

Consequences of Revocation

As of the effective date of revocation:

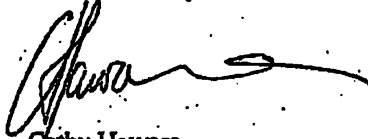
- a) the Foundation will no longer be exempt from Part I tax as a registered charity and will no longer be permitted to issue official donation receipts. This means that gifts made to the Foundation would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the Act respectively;
- b) by virtue of section 188 of the Act, the Foundation will be required to pay a tax within one year from the date of the Notice of Intention to Revoke. This revocation tax is calculated on prescribed form T-2046, *Tax Return Where Registration of a*

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

- c) the Foundation will no longer qualify as a charity for purposes of subsection 123(1) of the ***Excise Tax Act*** (ETA). As a result, the Foundation may be subject to obligations and entitlements under the ETA that apply to organizations other than charities. If you have any questions about your GST/HST obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

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

Yours sincerely,



Cathy Hawara
Director General
Charities Directorate

Attachments:

- Appendix A, CRA Position on Representations
- Appendix B, Relevant Provisions of the Act
- CRA letter dated November 19, 2009
- Your letter dated January 19, 2010

cc:

Mr. Manoharan Mailvaganam
Canadian Foundation For Tamil Refugee Rehabilitation
3610 Fountain Park Avenue
Mississauga ON L5M 7G1

APPENDIX A

CANADIAN FOUNDATION FOR TAMIL REFUGEE REHABILITATION

Following our review of the representations of the Canadian Foundation for Tamil Refugee Rehabilitation (the Foundation), the CRA maintains the position that the Foundation is in serious non-compliance with core requirements of the *Income Tax Act* in the following areas:

Issue 1: Ceased To Comply With the Requirements of the Act for its Continued Registration

a) Gifted to Non-Qualified Donees/Lack of Direction and Control over Resources

i) Audit Observations

The audit revealed that the Foundation failed to exercise direction and control over the use of its resources when it disbursed funds for projects undertaken by the Tamils Rehabilitation Organization Sri Lanka (TRO) and the Ramakrishna Mission (Mission) of Sri Lanka without ensuring that its resources were devoted exclusively to its own activities.

For the period under review, the Foundation gifted approximately 81 per cent of its total revenue to organizations that were non-qualified donees, as follows:

- \$620,000 to the TRO on May 25, 2005 and January 11, 2006. Furthermore, the Foundation appeared to be a conduit to transfer funds raised by Tamil Vision International (TVI), given to the Foundation, and then transferred to TRO as requested by TVI. The Foundation was unable to provide any supporting documentation to demonstrate ongoing direction and control over the use of its resources by TRO.¹
- \$112,930 to Mission of Sri Lanka representing a series of disbursements from February 10, 2005 to June 15, 2007.

ii) Foundation's Representations

To respond to the issue of its resources being transferred to the TRO, the Foundation stated that: "[a]t all material times, the TRO acted pursuant to an agency agreement with the Foundation to carry out the Foundation's objectives with respect to two projects" and that "... the TRO was registered as a Voluntary Social Organization/Non-governmental Organization whose certificate was not revoked during the currency of any project undertaken by the Foundation." Later in the representation, the Foundation stated, "[t]he agency agreements provided for the necessary controls, if required by the Foundation, to audit, review and monitor the activities of the TRO in

¹ During our audit, the Foundation advised the CRA that Tamil Vision International (TVI) had raised over \$600,000 for the December 2004 tsunami victims in Sri Lanka, and that TVI selected the Foundation as the recipient of these donations. TVI provided the Foundation with the funds and the names of the donors and the Foundation issued donation receipts. Audit findings also suggest that TVI influenced the Foundation to transfer the funds to the TRO in Sri Lanka.

both projects. The primary purpose of an agreement is to regain control of the agent's activities if, in [the] opinion of the Foundation, the activities were not being carried out. In any contractual relationship, especially in an agency relationship, many of the terms are only enforced when there is a material default by the agent."

The Foundation also represented that it "received updates and photographs of the project and had no reason to doubt the reliability of the information received from the TRO. Based on the information available to the Foundation during the currency of the projects, there was no basis for the Foundation not to continue to fund the projects."

Regarding funding to Mission, the Foundation stated, "On March 31, 1988, the Foundation entered into an agency agreement with Mission to fund a program for the welfare of children in Sri Lanka."

iii) CRA's Position

A registered charity is not permitted to make gifts to non-qualified donees.² Subsection 149.1(1) of the Act requires that a registered charity operating as a charitable organization devote all of its resources to "charitable activities carried on by the organization itself." Subsection 149.1(6) provides that a charitable organization shall be considered to be devoting its resources to charitable activities carried on by it to the extent that in any taxation year it disburses not more than 50 per cent of its income for that year to qualified donees. Thus, the Act requires that a charitable organization must control and remain accountable for the use of its resources. This requirement is lifted only when charitable organizations give their resources to a qualified donee under the Act.

Except where a charity gifts funds to a qualified donee, the CRA requires the charity to show that it effectively directs and actually controls its own activities on an ongoing basis, including situations in which a charity carries out its activities through an intermediary such as an agent.³ The Federal Court of Appeal has confirmed that a charity working with an intermediary must have control over the activities carried out on its behalf, and over the use of its resources.⁴ In particular, these cases highlight that the relevant issue to be determined with regard to this requirement is not only whether resources are being devoted to activities that the law regards as charitable, but whether funds transferred to a non-qualified donee are, in reality, devoted to activities being carried on by the charity itself. As noted in *Canadian Magen David Adom for Israel v. Canada (Minister of National Revenue)*, "the Minister is entitled to insist on credible

² The term qualified donee is defined in subsection 149.1(1) of the *Income Tax Act* to mean an organization to which Canadian taxpayers may directly make charitable gifts, or gifts to the Crown, which can be claimed when filing their income tax returns. Within Canada, the term "qualified donee" generally refers to other Canadian registered charities and municipalities. Outside Canada, the only organizations that are qualified donees under the Act are the United Nations and its agencies, certain universities outside Canada ordinarily attended by Canadian students, and charitable organizations outside Canada to which Her Majesty in Right of Canada has made a gift within the previous two years.

³ CRA Guidance: Canadian Registered Charities Carrying Out Activities Outside Canada, 2010-07-08. Replaced Form T4106-Registered Charities: Operating Outside Canada. Online: <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/isd-cnd-eng.html>.

⁴ *The Canadian Committee for the Tel Aviv Foundation v. Canada* (2002 FCA 72), 2002-03-01 [hereinafter *Tel Aviv Foundation*], *Canadian Magen David Adom for Israel v. Canada (Minister of National Revenue)* (2002 FCA 323), 2002-09-13 [hereinafter *CAMD*], and *Bayit Leplelot v. Canada (Minister of National Revenue)* (2006 FCA 128), 2006-03-28, at para. 5.

evidence that the activities of a charitable organization are, in fact and law, activities being carried on by the charitable organization itself.”⁵

Your letter asserts that the Foundation maintained direction and control of its resources through the use of agency agreements with TRO and Mission. We have considered your representations and maintain the position that the Foundation failed to establish ongoing direction and actual control over the use of its resources provided to TRO and Mission.

As detailed in our letter of November 19, 2009, it is evident from our audit that the Foundation was seen as a source of funding to TRO and Mission and not the “principal” or guiding mind of the projects. Indicators of fundraising on the part of Foundation include documentation relating to the Tsunami Relief Project;⁶ postings on the TVI web site stating that TVI “. . . collected \$668,266.00 within ten days. This was handed to a Canadian registered charity organization called CAFTARR (Canadian Foundation for Tamil Refugee Rehabilitation) within 10 days.”; information on ‘Ongoing Programs’ provided by the Foundation in its T3010 returns filed since 2000⁷; and information provided in the Foundation’s financial statements.⁸

The lack of direction and control on the part of the Foundation is also evidenced in the Foundation’s minutes of meetings. Based on our analysis of the audit findings, it is CRA’s view that the Foundation acted as a conduit on behalf of TVI to channel funds to TRO:

- December 29, 2004 meeting minutes: Guest J.M. Rajaratnam [President of TRO Canada]. President Arasaratnam stated that tsunami funds will be handed over to TRO in Canada or Colombo. “Arasaratnam . . . explained the reason of urgent meeting and fundraising, also he said the fund will be hand over to TRO in Canada or Colombo.” It is worth noting that two directors of TVI occupy director positions at TRO Canada.
- January 8, 2005 meeting minutes: Piraba Selvadurai [CEO of TVI] made his first guest appearance and “explained why they are waiting to make decision to transfer the TVI group collection to CAFTARR.”
- March 6, 2005 meeting minutes: “Prabha [a.k.a. Piraba Selvadurai] said they have given the money collected by TVI, CTR [Canadian Tamil Radio] & CMR [Canadian Multicultural Radio] and he confirmed to give to TRO. . .” and that “Prabha agreed with CAFTARR’s decision of using TRO in Sri Lanka as our agent for Tsunami related projects and TVI will provide detailed donor list for tax receipt to issue.”
- April 2, 2005 meeting minutes: “CAFTARR agency agreement with TRO” was noted. The minutes also state that [REDACTED] was unsure whether funds would

⁵ Ibid.

⁶ As indicated in the Project Status reports, noted as being provided by TRO, during the audit.

⁷ The T3010 returns indicate that no charitable activities have been carried on by the Foundation itself but that it ‘collects money’ for various causes (Ongoing Programs).

⁸ The repeated use of the word ‘Donations’ and the absence of any documentation that included breakdowns of expenses would indicate that the Foundation was not carrying out its own activities.

be sent directly to TRO and stated that "TRO will not be happy [with] other interference in the projects."

- September 14, 2007 letter from TVI to the Foundation: "We collected and delivered to you a sum of \$664,478.80 between January 2004 and October 2006. We would like to have a break down of how and when the funds were distributed to whom and what projects were carried out with the above said funds. Since we do not have any projects planned and are closing our account with you, we do require a project report for our files."

Your letter also represents that the Foundation received updates and photographs from the TRO and had no reason to doubt the information provided by the agent. The provision of status reports and photographs is not enough to demonstrate that the Foundation was, in fact, exercising the direction and control it claims. Nevertheless, the reports provided to the CRA lacked detail and did not adequately address any of the requirements specified in the agency agreements. Furthermore, according to the photographs of signs provided by the Foundation for its projects with the TRO, it is the TRO who was responsible for the "Implementation" and "Supervision & Organization" and the Foundation is noted as the "funding agency".

The terms of the agency agreements under which the Foundation acted do not meet the requirement of the charity to devote its resources to activities in which it actively engages itself. The arrangements contemplated by the Foundation's agency agreements with TRO and Mission do not provide for sufficient direction and control by the Foundation over the use of its resources to satisfy the requirements of the Act. Furthermore, no documentary evidence was provided to the CRA to indicate that the Foundation ever implemented the terms of its agency agreement or held its funding recipients accountable to the terms of the agency agreement. A review of the Foundation's T3010 returns and financial statements indicates that the Foundation was gifting to Mission outside the terms of a valid agency agreement given that a previous agency agreement had expired on February 28, 1991, and continued to fund the Mission up to at least 2010.⁹ The lack of an agency agreement and proper documentation lends credence to the fact that the Foundation did not have real, ongoing, active relationships with Mission where the Foundation actually directed and controlled the use of its own resources for the projects. In addition, the Foundation's T3010 returns for the audit period state that the Foundation is "to collect money" for various activities conducted in Sri Lanka as opposed to carrying on activities themselves or through an agent.

The representations provided by the Foundation fail to change CRA's view that, on a plain reading of the facts, the leadership of TRO Sri Lanka, through the common directorship between TRO Canada and TVI, and the obvious link between TRO Canada and TRO Sri Lanka, approached the Foundation to obtain funding and that, once provided, the monies sent to TRO Sri Lanka were no longer administered under the Foundation's direction and control. TRO's control over the Foundation is further exemplified in an undated letter from K.P. Reji, TRO Executive Director, to the Foundation requesting that donations be forwarded "as early as possible".

⁹ The Foundation reported gifting to Mission in both its 2009 and 2010 T3010 returns.

It remains our position that the Foundation has ceased to comply with the requirements of the Act by gifting to non-qualified donees in contravention of subsection 149.1(1) of the Act that stipulates that a charitable organization must devote its resources to charitable activities carried on by the organization itself. This constitutes sufficient reason to revoke the Foundation's status as a registered charity under paragraph 168(1)(b) of the Act.

b) Activities Contrary to Public Policy

i) Audit Observations

The audit revealed that the Foundation conducted activities that were contrary to public policy by putting its resources at the disposition of organizations operating in association with the LTTE, an entity listed in Canada as a terrorist organization under both the *United Nations Suppression of Terrorism Regulations* and the *Criminal Code of Canada*. The Foundation provided \$620,000 to TRO, an organization that CRA has concluded operated in association with, and in support of, the LTTE. Another \$112,930 was provided to the Mission which, for the reasons set out in CRA's letter dated November 19, 2009, CRA believes to be affiliated with TRO.

The Foundation has also been identified as a "supporting member of the Federation of Associations of Canadian Tamils (FACT)", an organization that "... has been repeatedly listed by the annual US State Department report 'Patterns of Global Terrorism' as a front organization for the LTTE..." The Report indicated further that FACT is the "... main umbrella organization for pro-LTTE organizations in Canada."¹⁰

ii) Foundation's Representations

The Foundation represented that it "has no ties to any terrorist or political group..." It also stated that, "... at all material times, the TRO was considered to be a voluntary social services organization in Sri Lanka. The Foundation has in its books and records confirmation from the Government of Sri Lanka that the TRO was registered as a Voluntary Social Organization/Non-governmental Organization whose certificate was not revoked during the currency of any project undertaken by the Foundation." The Foundation further represents that "... the TRO's activities received recognition from the Canadian, U.S. and Sri Lankan governments. The Foundation relied upon the good reputation and positive press reports of the TRO's activities and considered the TRO to be in a special position to assist on an agency basis to carry out the objectives of the Foundation under difficult circumstances... the Foundation's charitable activities were carried out during a period of civil unrest in Sri Lanka and the subsequent period of unrest after the cessation of the conflict."

iii) CRA's Position

It is well established at law that purposes which offend public policy are not charitable.¹¹ Canadian public policy in the area of financing of terrorism is found in the preamble to the *Anti-*

¹⁰ John C. Thompson and Joe Turlej, "Other People's Wars: A Review of Overseas Terrorism in Canada", *Mackenzie Institute*, (May 2003), Chapter 3. Online: http://www.mackenzieinstitute.com/2003/other_peoples_wars.htm. Accessed on 2011-03-25.

¹¹ See *Everywoman's Health Centre Society (1988) v. Canada (Minister of National Revenue)*, [1992] 2 FC 52 and CAMDL.

terrorism Act, in Part II.1 of the *Criminal Code of Canada*, and in the purposes and principles (section 2) of the *Charities Registration (Security of Information) Act*. These provisions recognize that depriving terrorist organizations of access to funds is a fundamental tool in undermining terrorist activities as it weakens their supporting logistical and social infrastructures.¹² As part of its anti-terrorism strategy, Canada has taken measures to prevent charities from being misused to provide support for terrorism and, particularly, to prevent organizations that help to provide resources to terrorist groups from having access to the tax benefits extended to registered charities under the Act.¹³ In this regard, it is very clear that Canada's commitment to combating terrorism extends to preventing organizations with ties to terrorism from benefiting from the tax advantages of charitable registration.

The Government of Canada regards the LTTE as a terrorist entity and has listed it as such, on April 8, 2006, under the provisions of the *Criminal Code of Canada* in accordance with UN Resolution 1373 (2001).¹⁴ Information pertaining to this listing posted on the Internet web site of the Department of Public Safety and Emergency Preparedness provides the following description for the basis of this listing:

Founded in 1976, the Liberation Tigers of Tamil Eelam (LTTE) is a Sri Lankan-based terrorist organization that seeks the creation of an independent homeland called "Tamil Eelam" for Sri Lanka's ethnic Tamil minority. Over the years, the LTTE has waged a violent secessionist campaign with the help of ground, air, and naval forces, as well as a dedicated suicide bomber wing. LTTE tactics have included full military operations, terror attacks against civilian centres, and political assassinations, such as the successful assassinations of Indian Prime Minister Rajiv Gandhi and Sri Lanka President Ranasinghe Premadasa. The LTTE has also had an extensive network of fundraisers, political and propaganda officers, and arms procurers operating in Sri Lanka and within the Tamil diaspora. Although the LTTE was militarily defeated in May 2009, subversion, destabilization, and fundraising continue, particularly in the diaspora.

Many of the policy and guidance statements for charities published on the CRA Internet web site call attention to the need to observe Canada's laws and public policy in this regard. For example,

¹² See Backgrounder: Terrorist Financing, Government of Canada's Air India Inquiry Action Plan in Response to the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182.

Online: <http://www.publicsafety.gc.ca/media/nr/2010/nr20101207-eng.aspx>. Accessed on 2011-02-11.

¹³ Final Report of the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, Volume 5: Terrorist Financing. Online: http://cpe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/air_india/2010-07-23/www.majorcomm.ca/en/reports/finalreport/volume5/default.htm. Accessed on 2011-03-22.

¹⁴ Resolution 1373 states, in part, "Recognizing the need for States to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism... Decides that all States shall: (a) Prevent and suppress the financing of terrorist acts;... 2. Decides also that all States shall: (a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts... (d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;..."

our publication entitled "CRA Guidance – Canadian Registered Charities Carrying Out Activities Outside of Canada" warns:

"Charities have to remember their obligations under Canada's anti-terrorism legislation. As with all individuals and organizations in Canada, charities are responsible for making sure that they do not operate in association with individuals or groups that are engaged in terrorist activities, or that support terrorist activities."

While there is no express due diligence requirement under the Act, all registered charities are expected to take the necessary steps to ensure compliance with the requirements for registration. Due diligence measures are simply a matter of good governance practice that can, if conscientiously and genuinely implemented, serve to lessen the risk that a charity's resources will be used in a manner that could result in revocation of its registration. This would include ensuring that a charity does not operate in association with individuals or groups that are engaged in terrorist activities or that support terrorist activities.

As outlined in our letter of November 19, 2009, the audit revealed that the Foundation placed its resources at the disposition of organizations operating in support of the LTTE. This letter included a sample of publicly available reports, which would have been accessible to the Foundation at the time of its funding to TRO and Mission, indicating that the TRO operated in areas of Sri Lanka that were under the control of the LTTE and that it raised funds for and operated in support of the LTTE.

The Foundation provided the CRA with a copy of TRO Sri Lanka's Certificate of Registration to demonstrate that it conducted due diligence prior to entering into partnership with the TRO. Your letter also suggests that the Foundation relied on the "good reputation and positive press reports of the TRO's activities and considered the TRO to be in a special position to assist on an agency basis to carry out the objectives of the Foundation". However, your letter fails to address the publicly available information linking the TRO to the LTTE or provide any reason why the Foundation's officials would not have been aware of, or able to access, such information. The Foundation's arrangements with TRO and Mission to shelter its actions under the protection of agency agreements do not remove a registered charity's obligation to ensure that it does not operate in association with individuals or organizations that engage in, or support, terrorist activities.

As reflected below, it is our view that it is reasonable to believe that this information was, in fact, common knowledge within the Tamil community worldwide and in the Toronto area before the tsunami in December 2004 and the Mission's decision to send funds to TRO Sri Lanka. We note the following observations from a Human Rights Watch Report referenced in our letter of November 19, 2009:¹⁵

¹⁵ "Funding the 'Final War' – LTTE (Intimidation and Extortion in the Tamil Diaspora)", *Human Rights Watch*, Vol. 18 No. 1 (C) released March 14, 2006, pages 10, 11, 21 and 34. Online: <http://www.hrw.org/en/reports/2006/03/14/funding-final-war-0>. Accessed on 2009-10-16.

- "the largest numbers of Sri Lankan Tamils outside Sri Lanka are found in Canada and the vast majority of Canadian Tamils live in the Toronto area, creating a larger urban Tamil population than is found in any city in Sri Lanka itself";
- "As Tamils settled abroad, particularly in areas with high Tamil concentrations such as in Toronto...they established a range of Tamil institutions and organizations including...religious temples...and cultural, political and service organizations... To ensure both political and financial support, the LTTE sought – and gained – influence or control over many of these institutions. One Toronto Tamil remarked, 'Whatever is happening in the Tamil community, they make sure their agenda is there'";
- "The majority of Tamils are Hindu... The Toronto area has approximately forty Hindu temples attended by Sri Lankan Tamils... Because the temples provide both ready access to the Tamil community and to a potential source of funds, the LTTE has sought control over temple events, management, and revenue"; and
- "The LTTE's influence is apparent in many Hindu temples in the West. Temples may display photographs of Prabhakaran, the LTTE leader, and sell LTTE flags, CDs of Prabhakaran's speeches or videos and DVDs promoting the LTTE. The temple may also collect funds for the Tamil Rehabilitation or other LTTE front groups."

Moreover, the Government of Canada's concerns over the TRO network's links to the LTTE would have been openly known for many years within the leadership of organizations and institutions within Toronto's Tamil community. For example:

- on January 14, 1999, the Special Senate Committee on Security and Intelligence issued a report that identified charitable fundraising in Canada by international terrorist groups as a problem, and recommended changes to the Act. The Toronto Star reported:

"The Committee's concern was that these charitable groups conduct enforced fundraising in the community," says the consultant to that committee, Don Gracey, in an interview from Ottawa. "The Tamil Rehabilitation Organization was one group identified by the committee that, in fact, raised money for guns and materiel used by the Tamil Tigers";¹⁶

- newspaper coverage of a fund-raising rally on the lawn of Queen's Park sponsored by the World Tamil Movement¹⁷ (WTM) in June 2000 to mark the

¹⁶ Michael Swan, "Tamil War casts long shadow: Hindu, Buddhist, Anglican and Catholic Tamils still caught in homeland's strife", *Toronto Star*, (February 27, 1999).

Online: <http://ttnet.bravehost.com/history/1999/his1999news065.html>. Accessed on 2011-08-08.

¹⁷ As your letter notes, the WTM was itself listed as a terrorist entity under the *Criminal Code of Canada* on June 13, 2008. The listing found on the Internet web site of Public Safety Canada at <http://www.publicsafety.gc.ca/prg/ns/le/cle-eng.aspx> contains the following information: "The World Tamil Movement was created in 1986 and became a known and leading front

success of the LTTE in capturing the strategic gateway to the northern Jaffna peninsula notes that "the charity the World Tamil Movement say receives much of its money, the Tamil Rehabilitation Organization, is itself controlled by the Tigers, according to officials with several independent non-governmental organizations in Sri Lanka";¹⁸

- a *National Post* article published on December 9, 2000 lists the TRO as one of eight organizations named in a [Canadian Security Intelligence Service] CSIS report as front organizations for the LTTE. The article states: "The Tigers have traditionally raised money through the use of front groups such as the World Tamil Movement (WTM) and Tamil Rehabilitation Organization (TRO), which collect money for humanitarian purposes, the reports says. "However most funds raised under the banner of humanitarian organizations such as the TRO are channelled instead to fund the LTTE war effort;"¹⁹
- another *National Post* article, published on November 23, 2001, concerning a decision by the Department of Citizenship and Immigration not to renew funding to the Tamil Eelam Society of Canada, notes that a "CSIS report says the society has shared addresses in the past with not only FACT, but also the World Tamil Movement (WTM), which a Federal Court judge has described as the Canadian arm of the Tamil Tigers. It has also shared an address with the Tamil Rehabilitation Organization (TRO)." The article goes on to say, "The TRO and WTM are both considered by CSIS to be actively engaged in fundraising for the Tamil Tigers guerrilla war effort in Sri Lanka. The money they raise in Canada is shipped to the LTTE's chief weapons purchaser in Thailand, CSIS claims;"²⁰
- again in June, 2002, the *National Post* reported: "A secret list of 'LTTE front organizations in Canada' compiled by the Canadian intelligence service lists the WTM at the top, along with the Ellesmere Road address of the strip mall, as well as seven other non-profit associations in Toronto, Ottawa, Montreal and Vancouver: The Tamil Eelam Society of Canada, Tamil Rehabilitation Organization, Federation of Association of Canadian Tamils, Tamil Coordinating

organization for the Liberation Tigers of Tamil Eelam (LTTE) in Canada. The leadership of the WTM acts at the direction of the LTTE and has been instrumental in fundraising in Canada on behalf of the LTTE. WTM representatives canvas for donations amongst the Canadian Tamil population, and have been involved in acts of intimidation and extortion to secure funds." In this regard, we note that the Affidavit of RCMP Corporal Deanna Hill filed with the Federal Court of Canada in the matter of *Her Majesty the Queen and The World Tamil Movement of Ontario* seeking an order to restrain and manage property of the WTM pursuant to sections 83.13(1)(b) and 83.13(2) of the *Criminal Code of Canada* states that donation receipt books seized from the WTM office included tickets or donation receipt books for various fundraising schemes, including the Tamil Rehabilitation Organization Relief Fund (para. 382 at page 233).

¹⁸ Somini Sengupta, "Feeding the Tamil Tigers: Fuelling An Insurrection: Sri Lankans in Canada send millions to support rebels in their homeland but Ottawa is preparing to crack down on contributions to 'terrorist groups'", *Edmonton Journal*, (July 23, 2000), page E.4.

¹⁹ Stewart Bell, "Groups act as fronts for terror: CSIS: Tamils reject report, deny any part in covert operations", *National Post*, (December 9, 2000), page A.1.FRO.

²⁰ Stewart Bell, "Ottawa won't renew funding of Tamil society: Panel gets final say: CSIS report named group as front for terrorist Tigers", *National Post*, (November 23, 2001), page A.2.

Committee, Eelam Tamil Association of British Columbia, World Tamil Movement (Montreal chapter) and the Eelam Tamil Association of Quebec",²¹

- a *Hamilton Spectator* article published on January 14, 2005, reported that a Hamilton medical centre backed out of a plan to donate medical supplies for tsunami relief to the Tamils Rehabilitation Organization after learning that it had been "named by the Canadian Security Intelligence Service as a front for the Liberation Tigers of Tamil Eelam",²² and
- a *Globe and Mail* report on January 18, 2005 documenting attempts being made at that time to influence then Prime Minister Paul Martin to have the TRO granted charitable status in Canada also referred to an independent report posted in 1999 on the Internet web site of the Canadian Security Intelligence Service describing the TRO as a front for the LTTE.

Finally, the Foundation has also failed to respond to our concern that it is listed as a supporting member of FACT, an organization that, according to the US State Department, operates as a front organization for the LTTE and is the "...main umbrella organization for pro-LTTE organizations in Canada."

iv) Political Realities in Sri Lanka

It is CRA's position that the Foundation's decision-making process was very much influenced by political considerations. For example, the study by Shawn Teresa Flanigan, "Nonprofit Service Provision by Insurgent Organizations: The Cases of Hizballah and the Tamil Tigers" documented the LTTE's control over humanitarian aid projects through the TRO.²³ The study provides what is, in CRA's view, an objective and very credible assessment of the relationship between the TRO and the LTTE and the role of the TRO in exerting control over humanitarian assistance in the north and east of Sri Lanka on behalf of the LTTE.

...Although the government in Colombo provides some financial support to schools, hospitals, and other parts of the bureaucracy in the LTTE provinces, the Sri Lankan government is reluctant to provide too much assistance to the area for fear of being perceived as overly supportive of Tamil separatists. The Tamil Tigers are equally interested in keeping government assistance out of their territories. As Philipson and Thangarajah (2005) noted, "The LTTE also has been very watchful of any attempt by the government to use rehabilitation and development programs as a means of further undermining the LTTE in both the North and the East" (32). Recognizing the power of service provision as a means of generating community support, the LTTE is eager not to give such an advantage to the Sri Lankan state. While the LTTE often tolerates the Sri Lankan government's activities in its regions, allowing the Sri Lankan

²¹ Stewart Bell, "Blood money on tap", *National Post*, (June 1, 2002), page B.1.FRO.

²² Daniel Nolan, "Medical donation postponed, Centre learns of Tamil group's terror links", *The Hamilton Spectator*, page A07.

²³ *Studies in Conflict & Terrorism*, (June 2008), 31:6, pages 499 to 519.

government to provide too much aid in Tamil Tiger areas could undermine popular support for the organization.

The Tamil Tigers have realized that the people will be beholden to those that take care of them. In an effort to capture that community support, the Tamil Tigers have ensured that the communities in LTTE-controlled provinces perceive health and social services as coming from the LTTE itself. The LTTE has accomplished this goal through an elaborate effort to direct the service activities of the local and international [nongovernmental organizations] NGO communities, create its own NGOs, and appoint steering committees to Sri Lankan government agencies that provide services. By creating this public image of a welfare "state," the LTTE ensures that the population under its control sees it as the primary provider of relief and rehabilitation.

....
the Tamil Tigers meet the social service needs of the population in its territories by using the resources of the local and international NGO community. The LTTE makes use of these resources by "taxing" NGOs, by steering the activities of the NGO community to meet its needs, and through the work of its own NGO, the Tamil Relief Organization (TRO). [emphasis added]

....
The LTTE is able to direct these humanitarian activities by requiring NGOs to conduct their work through the TRO and "local NGO" partners. By requiring NGOs to direct their resources and efforts through these entities, the LTTE can maintain a relatively high degree of control over how resources are used and what programs are implemented. It is in the Tamil Tiger's interest to exert control over the NGO sector and make the services appear as if they are coming from the LTTE itself, because this boosts the LTTE's legitimacy in the eyes of the Tamil community in the north and east. Some experts on Sri Lanka's NGO sector suggest that the LTTE actively uses development projects to gain public support from the community, and therefore uses the TRO and its services as a tool to ensure dependency on the LTTE for relief and rehabilitation services (Philipson and Thangarajah, 2005). Chandrakanthan (2000) noted that the LTTE's provision of various services and development of infrastructure has had the added benefit of causing Tamil youth to feel they are part of a distinct nation to which they should be loyal, which aids in generating genuine community support and reducing the LTTE's reliance on silencing and coercion. [emphasis added]

....
The close relationship between the Tamil Tigers and the TRO is noted by scholars as well (Wayland, 2004). Some observe that the LTTE has appointed the eastern head of TRO as the LTTE's political chief for the east of the country, and cite this as an example of the unity of the two organizations (Philipson and Thangarajah, 2005). Some of the interview participants reported an explicit relationship between the LTTE and the TRO, stating that in the LTTE areas the TRO is known simply as "The Relief Organization" rather than

the "Tamil Relief Organization," and is widely viewed by the local population as the LTTE's official social services arm. As one individual describes,

"They wouldn't like it if anybody says it, but yes, the TRO is the humanitarian arm of the LTTE. Basically they are the LTTE's social services department. That's one thing they do have. They have their own courts, they have their own police, they have their own army, and they have their own social service department, the TRO. Everything else, all the other departments are regular Sri Lankan government departments."

As Wayland (2004) noted, "Certainly, some or most of the TRO funds support legitimate relief efforts, but only those that are in keeping with the wishes of the LTTE leadership" (422). According to their financial report, the TRO is engaged in the construction of permanent and temporary housing, education and early childhood services, water and sanitation projects, and health and medical relief, among other activities (TRO, 2005).

Whether an independent entity or an official arm of the LTTE, most interview participants described the TRO's activities as symbolic, and believe that the TRO primarily serves as a fund-raising mechanism for the LTTE. In fact, numerous scholars have noted the tremendous amount of resources the LTTE receives from the Tamil diaspora worldwide, and some cite the TRO and other organizations engaged in relief activities as a potentially important source of LTTE funding (La, 2004; Wayland, 2004). [emphasis added]

A number of international aid agencies reportedly contract with the TRO in their development activities, and many interview participants suggested that the TRO inflates their prices far beyond those of other NGOs operating in Sri Lanka, and then funnels the excess funds to the LTTE. One NGO worker told the following story,

"Other than a few projects the TRO has no serious development activities, because to a fairly large extent the NGOs are also a way of making money for the LTTE. International agencies have to give money to them, and then they quote, well, for example toilets. We were building toilets for 17,000 rupees, that's almost \$200. The quote we got from the TRO was 35,000 rupees. Of course they have their own overhead, minimal, but they do. But everything else is just hidden here and there and then taxed out to the LTTE. The quality of what they provide isn't any better than the other NGOs, even though their prices are higher."

Particularly since the 2004 Asian tsunami, the TRO has played an important role in channeling aid from donor countries and international NGOs to LTTE-controlled areas (Hogg, 2006). As described earlier, NGOs have come under pressure to work with TRO in tsunami reconstruction activities, and

there are reports that in some cases relief camps operated by other NGOs were taken over by force. There is a great deal of concern in the NGO community that, considering the current context of terror existing in the east of the country, the TRO slowly will gain the compliance of the majority of NGOs working in these areas as it seeks to bring all relief and development activities under its umbrella (Philipson and Thangarajah, 2005).

It remains our position that the Foundation has ceased to comply with the requirements of the Act in contravention of subsection 149.1(1) that its resources be devoted to activities that are charitable by law, by making its resources available to an organization operating in association with, and in support of, a terrorist group. This constitutes sufficient reason to revoke the Foundation's status as a registered charity under paragraph 168(1)(b) of the Act.

c) Personal Benefit

i) Audit Observations

The audit indicated that cheques totalling \$92,500 were issued to a director of the Foundation and that they appeared to be a form of remuneration. Directors are not permitted to receive remuneration except for actual work performed. The Foundation initially did not provide supporting documentation for these expenditures.

ii) Foundation's Representations

The Foundation stated that "No Director or volunteer of the Foundation has ever received any remuneration either directly or indirectly from the Foundation. The cheques written to the director were done so in order to minimize bank charges. . . ." The Foundation provided documentation to support the reconciliation of the \$95,000 at issue.

iii) CRA's Position

Based upon the documents provided by the Foundation in support of its representation, our concern regarding possible personal benefit has been alleviated. However, we would point out that despite the fact that the Foundation issued cheques to avoid paying bank charges, the proper method would be to issue bank drafts without the use of an intermediary. Issuing cheques through a charity is an irregular practice that could be susceptible to abuse, absent of a sound business rationale.

Issue 2: Failed To Comply With or Contravened Any of Sections 230 to 231.5 of the Act

a) Failed To Maintain Books and Records In Accordance With the Act

The audit revealed that the Foundation did not maintain adequate books and records relating to disbursements for projects outside Canada for which it provided funding. The Foundation was not able to provide supporting documentation by way of a general ledger, invoices, or cancelled cheques to confirm the nature of expenditures provided to TRO or Mission in the amounts of \$620,000 and \$112,920, respectively.

i) Foundation's Representations

The Foundation stated that its books and records "were the subject of an independent audit by a chartered accountant" and that it "... maintained bank statements, cancelled cheques, copies of wire transfers, and all records required by a charity. There is no basis for the allegation in the audit letter and any allegation of inadequacy would not be consistent with the current law on books and records that are required to be maintained by a registered charity."

ii) CRA's Position

Subsection 230(2) of the Act requires that every registered charity keep books and records²⁴ of account at an address in Canada recorded with the Minister containing information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration. This would normally include records demonstrating the charity's internal decision-making mechanisms, such as copies of minutes of meetings, as well as all relevant source documentation in support of bank and cash transactions, such as invoices and receipts, and all records and books of account related to any activity carried on outside Canada.

Subsection 230(4) of the Act requires a charity to maintain records and books of account together with every supporting account and voucher.²⁵ In addition, Regulation 5800(1) states that minutes of meetings of the directors of a corporation are required to be kept two years after the date the charity is dissolved. The purpose of these requirements is to enable the charity to accurately provide the CRA with the information required by the Act, as well as to enable the CRA to verify the accuracy of reported information through the audit function.

We maintain the position that the books and records kept by the Foundation were inadequate for the purposes of the Act. The documentation that was provided by the Foundation failed to substantiate the disbursement of funds to TRO and Mission in terms of confirming the nature of these foreign expenditures. Even though some bank statements, receipts from Ramakrishna Mission, and copies of bank drafts were provided during the audit, the absence of a complete general ledger, invoices and relevant cancelled cheques prevented the auditor from being able to reconcile the amounts recorded in the books and records to the T3010 returns and financial statements.²⁶ We would add that the Foundation has not provided any evidence in support of its assertion that it properly maintained "...all records required by a charity".

²⁴ The definition of a "record", as found in subsection 248(1) of the Act includes: an account, an agreement, a book, a chart or table, a diagram, a form, an image, an invoice, a letter, a map, a memorandum, a plan, a return, a statement, a telegram, a voucher, and any other things containing information, whether in writing or in any other form.

²⁵ See also Information Circular: IC 78-10R5 - Books and Records Retention/Destruction.

Online: <http://www.cra-arc.gc.ca/E/pub/ip/ic78-10r5/ic78-10r5-10e.pdf>. Accessed on 2011-02-14.

²⁶ A review of the Foundation's income, as reported on its 2010 T3010 return, does not reconcile to its financial statements.

It remains our position that the Foundation failed to maintain books and records in accordance with subsections 230(2) and 230(4) of the Act. This constitutes sufficient reason to revoke the Foundation's status as a registered charity under paragraph 168(1)(e) of the Act.

Issue 3: Issued a Receipt For a Gift or Donation Otherwise Than in Accordance With the Act and the Regulations or That Contains False Information

a) Improper Receipting

i) Audit Observations

The audit revealed that the official donation receipts issued by the Foundation did not fully comply with the requirements of Regulation 3501(1) of the Act, as follows:

- Regulation 3501(1)(j) requires that official donation receipts must show the CRA name and Internet web site. This information was not included on the receipts issued by the Foundation.

ii) Foundation's Representations

The Foundation represented that it "has a minimal web presence and only maintains a limited facebook page and was unaware of the requirement to place the CRA's link on its facebook page. The Foundation will attempt to comply with this requirement and/or will remove its facebook page. This is simply an innocent oversight by the Foundation."

iii) CRA's Position

Regulations 3500 and 3501 of the Act set out the requirements for registered charities with respect to the issuing of official donation receipts. These core requirements are also described in Interpretation Bulletin IT-110R3 "*Gifts and Official Donation Receipts*". The Government of Canada considers contraventions of these requirements to be serious enough to warrant various penalties or sanctions as set out in subsections 188.1(7) to 188.1(10) and 188.2(1) of the Act. In addition, improper receipting of gifts or donations may, on its own, result in the revocation of registered status under paragraph 168(1)(d) of the Act.

A registered charity is not required to maintain a social networking site or to place a link to the CRA on that site. The requirement per Regulation 3501, as outlined in our previous letter, is that official donation receipts issued by the charity must include the CRA name and Internet web site.

The Foundation's response failed to address the issue of improper receipting.

It remains our position that the Foundation has issued a receipt for a gift or donation otherwise than in accordance with the Act and its Regulations. This constitutes sufficient reason to revoke the Foundation's status as a registered charity under paragraph 168(1)(d) of the Act.

Mr. Manoharan Mailvaganam
Treasurer
Canadian Foundation For Tamil Refugee Rehabilitation
3610 Fountain Park Avenue
Mississauga, ON L5M 7G1

REGISTERED MAIL

November 19, 2009

File No.: 0732412
BN: 118831510 RR0001

Dear Mr. Mailvaganam:

Re: Audit of Registered Charity: Canadian Foundation For Tamil Refugee Rehabilitation
Business Number: 118831510 RR0001

This letter is further to the field audit of **Canadian Foundation For Tamil Refugee Rehabilitation** (the "Foundation") conducted by the Canada Revenue Agency ("CRA") commencing December 10, 2008. The CRA audit related to the operations of the Foundation for the period June 1, 2004 to May 31, 2008; later events up to the date of the audit were also reviewed.

The CRA audit identified specific areas of serious non-compliance with core requirements of the *Income Tax Act* ("the Act") and its *Regulations* for maintaining charitable status.

1. Maintaining Charitable Status

In order for a registered charity to retain its registration, it is required to comply with the provisions of the Act applicable to registered charities. If these provisions are not complied with by a particular registered charity, the Minister of National Revenue ("the Minister") may revoke its registration in the manner described in section 168(2) of the Act.

The provisions of the Act concerning registered charities were enacted to ensure that the privilege of charitable status, and the right to issue official donation receipts for tax purposes are available only to those organizations that meet the requirements of the registration process and otherwise continue to satisfy the requirements of charitable status. CRA's role is to ensure that charities are complying with the Act and devoting their resources to charitable purposes. CRA performs this role by monitoring the operations of charities to ensure continued compliance with registration requirements.

Audit is an important element of this process. A CRA charity audit is not limited to examining a charity's financial books and records. The audit will also review the charity's activities, as well as any evidence that might indicate whether or not a charity is satisfying its legal obligations under the Act.

Revocation of registered status pursuant to section 168 (1) of the Act may take place in serious cases of non-compliance, such as breach of the core requirements of the Act, previous record of serious non-compliance, and non-charitable activities.

2. Opportunity to Respond to CRA's Concerns

The balance of this letter describes the areas of non-compliance identified during the field audit and in depth review of the Foundation's file as they relate to the legislative provisions applicable to registered charities, in order to provide you with an opportunity to respond to our concerns, provide any additional information regarding the issues outlined in this letter, and submit your written representations as to why the Foundation's charitable registered status should not be revoked.

3. Activities and Gifts to Non-Qualified Donees: Legislation and Policy

The Act permits a registered charity designated as a charitable organization to carry out its charitable purposes, both inside and outside Canada, in the following manner:

- It can carry on its own activities. Unless donations received are transferred to qualified donees, money and property donated to a charitable organization must be used by the organization itself in the conduct of its own activities.¹
- Except where a charity gifts its funds to a qualified donee, CRA requires a charity to show that it effectively directs and actually controls the use of its resources on an ongoing basis.
- As part of carrying out its charitable purpose, a charity can make gifts to other organizations defined as qualified donees in sections 110.1, 118.1 and 149.1(1) of the Act. Qualified donees include Canadian registered charities, certain universities outside Canada, the United Nations and its agencies, and a few foreign charities.

A charitable organization cannot act as an intermediary providing tax receipts to donors for amounts that are to be transferred to other organizations that are not qualified donees. In other words, a registered charitable organization may not act as a channel or conduit through which tax receipts are provided for donations that are intended for the use of another organization unless the recipient organization is a qualified donee within the meaning of the Act. This is true even if the charity believes that an individual or organization receiving the charity's funds will devote

¹ See the Federal Court of Appeal decisions on *Canadian Committee for the Tel Aviv Foundation v. Canada*, 2002 FCA 72 (CanLII) and *Bayit Lepletot v. Canada (Minister of National Revenue)*, 2006 FCA 128 (CanLII). Accessed on 2009-10-07.

those resources to efforts that are *bona fide* and in line with the charity's own objectives. When a registered charity merely transfers its resources to another entity that is not a qualified donee, and fails to maintain effective direction and actual control over those resources, the charity has, in effect, made a gift to a non-qualified donee. This contravenes the purpose and intent of the charitable registration provisions of the Act.

4. Audit Observations

The audit has raised serious concerns with respect to the Foundation's expenditures outside Canada:

- The audit found that significant portions of the Foundation's resources were distributed to non-qualified donees outside Canada. The Foundation made gifts in 2004 to 2008 to the non-qualified donees listed below:
 - Tamils Rehabilitation Organization Sri Lanka ("TRO")
 - Ramakrishna Mission ("the Mission")
- As explained later in this letter, it is CRA's view, on a balance of probabilities, that it is logical and reasonable to assume that TRO operates within the overall structure of the Liberation Tigers of Tamil Eelam (LTTE), which is a listed terrorist entity.
- It appears that the Foundation did not maintain direction and control over the expenditure of its funds outside Canada.
- The Foundation was unable to demonstrate that the transferred funds were used for its own charitable activities.
- The Foundation did not maintain adequate books and records.
- In addition, it appears that a director may have received prohibited personal benefits from the Foundation, and that the Foundation's official donation receipts did not include all of the necessary information.

Further details regarding these areas of concern are set out below.

a) Funding of Non-Qualified Donees

Section 149.1(1) of the Act requires that a charitable organization devote all of its resources to "charitable activities carried on by the organization itself." Alternatively, the Act allows a charitable organization to apply its resources by making disbursements, not exceeding 50 per cent of its income for any given year, to qualified donees.²

² The term "qualified donee" includes only those entities defined in section 149.1(1) of the Act, and described in sections 110.1(1) and 118.1(1) of the Act. The largest category of qualified donees comprises other Canadian registered charities. Only three categories refer to foreign organizations. In this regard, a Canadian registered charity can donate money or property to the United Nations and its agencies, any university prescribed in Schedule VIII of the *Regulations*, or a foreign charity to which Her Majesty in Right of Canada (effectively the Government of Canada) has made a donation either during the Canadian charity's

The Foundation made payments, as set out below, to TRO and to the Mission. Neither is a qualified donee as defined above.

TRO Sri Lanka

<u>Date</u>	<u>Method</u>	<u>Amount</u>	<u>Total</u>
25.05.2005	Wire Transfer	\$ 135,000.00	
25.05.2005	Wire Transfer	<u>\$ 36,000.00</u>	\$ 171,000.00
11.01.2006	Wire Transfer	\$ 225,000.00	
11.01.2006	Wire Transfer	<u>\$ 224,000.00</u>	\$ 449,000.00
Total			<u>\$ 620,000.00</u>

Ramakrishna Mission

<u>Fiscal Year End</u>	<u>Amount</u>
2005	\$ 36,100.00
2006	\$ 12,000.00
2007	\$ 39,830.00
2008	<u>\$ 25,000.00</u>
Total	<u>\$ 112,930.00</u>

Our audit revealed the following examples where the Foundation acknowledged that they merely transferred its resources for the use of another organization:

- In the Project Status reports provided by the TRO that were obtained during the audit and in the Tamil Vision web site on the Tsunami Relief Project³ regarding the low cost housing and the construction of new children's home projects, there are numerous references and photographs of signage showing the projects' "Implementation", "Supervision & Organisation" as being done by the TRO with

fiscal period, or the 12 months preceding the fiscal period. For more information, see the CRA website, Summary Policy CSP-Q01, Qualified Donee, online: <<http://www.cra-arc.gc.ca/cu/chrts/policy/csp/csp-q01-eng.html>>. Accessed on 2009-08-28.

³ Online: <<http://www.tamilvision.tv/tvirelief/common/ProjectList.aspx>>. Accessed on 2008-12-02.

the "Funding" from the Foundation. This suggests that the Foundation was in fact fundraising for projects carried out by others, rather than conducting its own activities.

- In every T3010 since 2000, the Foundation has reported its Ongoing Programs as "To collect money to send to Sri Lanka in connection with ongoing projects", "To collect money for low cost housing project", "To collect money to send to orphanages in Sri Lanka", and "To collect money for tsunami relief effort". We note the key words "To collect money..." and the absence of any mention of charitable activities carried on by the organization itself. This suggests that the Foundation was in fact fundraising for projects carried out by others, rather than conducting its own activities.
- The Foundation's charitable activities are reported as "expenses" in its financial statements, with descriptions such as "Donations to Ramakrishna Mission - General", "Donations to Ramakrishna Mission - Tsunami", "TRO-Low Cost Housing Project", and "TRO-Orphanage Reconstruction Project". We note the use of the key word "Donations" and the absence in any of the documents that we examined of a breakdown of expenses (such as building materials, labour costs, etc.) that would indicate that the Foundation had carried on the activities itself.

Tamil Doctors Canada

According to the Foundation's Board meeting minutes dated April 2, 2005, the Foundation agreed to give \$20,000 to Tamil Doctors Canada. Although our audit did not find any additional documentation regarding such a donation, and review of the Foundation's T3010s and financial statements did not report any such donation, we note that Tamil Doctors Canada is not a qualified donee as defined above.

b) Making resources available to organizations that appear to operate within the overall structure of the LTTE - a listed entity.

A serious concern stems from the Foundation's decision to fund TRO's tsunami relief operations in the north and east of Sri Lanka, rather than those of registered charities selected by the Government of Canada for its tsunami Matching Fund Program.

The Government of Canada reacted immediately to the need for aid for tsunami victims, including in Sri Lanka, through its Matching Fund Program⁴ for emergency relief donations by Canadians to 23 organizations, including many qualified donees. These approved organizations were selected as being organizations to which Canadians could donate with confidence and trust. The list of matching funding organizations did not include TRO.

As outlined in Appendix A, the consensus of numerous and diverse sources we have reviewed indicates that the TRO raises funds and otherwise operates in support of the LTTE, which is a listed terrorist entity in Canada. In particular, numerous public reports indicate that the areas of Sri Lanka where TRO operated during 2004, 2005, and 2006 were under the control of

⁴ Online: <<http://www.acdi-cida.gc.ca/acdi-cida.nsf/Eng/DBAD3248D0730C2E85257601005B80B5?OpenDocument>> and <<http://www.acdi-cida.gc.ca/acdi-cida/acdi-cida.nsf/eng/NAT-220134751-Q2Y>>. Accessed on 2009-10-07.

the LTTE, at the time when funds were transferred⁵ and that monies given to TRO for tsunami relief operations were not all used for that purpose.⁶ On the basis of the information we have examined, it is our view that, on a balance of probabilities, it is logical and reasonable to assume that the TRO network operated in support of the LTTE.

The LTTE is listed in Canada as a terrorist organization under both the *United Nations Suppression of Terrorism Regulations*⁷ and the *Criminal Code of Canada*.⁸ It has been an offence since November 7, 2001 for any person in Canada to knowingly provide or collect by any means, directly or indirectly, funds with the intention or in the knowledge that the funds are to be used by a listed person or entity. As required by Canadian law, on November 20, 2008, the list was reviewed and the LTTE remains on the list.⁹

During our audit, the Foundation explained that Tamil Vision Inc. (TVI) had raised over \$600,000 for the December 2004 tsunami victims in Sri Lanka, and that TVI selected the Foundation as the recipient of these donations. TVI provided the Foundation with the funds and the Foundation issued donation receipts to the donors. The Foundation then prepared an agency agreement with the TRO and eventually disbursed \$620,000 to the TRO. As noted above, the Government of Canada had implemented its tsunami Matching Fund Program involving 23 organizations, of which the TRO was not one. The Foundation chose instead to work with the TRO even though numerous public reports had identified the TRO as a support network for the LTTE. As explained below, our research and review of the audit documents suggest that TVI influenced the Foundation's decision to partner with the TRO and that there is a relationship between TVI and TRO.

We also note that the Canadian Foundation for Tamil Refugee Rehabilitation has been identified¹⁰ as a "supporting member of the Federation of Associations of Canadian Tamils (FACT)", and observed that FACT has been "repeatedly listed by the annual US State

⁵ The U.S. Department of State annually releases Country Reports on Terrorism. The April 27, 2005 report indicates that the LTTE controlled most of the northern and eastern coastal areas of Sri Lanka during the period under review. Online: <<http://www.state.gov/sct/rls/45394.htm>>. Accessed on 2009-10-19.

⁶ On May 4, 2009, the *National Post* reported that the Sri Lankan government had captured LTTE armaments worth about \$20 million in its recent offensive. Daya Master, a senior LTTE spokesperson who had recently surrendered to the Sri Lankan government said that funds sent from outside Sri Lanka for humanitarian aid and reconstruction after the 2004 tsunami were misappropriated and "utilized for military purposes rather than the welfare of the Tamil people", Stewart Bell, "\$20M in Tiger Weapons Seized", *National Post*, (May 4, 2009). Online: <<http://www.nationalpost.com/story.html?id=1562915>>. Accessed on 2009-10-07.

⁷ The LTTE was listed in the Schedule to the *United Nations Suppression of Terrorism Regulations*, SOR/2001-360 pursuant to the Regulations Amending the *United Nations Suppression of Terrorism Regulations* SOR/2001-492 on November 7, 2001. Online: <http://www.osfi-bsif.gc.ca/app/docrepository/11eng/issues/terrorism/other/admcon01_e.pdf>. Accessed on 2009-10-07.

⁸ *Criminal Code*, R.S.C. 1985, c. C-46, s. 83.05. Online: <<http://www.canlii.org/en/ca/laws/stat/rsc-1985-c-46/latest/rsc-1985-c-46.html>>. The currently listed entities can be accessed online: <<http://www.publicsafety.gc.ca/prg/ns/le/cle-en.asp>>. Accessed on 2009-10-07.

⁹ Pursuant to the *Regulations Establishing a List of Entities* under s. 83.05 (9) of the *Criminal Code of Canada*, the Minister of Public Safety and Emergency Preparedness must review the "List" and determine whether there are still reasonable grounds to believe that each [listed entity] has knowingly carried out, attempted to carry out, participated in or facilitated a terrorist activity or is knowingly acting on behalf of, or at the direction of or in association with an entity that has knowingly carried out or attempted to carry out, participated in or facilitated a terrorist activity. The Minister must then make a recommendation to the Governor in Council that each entity listed as of July 23, 2008, remain listed. This recommendation was made in P.C. 2008-1778 on November 25, 2008 and the LTTE remains on the list; (see SI/2008-143 December 10, 2008: Order Recommending that Each Entity Listed as of July 23, 2008 in the *Regulations Establishing a List of Entities* Remain a Listed Entity).

¹⁰ John C. Thompson and Joe Turliej, "Other People's Wars: A Review of Overseas Terrorism in Canada", *Mackenzie Institute*, (May 2003). Online: <http://www.mackenzieinstitute.com/2003/other_peoples_wars.htm>. Accessed on 2009-10-14.

Department report "Patterns of Global Terrorism" as a front organization for the LTTE" and that FACT is the "main umbrella organization for pro-LTTE organizations in Canada."

The Government of Canada has made it very clear that it will not tolerate the abuse of the registration system for charities to provide any means of support to terrorism, and that the tax advantages of charitable registration should not be extended to an organization where its resources may, directly or indirectly, provide any means of support for, or benefit to, an organization that is listed under the *United Nations Suppression of Terrorism Regulations* and/or under the *Criminal Code of Canada*.

c) Direction and Control

In order to meet the definition of a charitable organization under section 149.1(1) of the Act, unless disbursements are made to qualified donees, a registered charity must devote all its resources to charitable activities it carries on itself.

The minutes of the Foundation's board meetings on January 8, 2005, March 6, 2005, and April 2, 2005 report that Piraba/Prabha Selvadurai, CEO of TVI, attended those meetings. At the meeting of March 6, 2005, Mr. Selvadurai is reported as saying "...they have given the money collected by TVI...and he confirmed to give to TRO" and "...agreed with CAFTARR's decision of using TRO in Sri Lanka as our agent for Tsunami related projects..." Our research into TVI revealed that it has two directors: Vyrarnuthu Sornalingam and Vadivelu Santhakumar.¹¹ Research into Tamils Rehabilitation Organisation (Canada) revealed that Vyrarnuthu Sornalingam is a director and officer of TRO Canada.¹² Review of an archived TRO Canada web site (www.trocanada.com) shows that TRO Canada is one of 14 branches of the TRO, whose head office is in Sri Lanka.¹³ At the Foundation's board meeting of December 29, 2004, it was explained that funds raised by the Foundation would be "handed over to the TRO in Canada and Colombo." We note that a [REDACTED] was listed as a guest of the board meeting of December 29, 2004, and the possibility that this may be the same Mr. [REDACTED] who has been named in a lawsuit, filed in New Jersey on October 22, 2009, by survivors and relatives of victims of LTTE attacks, as having provided financial support and other support to the LTTE.¹⁴ We also note undated correspondence to the Foundation from K.P. Reji, the TRO Executive Director, acknowledging receipt of contributions from the Foundation, further confirming the linkage between the TRO and TRO Canada.

In summary, our research and review of the audit documents suggests that TVI influenced the Foundation's decision to work with the TRO; that TVI is related to TRO Canada through a common director; and that TRO Canada is related to TRO.

¹¹ Federal Corporations Data Online report for Tamil Vision Inc. Online: <http://strategies.ic.gc.ca/cgi-bin/sc_sc_mrkscv/corpdtr/dataOnline/corps_re?company_select=3859801>. Accessed on 2009-10-14.

¹² Ontario Corporation Profile Report for Tamils Rehabilitation Organisation (Canada). Online: <<http://www.oncorp.com>>. Accessed on 2009-10-14.

¹³ TRO Canada's archived website. Online: <<http://web.archive.org/web/20050405054448/www.trocanada.com/contacts.htm>>. Accessed on 2009-10-08.

¹⁴ "Sri Lankan Terrorism Victims Charge Wall Street Hedge Fund Manager, Rajaratnam, With Financing Tamil Tigers", (October 22, 2009). Online: <<http://www.reuters.com/articlePrint?articleId=US207006%2B22-Oct-2009%2BPRN2009>>. Accessed on 2009-10-23.

Although, the Foundation had at various times written agency agreements with TRO and the Mission, merely having an agreement in place is not, by itself, enough to show direction and control. A charity must be able to show that in fact, at all times, it is carrying out only its own activities through the intermediary, and that it directs and controls the use of any resources that further these activities.¹⁵ When working through an intermediary, a charity must always direct and control the use of its resources by the intermediary. A charity cannot simply act as a passive funding body for an intermediary's programs. One way of demonstrating that a charity has a real, ongoing relationship with its intermediary is through regular monitoring and supervision. The charity must be able to show that it receives timely and accurate reporting that allows it to control the use of its resources.

Even though all the agency agreements contained numerous requirements of the agent, our review of the Foundation's books and records revealed that almost none of the requirements of either agency agreement were met. This strongly suggests that the Foundation disbursed funds without direction and control.

For example, the agency agreements with TRO stipulated the following:

7.1 "TRO...shall transmit to CAFTARR at its Head Office in Canada periodical statements of accounts showing in detail all receipts and disbursements and the manner in which the transactions were carried out."

7.2 "Such periodical statements shall be sent by TRO to CAFTARR every two months..."

7.3 "Such periodical statements shall, besides giving the financial details on income and expenditure and balance in hand, contain the following particulars, namely:

- (a) the number of rehabilitation centers, which have been set up for each Project, or for which arrangements are being made;
- (b) the location and address of such centers associated with the Projects;
- (c) the name and address of each recipient of treatment and the centre to which the recipient is admitted;
- (d) a break down of the total amount of aid transmitted for each centre and/or Project, such as rent, leasehold improvements, cost of equipment, furniture, professional services, etc."

7.4 "Every periodical statement shall be accompanied by TRO's report containing a full and complete account of the measures taken to check and ensure that the funds granted to each Project were properly utilized for the purposes for which the aid was given..."

8.2 "Audited statements of TRO shall be made available to CAFTARR within twenty (20) days of such a request."

Our review of the Foundation's books and records obtained from the audit showed no documentation of any kind from TRO that addressed the above requirements. The Foundation

¹⁵ See the Federal Court of Appeal decision on *Bayit Leplelet v. Canada (Minister of National Revenue)*, 2006 FCA 128 (CanLII). Accessed on 2009-10-07.

did provide final status reports from TRO; however, these reports lacked detail and did not adequately address any of the requirements specified in the agency agreements. It thus appears that the Foundation disbursed the funds without direction and control.

Additionally, the disbursement instructions outlined in correspondence dated May 20, 2005 between the Foundation and TRO were not properly followed. For the two TRO projects (low cost housing and the orphanage projects), the disbursements were to be made in four instalments as follows: 30% for the 1st instalment on commencement of the project, 30% for the 2nd instalment when the project is 20% complete, 30% for the 3rd instalment when the project is 50% complete, and the remaining 10% when the project is 100% complete.

As noted in the Foundation's financial records, the Foundation made disbursements of \$135,000 and \$36,000 to TRO on May 25, 2005, which represented the first instalment of 30%, respectively for each project. However, the Foundation then made disbursements of \$225,000 and \$224,000 to TRO on January 11, 2006, which appear to represent lump sum final payments for the remaining 70%. In the undated letter from the TRO Executive Director, K.P. Reji, referred to above, Mr. Reji explained that "due to the high demand for building materials and the shortages of labor prices are skyrocketing. TRO aims to pre-purchase as much material as possible to lessen the impact of these prices increases." Mr. Reji requested that the Foundation "remit the remained of the funds to TRO as early as possible" and to "send the second remittance ASAP". As noted in the Foundation's financial records, it appears that the Foundation agreed to Mr. Reji's request and disbursed the remaining funds, in contravention of the disbursement schedule that had been agreed and without direction and control.

Given the absence of periodical reporting and an adequate final report from TRO, it is uncertain if and when the projects were completed. Taken with the departure from the agreed disbursement schedule, it appears that the Foundation disbursed the funds to the TRO without any direction and control.

The Foundation also had an agency agreement with the Mission which stipulated the following:

- 6) "It is expressly agreed and understood that MISSION...shall transmit to the CAFTARR at its Head Office in Canada periodical statements of account showing in detail all receipts and disbursements and the manner in which the transactions were carried out. Such periodical statements should be accompanied and supported by photocopies of all related receipts, bills, vouchers, papers and documents certified as true copy by a Barrister, Solicitor, or Notary Public or any person authorized by the laws of India to certify the documents.

Such periodical statements shall be sent by the agent to CAFTARR every six months...

The statements shall, besides giving the financial details on income and expenditure and balance in hand, contain the following particulars, namely;

- (a) The number of children included in the Foster Child project.
- (b) Details of each child – name, age and sex.
- (c) Background history of each child.
- (d) Photograph of each child."

Our review of the documents obtained from the audit showed no documentation of any kind from the Mission that addressed the above requirements. The Foundation was provided with thank you letters and confirmation of receipt of funds from the Mission. However, this correspondence did not provide the required information as stipulated in the agency agreement. Due to the absence of any periodical reports from the Mission, it appears that the Foundation disbursed the funds without direction and control. We further note that the agency agreement with the Mission appears to have expired in February 1991 without being renewed. The Foundation's T3010s for fiscal year-ends May 31, 1996 to May 31, 2008 show that the Foundation was still gifting to the Mission (which, as noted above, is not a qualified donee), apparently outside the terms of any agency agreement.

It is CRA's view that in relation to its choice of TRO as a partner, and with respect to the apparent ineffectiveness of its agency agreements, the Foundation has failed to clearly demonstrate that it maintained a level of direction, control and accountability over the use of its funds sufficient to show that its resources were used in the conduct of its own charitable activities. It is noted in this respect that the Foundation was unable to provide supporting documents for amounts transferred to Sri Lanka. Based on the information provided to us, it appears that the Foundation operated essentially to put funds at the disposal of other entities; i.e., TRO and the Mission, for activities conducted by those entities. Such an arrangement does not meet the operational tests contained in the definition of a charitable organization under section 149.1 of the Act. Moreover, in so doing, it is the CRA's view that the Foundation has made its resources available to organizations operating in support of a listed terrorist entity, thereby failing to ensure that its resources would be devoted exclusively to charitable purposes and activities.

d) Books and Records

Section 230(2) of the Act stipulates that a registered charity must keep adequate books and records at a Canadian address recorded with the Minister. This requirement allows the Minister to verify the donations to the charity for which a deduction or tax credit is available under the Act, and to examine the official donation receipts issued by the charity.

Review of the Foundation's books and records revealed that it gifted \$620,000 to TRO in fiscal years 2005 and 2006 and \$112,930 to the Mission from fiscal years 2005 to 2008. However, the books and records themselves were deficient in that there was no supporting documentation, such as a general ledger, invoices, or cancelled cheques to confirm the nature of these expenditures. Also, there was no supporting documentation to demonstrate any direction and control exercised by the Foundation over the use of these funds and whether the activities were actually conducted.

Due to incomplete documentation concerning the payments made to the TRO and the Mission, the disbursements could not be reconciled with the T3010s and the financial statements.

e) Personal Benefit

Section 149.1(1) of the Act stipulates that no part of a charity's income is payable to, or otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor of the charitable organization.

Discussion with the Foundation during the audit showed that it does not have any employees and that all work is done by volunteers. Review of the Foundation's bank statements and cheques revealed that between October 8, 2001 and April 3, 2005, it issued 14 cheques made payable to [REDACTED] totaling \$92,500. Throughout this period, [REDACTED] was (as he continues to be) a director of the Foundation. These disbursements appear to be a form of remuneration to a director. Directors are not permitted to receive remuneration except for actual work performed. The Foundation failed to provide supporting documentation for these expenditures. By virtue of section 200(2)(g) of the *Regulations*, a charity must issue a T4A slip (statement of remuneration) when remunerating a director for work performed. No such T4A was issued.

f) Official Donation Receipts

Regulation 3501 requires that official donation receipts must include the CRA name and web site. This is explained in the CRA guidance for charities on issuing receipts, online: <www.cra-arc.gc.ca/tx/chrts/dnrs/rcpts/1-eng.html>. Review of the Foundation's official donation receipts revealed that none of donation receipts included the CRA name and web site.

5. Conclusion:

On the basis of the audit findings discussed above, it is our preliminary view that there are sufficient grounds for revocation of the Canadian Foundation For Tamil Refugee Rehabilitation's registration under section 168(1)(b) of the Act because it has failed to comply with the requirements of the Act for its registration by funding non-qualified donees outside Canada, by failing to maintain adequate direction and control over the use of its resources, by failing to maintain adequate books and records, and operating for the personal benefit of its directors. It is also our view that, by putting its resources at the disposition of organizations operating in association with the LTTE, the Canadian Foundation For Tamil Refugee Rehabilitation has acted contrary to Canadian public policy, thereby devoting its resources to purposes and activities that are not charitable under Canadian law. This is an additional ground for revocation of the Foundation's registration.

The consequences to a registered charity of losing its registration include:

1. The loss of its tax exempt status as a registered charity which means that it would become a taxable entity under Part I of the Act unless, in the opinion of the Director of the applicable Tax Services Office, it qualifies as a non-profit organization as described in section 149(1)(l) of the Act;
2. Loss of the right to issue official donation receipts for income tax purposes which means that gifts made to it would not be allowable as a tax credit to individual

donors as provided at section 118.1(3) of the Act, or as a deduction allowable to corporate donors under section 110.1(1)(a) of the Act; and

3. The possibility of a tax payable under Part V, section 188(1) of the Act.

If you do not agree with the information and concerns outlined above, or if you wish to present any reasons why the Minister of National Revenue should not revoke the registration of the Foundation in accordance with subsection 168(2) of the Act, you are invited to submit your representations within 30 days from the date of this letter.

Subsequent to this date, the Director General of the Charities Directorate will decide whether or not to proceed with the issuance of a notice of intention to revoke the registration of the Foundation in the manner described in section 168(1) of the Act.

If you appoint a third party to represent you in this matter, please send us a written authorization naming the individual and explicitly authorizing that individual to discuss your file with us. If you have any questions or require further information or clarification, please do not hesitate to contact us at [REDACTED]

Yours sincerely,

[REDACTED]

Charities Directorate
Place de Ville, Tower A
320 Queen Street W.
Ottawa ON K1A 0L5

Appendix A

The Relationship between the TRO and LTTE

The following sources indicate that TRO raises funds and otherwise operates in support of the LTTE. The CRA also notes that on November 15, 2007, the United States Department of the Treasury named the TRO a "Specially Designated Global Terrorist" under Executive Order 13224 on the basis that it acts as a front to facilitate fundraising and procurement for the LTTE.¹⁶

Immigration and Refugee Board of Canada

A November 19, 2001 ruling of the Immigration and Refugee Board of Canada¹⁷, states that there was "reliable evidence from three sources that affirm or strongly suggest" that:

- The TRO is the rehabilitation wing of the LTTE; the funds it collects are used for both rehabilitation and weapons procurement.
- It is part of the LTTE modus operandi to siphon off funds that are intended for rehabilitation programs in Sri Lanka.
- The Board further found, on the balance of probabilities, "that the TRO in Sri Lanka was under the direct influence of the LTTE and, therefore, not able to control the use of funds sent to it from overseas groups."

Charity Commission of England and Wales Inquiry into TRO

On the basis of allegations that the TRO raises funds for the LTTE, Lord Avebury, the Vice-Chairman of the U.K. Parliamentary Human Rights Group, filed a complaint to the Charity Commission.¹⁸ Subsequently, the Commission de-registered TRO (UK) and released the results of the formal inquiry into the activities of the TRO branch based in London.¹⁹ The Commission found evidence that:

- "trustees exercised little or no control over the application of funds in Sri Lanka and failed to demonstrate a clear audit trail relating to expenditure. They also

¹⁶ Online: <<http://www.treas.gov/press/releases/hp683.htm>>. Accessed on 2009-10-15.

¹⁷ Online: <http://www2.irb-cisr.gc.ca/en/decisions/reflex/index_e.htm?action=issue,view&id=181>, (Issue 181 – February 7, 2002). Accessed on 2009-10-16.

¹⁸ Tanuja Solanki, "UK probe into Tamil charity", *BBC News*, (November 2, 2000) – online: <http://news.bbc.co.uk/2/hi/south_asia/1003683.stm> and Fran Abrams, "Charities watchdog in raid on Tamil agency", *The Independent*, (October 29, 2000) – online: <<http://license.icopyright.net/user/viewFreeUse.act?uid=NTQ5MzQ0MA%3D963D>>. Accessed 2009-10-23.

¹⁹ The Charity Commission of England and Wales conducted an Inquiry under s. 8 of the *Charities Act*, 1993, to, among other things, "investigate the allegations that the Charity [TRO UK] was providing financial support to the LTTE." "...the results of the review suggested that the TRO SL liaised with the LTTE in determining where funds could be applied. It also found that once funds had been received by TRO SL, they were used for a variety of projects which appeared to be generally humanitarian, but not necessarily charitable in English law nor in line with the Charity's objects." Online: <<http://www.charity-commission.gov.uk/investigations/inquiryreports/tamils.asp>>. Accessed on 2007-12-07. The TRO was subsequently removed from the Register of Charities on August 10, 2005. Online: <<http://www.charity-commission.gov.uk/ShowCharity/RegisterOfCharities/RemovedCharityMain.asp>>. Accessed on 2009-10-16.

failed to provide the Commission with any explanation as to the provenance of some of the funds received from the US and Canada."

A review of the systems operated by TRO Sri Lanka, undertaken on behalf of the Interim Manager of TRO (UK) appointed by the Commission, suggested that:

- "the TRO SL [Sri Lanka] liaised with LTTE in determining where funds could be applied. It also found that once funds had been received by TRO SL, they were used for a variety of projects which appeared to be generally humanitarian, but not necessarily charitable in English law nor in line with the Charity's objects." [emphasis added]

Human Rights Watch ("HRW") – Funding the "Final War" – LTTE Intimidation and Extortion in the Tamil Diaspora

The following are excerpts from a 2006 HRW report on the LTTE's "aggressive and systematic campaign in Canada and parts of Europe to raise funds for the 'final war' between the Tamil Tigers and the Sri Lankan government".²⁰

- "As Tamils settled abroad, particularly in areas with high Tamil concentrations such as in Toronto or London, they established a range of Tamil institutions and organizations, including Tamil-owned businesses, media, religious temples and churches, and cultural, political, and service organizations, including agencies that help new arrivals to find housing or employment. To ensure both political and financial support, the LTTE sought – and gained – influence or control over many of these institutions."
- "In most countries with a significant Tamil diaspora, Tamils established charitable organizations to raise funds for Tamil causes. These included the World Tamil Movement, British Tamil Association, and the Tamil Rehabilitation Organization, among others. Although the charities solicited funds to assist civilians affected by the war, numerous inquiries, including investigations by Canadian intelligence, have found that a significant amount of the funds raised were channelled to the LTTE for its military operations." [emphasis added]
- "The LTTE's influence is apparent in many Hindu temples in the West. Temples may display photographs of Prabhakaran [sic], the LTTE leader, and sell LTTE flags, CDs of Prabhakaran's speeches, or videos and DVDs promoting the LTTE. The temples may also collect money for the Tamil Rehabilitation Organization or other LTTE front groups."
- "When we asked about the World Tamil Movement's relationship to the LTTE [Sitha] Sittampalam [current President of the World Tamil Movement in

²⁰ "Funding the 'Final War' – LTTE Intimidation and Extortion in the Tamil Diaspora", *Human Rights Watch*, Vol. 18, No. 1 (C), released March 14, 2006, pages 10, 11, 21 and 34. Online: <<http://www.hrw.org/en/reports/2006/03/14/funding-final-war-0>>. Accessed on 2009-10-16.

Canada] told Human Rights Watch, "We are sympathetic to our cause there and because the LTTE is fighting for our rights and in the vanguard we have also campaigned to help them". The organization's [World Tamil Movement] website prominently features quotes from the LTTE leader Vellupillai Prabhakaran.²¹ However, Sittampalam denies that the World Tamil Movement collects funds directly for the LTTE, or for any other organization. He told Human Rights Watch:

"We don't raise funds, but we canvas and advise people to help our people there [in Sri Lanka] for rehabilitation from the war and tsunami... We ask them to give it to the TRO (Tamil Rehabilitation Organization) or SEDAT [Social and Economic Development Association of Tamils]. Some give to the TRO branch here, or some give bank to bank transactions." " [emphasis added]

We find it significant that the World Tamil Movement ("WTM"), a front organization for the LTTE,²² and a listed terrorist organization in Canada since June 13, 2008,²³ canvasses for and advises people to donate to the TRO.

LTTE support sites: News releases from LTTE's International Secretariat

The following excerpts from various LTTE news releases, while not directly admitting LTTE control over the TRO, further suggest close ties between the two organizations:

- "Nutrition centres have been opened by the Tamils Rehabilitation Organization (TRO) in conjunction with the LTTE administration ..."²⁴

²¹ Vellupillai Prabhakaran and several of his senior commanders had been shot dead on May 18, 2009 while fleeing the war zone. Sally Sara, "Sri Lanka: War Over, Rebel Leader Dead", *ABC News*, (May 19, 2009). Online: <<http://www.abc.net.au/news/stories/2009/05/19/2574237.htm?section=world>>. Accessed on 2009-10-16.

²² Our supplementary research has uncovered a variety of sources, which indicate that the WTM is actually an LTTE front organization. Examples include:

- The WTM has been described by the *New York Times* as "effectively the political arm of the Tigers in Canada" and that the "charity who receives much of its money, is the Tamil Rehabilitation Organization." (Somini Sengupta, "Canada's Tamils Work on a Homeland From Afar", *New York Times*, (July 16, 2000).
- The US State Department's annual report "Patterns of Global Terrorism" has, since 1994, specifically identified the WTM as a "known [LTTE] front organization. Online: <<http://www.state.gov/documents/organization/31946.pdf>>. Accessed on 2009-10-16.
- In the 1997 decision of the Federal court of Canada (Re Suresh [1997] F.C.J. No. 1537 T.D.), Justice Teitelbaum, ruling on the reasonableness of a security certificate, stated that "it can reasonably be concluded [that WTM] is part of the LTTE organization or is, at the very least, an organization that strongly supports the activities of the LTTE. Further, the Court ordered Suresh to not have direct contact with...any executive members of WTM, or with any of the WTM's employees." Justice Teitelbaum confirmed this finding again in *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 746 (CanLII), (June 13, 2003), para. 16.

²³ The World Tamil Movement was listed in the *Regulations Establishing a List of Entities*, SOR/2002-284 pursuant to the Regulations amending the *Regulations Establishing a List of Entities*, SOR/2008-214 on June 13, 2008, as the leading front organization for the LTTE in Canada. The various offices of the WTM in Canada transfer funds to bank accounts in Sri Lanka destined to support the terrorist activities of the LTTE. The leadership of the WTM acts at the discretion of leaders of the LTTE. WTM representatives canvas areas in Canada with large Tamil populations demanding large donations on behalf of the LTTE. Refusals to contribute often lead to threats and intimidation.

²⁴ LTTE Press Release, "News From Tamil Eelam", (April 2, 1997), online: <http://www.eelam.com/freedom_struggle/ltte_press_releases/1997/april/02.html>. Accessed on 2006-04-25.

- "The TRO in Skanthapuram is helping treat skin diseases in a free Ayurvedic medical centre... The clinic was set up by TRO with the active participation of the LTTE's administration."²⁵

- **CALL FOR SELF-SUFFICIENCY DRIVE BY LTTE AND TRO**

"At a TRO-organised prize-giving for Tamil farmers in Puthukudiyiruppu (Vanni), TRO's head Mr. Ravi stated to the audience of cultivators that they must cultivate their soil with the same vigour they are showing in war. He went on, "The enemy is trying to humble us with starvation. We can win only by producing our own food." Mr. Ravi said the TRO was here to help steer such a food production drive. His powerful speech was matched by LTTE representative Mr. Balakumaran who said the Tamil struggle is "bound to the soil". He emphasised the need for Tamil Eelam to achieve self-sufficiency to combat the evil designs of the Sri Lankan government."²⁶

TamilNet

TamilNet²⁷ covered the 2004 opening of the TRO's fifth divisional office in the Trinco district:²⁸

- Mr. S. Elilian, Trincomalee district political head of the Liberation Tigers of Tamil Eelam (LTTE) unveiled the name board of the TRO Eachchilampathu division office... Mr. Elilian said at the event that TRO would expand its activities to provide urgent needs to the war affected families in the district through its divisional offices. Mr. Elilian went on to say: TRO currently provides assistance to the needy from the funds channelled through the LTTE on the instruction of our national leader.

Pro-LTTE Web sites

- Staunchly pro-LTTE Web sites "EelamWeb"²⁹ and "Tamil Eelam"³⁰ prominently display hypertext links to the TRO.

²⁵ LTTE Press Release, "News From Tamil Eelam", (September 3, 1997), online: <http://www.eelam.com/freedom_struggle/ltte_press_releases/1997/sept/03.2.htm>. Accessed on 2006-04-23.

²⁶ LTTE Press Release, "News from Tamil Eelam", (August 29 1997), online: <http://www.eelam.com/freedom_struggle/ltte_press_releases/1997/august/29.html>. Accessed on 2006-04-23.

²⁷ TamilNet is a news and feature service that provides information on issues concerning the Tamil People and the developments within the northeastern parts of Sri Lanka. Online: <<http://www.tamilnet.com>>. Accessed 2009-10-15.

• We find it noteworthy that the launch of TamilNet originally advertised for journalists who "most importantly... support Tamil's struggle for self-determination". Online: <<http://www.web.archive.org/19970404180520/http://www.tamilnet.com/>>. Accessed on 2006-05-01.

• TamilNet is also listed as a resource, online at <<http://www.eelamweb.com>>, the staunchly pro LTTE website.

²⁸ "TRO opens its fifth divisional office in Trinco district", *TamilNet*, (November 3, 2004). Online: <<http://www.tamilnet.com/art.html?catid=13&artid=13304>>. Accessed on 2006-02-08.

²⁹ Online: <<http://web.archive.org/web/20071024141206/http://www.eelamweb.com>>. Accessed on 2009-10-26.

³⁰ Online: <<http://web.archive.org/web/20080822022256/http://www.eelam.com>>. Accessed on 2009-10-26.

LTTE Supporters

- In "British Charities Fund Terrorists,"³¹ Dushy Ranetunge reports that the LTTE, "[try] to create a perception that the TRO is separate and independent of [it] in order to raise funds." In light of this statement, we also find it significant that certain alleged LTTE activists appear to have openly admitted LTTE control over the TRO.
- In the above-noted report, Ranetunge adds:

"Leading LTTE activists in the UK, writing in pro-LTTE magazines have admitted that the Tamil Rehabilitation Organisation (TRO) and several other "charities" are the "brain child" of the LTTE leader V Prabakaran, who is wanted in India for the assassination of India's former Prime Minister Rajiv Gandhi."
- The Canadian branch of the Tamil Rehabilitation Organization (TRO) operates out of the same offices as the Tamil Eelam Society of Canada (TESOC), 861 Broadview Avenue, Toronto M4K 2P9, Ontario and is headed by Mr E Gunanathan a well known LTTE activist in Canada.
- Charles Somasundrum who works as a volunteer several days a week at Eelam House, 202 Long Lane, London SE1 4QB, the LTTE HQ in London, has stated in "Hot Spring" July 1997 issue, page 20, "Prabakaran has proved himself to be not only a brilliant military tactician but also an equally brilliant and humane administrator. This is borne out by some of the organisations he has established for the citizens of Eelam like "Chencholai" (an organisation for the care of war orphans), TEEDOR (an organisation for economic development of Eelam) and the TRO (an organisation for the rebuilding of war scorched Eelam and the rehabilitation of its citizens)."
- Rev. Dr. S.J. Emmanuel,³² described by Rohan Gunaratna as "a key figure in the LTTE international network"³³ appears to have candidly admitted LTTE control over the TRO by stating:

³¹ Online: <<http://www.island.lk/2000/10/07/news02.html>>. Accessed on 2009-10-26.

³² In an undated article, "Boys and Girls Come Out to Play", in the U.K. newspaper, *The Independent*, Rev. Emmanuel, the former Vicar General of Jaffna, is alleged to have been quoted as comparing the LTTE leader Velupillai Prabhakaran to Jesus Christ and further describing Prabhakaran as "a freedom fighter who has given the leadership to a movement committed to setting up the homeland to Tamil Eelam so that oppressed Tamil people could be saved from the chauvinist Sinhala regime". Online: <<http://www.infolanka.com/org/diary/2.html>>. Accessed on 2009-10-26.

Rev. Emmanuel's active presence at pro-LTTE rally held February 1, 1998 in London, England was reported on the TamilNet web site. Emmanuel was reported to have condemned the Sri Lankan government's war in the Tamil areas as unjust and called for a peaceful resolution to the conflict. Online: <<http://www.tamilnet.com/art.html?catid=138&artid=834>>. Accessed on 2009-10-26.

On December 16, 2000, Emmanuel delivered a speech at a charity dinner held by TRO (UK) at Walthamstow Assembly Hall in London. The speech was decidedly pro-TRO ("...so long as there exists a discriminated and suffering Tamil people in Tamil Eelam and an expatriate Tamil community in strong solidarity with their suffering brethren, this organisation, the TRO, is bound to stay and will only grow from strength to strength") and pro-Tamil Eelam ("Despite the racist efforts of Sri Lanka to chase the Tamils away from their homelands, a new Tamil nation rooted in Tamil Eelam and spread across the world is bound to bloom"). Online: <http://www.sangam.org/ANALYSIS/Emmanuel12_00.htm>. Accessed on 2009-10-26.

It is to the credit of the LTTE that within two days their Tamil Rehabilitation Organization (TRO) ... set up a network of services to cater to the very minimum needs of such a massive population.³⁴

- Four men pleaded guilty in New York to terrorism charges in June 2009 in relation to their involvement in a LTTE support network that operated in the United States and Canada. The indictment included a statement by one of those convicted, Vijayshanthar Patpanathan, to an undercover agent that the LTTE raised millions of dollars in North America, funneled through the TRO.³⁵
- "Lawrence Thilakar, also known as Lawrence Christy (planning director of the TRO)", is included in a list of LTTE political leaders and senior administrative officers being held by the Sri Lankan government in August 2009.³⁶ We also note that Lawrence Christy, describing himself as the head of field office, "safe zone", in Mullivaikal, Mullaitivu, addressed a TRO appeal to world leaders on April 26, 2009.³⁷

While the above excerpts are by no means exhaustive, they offer a sample of evidence that strongly suggests close and long-established ties between the TRO and the LTTE.

³³ Rohan Gunaratna, "The South African Connection - LTTE infrastructure in South Africa". Online: <http://www.sinhaya.com/SA_connection.htm>. Accessed on 2009-10-29.

³⁴ S. J. Emmanuel, "Indictment Against Sri Lanka - Sri Lanka's Genocidal War - '95 to '98". Online: <<http://www.tamilnation.org/indictment/genocide95/gen95026.htm>>. Accessed on 2009-10-26.

³⁵ Stewart Bell and Adrian Humphreys, "Four guilty of Tamil Tiger terror charges", *National Post*, June 10, 2009. Online: <<http://www.nationalpost.com/news/canada/story.html?id=1680626>>. Accessed on 2009-10-26.

³⁶ "Act Against the Torture and Executions in Sri Lanka", Human Rights.de, Germany, (August 25, 2009). Online: <http://www.sangam.org/2009/08/Torture_Executions.php?uid=3655>. Accessed on 2009-09-28.

³⁷ "TRO Appeal to Security Council and India", (April 26, 2009). Online: <http://www.sangam.org/2009/04/TRO_Appeal.php?uid=3438>. Accessed on 2009-10-16.