



Collège Rabbinique de Montréal Oir Hachaim D'Tash
c/o Mr. Fred Pfeiffer
[REDACTED]

1997.

Dear Sir:

OBJECT: AUDIT OF A REGISTERED CHARITY

This letter is further to an audit of the books and records of account of the Collège Rabbinique de Montréal Oir Hachaim D'Tash (the "Charity") which was conducted by two representatives of the Department. The audit related to the operations of the organization for its fiscal period ended December 31, 1995.

The results of this audit and review indicate that the organization may be in contravention of certain provisions of the Income Tax Act (the "Act"). 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, the Minister of National Revenue (the "Minister") may revoke your registration in the manner described in section 168 of the Act.

The balance of this letter describes how the Department considers that the organization contravened the Law.

DEVOTION OF RESOURCES

The Charity is registered as a charitable organization as defined by subsection 149.1(1) of the Act. As such, it must devote all of its resources to charitable activities. Except to the limited extent that subsection 149.1(6) of the Act permits gifts to "qualified donees", these must be charitable activities carried on by the organization itself. (The term "qualified donees" is defined by subsection 149.1(1) of the Act to mean registered charities and other organizations similarly able to receipt donations for Canadian tax purposes.) This limitation on gifts to other organizations is reinforced by the disbursement quota rules, which also specify that a charity's annual expenditure requirement is to be met by expenditures on charitable activities carried on by it, or as gifts to "qualified donees". Subsection 149.1(1) also states that no part of the income of which is payable to, or is otherwise available for the benefits of its members.

Objects of the Charity and related expenses

The objects of the Charity at registration were the following:

1. To form, establish, operate, possess and maintain a centre of scholarship and learning for boys, for the study of the humanities and ancient Hebrew lore, with particular emphasis on Hebrew learning, culture and kindred studies;
2. To conduct classes and teaching, and to train students as Hebrew teachers, and grant diplomas therefor.
3. To conduct Jewish religious educational work through schools, publications and other means.
4. To conduct Jewish religious schools both elementary and high school grades, in which religious training or general secular education, or both, may be given.
5. To build and maintain dormitories for students.

A review of the expenses revealed that some of them were not incurred to accomplish directly the objects of the Charity. Personal expenses for specific users were paid by the Charity such as a car, nursing services, credit cards payments, etc. These expenses paid for the individuals are considered as personal benefits. We would like to outline that the Charity was informed not to convey personal benefits on any of their members in a letter dated January 3, 1991 (please refer to copy attached). Moreover, we understand that the Mikvat is part of the Jewish religion, however we would like some clarifications as to how it is linked with the objects of the Charity.

Loans to non-qualified donees

Should a Charity wish to loan funds to an organization which is not a qualified donee, in order to be acceptable to Revenue Canada, the transaction would have to be properly characterized as an investment. We would expect the loan to be for a reasonable term, be adequately secured and be made on terms similar to an arm's length transaction (the interest charged and received by the Charity would be similar to that charged in the open market between two entities acting independently of each other).

During the audit, we were able to identify over \$20,000,000 going to [REDACTED] From that amount, approximately \$16,000,000 came back to the Charity leaving a balance of over \$4,000,000 as a receivable (please refer to Schedule 2 attached). The audit results indicate that the Charity's loan receivable from [REDACTED] is non-interest bearing, has no specific terms of repayment, is unsecured and is increasing year after year since 1990. The Charity also has a loan receivable from [REDACTED] and from [REDACTED] which are non-qualified donees. There was no supporting

documentation available regarding the terms of repayment of the loans. On December 31, 1995, the loans amounted to \$104,965 and \$444,965 respectively.

As a result, it appears that the Charity has failed to devote all its resources to charitable activities, and therefore does not meet the definition of a charitable organization pursuant to subsection 149.1(1) of the Act.

Paragraph 168(1)(b) of the Act provides that for a registered charity to be entitled to retain its registered status, it is required to comply with the requirements of the Act relating to its registration as such. If a registered charity ceases to comply with these requirements, the Minister may give notice to the charity that he proposes to revoke its registration.

PARTISAN POLITICAL ACTIVITIES

Subsection 149.1(6.2) of the Act permits a charitable organization to devote some of its resources to non-partisan political activities provided that such political activities are ancillary and incidental to its charitable activities and that substantially all of its resources are dedicated to charitable activities carried on by it. The Department accepts the test that substantially all of a charitable organization's resources be devoted to charitable activities is met where ninety percent thereof are so devoted. Accordingly, a charitable organization may devote up to ten percent of its resources to ancillary and incidental political activities of a non-partisan nature.

As per Information Circular 87-1 (copy enclosed), a charity may not oppose or endorse a named candidate, party, or politician. The charity's resources may not be devoted directly to such activities, or devoted indirectly through provision of resources to a third party engaged in partisan political activities.

It was discovered that the Charity sent a cheque of \$150 to [REDACTED] The Charity has failed to meet the prerequisite of subsection 149.1(6.2) of the Act.

Once again, pursuant to paragraph 168(1)(b) of the Act, failure to comply with the provisions of the Act relating to a charity's registration may cause the Minister to propose revocation.

DISBURSEMENT QUOTA

Registered charities are required in each year of operation to meet or exceed a disbursement quota. This quota relates to expenditures that must be made during the year and that are of a charitable nature. In the case of a charitable organization, the Act stipulates that this minimum annual disbursement quota is equal to eighty percent of the prior year's officially receipted donations less certain types of gifts received.

As discussed above, it would appear that the Charity has not made the required amount of expenditures on charitable activities. The audit revealed that the Charity has not met its disbursement quota for the years ending in 1993, 1994 and 1995. Please refer to Schedule 1 attached.

As a result, it appears that the Charity has failed to meet the requirements of paragraph 149.1(2)(b) of the Act.

Paragraphs 168(1)(b) and 149.1(2)(b) of the Act provide that for a registered charity to be entitled to retain its registered status, it is required to comply with the requirements of the Act relating to its registration as such. If a registered charity ceases to comply with these requirements, the Minister may give notice to the charity that he proposes to revoke its registration.

BOOKS AND RECORDS

Pursuant to subsection 230(2) of the Act, "every registered charity is required to keep records and books of accounts (including a duplicate of each receipt containing prescribed information for a donation received by it) at an address in Canada recorded with the Minister in such form and containing such information as will enable the donations to it that are deductible under the Act to be verified."

The audit results indicate that the Charity has not retained a duplicate of all official donation receipts issued. We would like to outline that this issue was raised in another letter sent to the Charity dated January 3, 1991. Furthermore, the minutes provided to the auditors were insufficient. The only decision mentioned in the minutes is the one related to the hiring of the auditor and the approval of the financial statements. Minutes should reflect the decision making processes concerning the Charity's activities and projects. Finally, the expenses were not always supported by appropriate documentation. As mentioned above, there was no documentation regarding the loans receivable and we were unable to determine in some occasions the real nature of the expenses.

Under paragraph 168(1)(e) of the Act, the Minister may, by registered mail, give notice to the registered charity that he proposes to revoke its registration if it fails to comply with or contravenes section 230 of the Act dealing with Books and Records.

OFFICIAL DONATION RECEIPTS

The Charity did not comply with income Tax Regulation 3501 and with the Interpretation Bulletin IT-110R3 (copy enclosed). The latter states:

Each such receipt must be prepared at least in duplicate (since charities are required to keep on file a copy of every official receipt issued). Paragraph 18 stipulates the following:

Charities are expected to guard against the unauthorized use of official receipts. Most charities arrange through a printer for a supply of blank, serially-numbered receipts to be on hand at any given time. The charity must control the use of its receipts and, in the event of lost or stolen receipts, should notify Revenue Canada, Charities Division...".

As mentioned above, duplicate receipts were not kept by the Charity. According to the official donation listing provided, there were substantial gaps in the numerical sequence. In some instances, the listings provided by the Charity showed the same receipt number issued to different individuals. We would like to outline that we consider the listings insufficient as they did not contain all the information described in Regulation 3501 of the Income Tax Act.

CONCLUSION

For all of the reasons indicated above, we believe that there are grounds for revocation of Charity's status as a registered charity.

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 the Charity would become a taxable entity under Part I of the Income Tax Act unless, in the opinion of the Director of the applicable Tax Services office, it qualifies as a non-profit organization as described in paragraph 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 the Charity would not be allowable as a tax credit to individual donors as provided at subsection 118.1(3) of the Act or as a deduction allowable to corporate donors under paragraph 110.1(1)(a) of the Act; and
3. the possibility of a tax payable under Part V, subsection 188(1) of the Act.

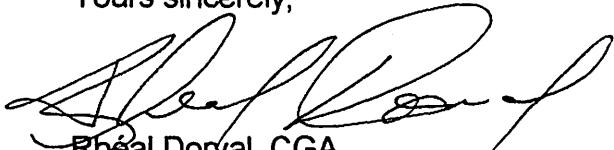
For your reference, we have attached a copy of the relevant provisions of the Income Tax Act concerning revocation of registration and the tax applicable to revoked charities as well as appeals against revocation.

If you do not agree with the facts outlined above, or if you wish to present reasons why the Minister of National Revenue should not revoke the registration of the Charity 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 of Charities will decide whether or not to proceed with the issuance of a notice of intention to revoke the registration of the Charity in the manner described in subsection 168(1) of the Act.

If you appoint a third party to represent you in this matter, please notify us in writing.

Should you have any questions on these matters, please telephone Marie-Claude Nadon at [REDACTED] or myself at [REDACTED] or write to 400 Cumberland Street, Room 5004B, Ottawa, Ontario, K1A 0L5.

Yours sincerely,



Réal Dorval, CGA,
Assistant Director - Audit
Charities Division

Enclosures

Schedule 1-a)

DISBURSEMENT QUOTA CALCULATION

YEARS	1986(2)	1987(1)	1988(1)	1989(2)	1989(2)
Off. don. receipts issued in the prev. year	1,907,375	1,591,777	2,749,235	3,124,600	3,173,450
80% of above amount	1,525,900	1,273,422	2,199,388	2,499,680	2,538,760
Char. expenses	1,630,132	1,832,762	2,319,321	3,155,441	2,246,174
Shortfall					292,586
Excess	104,232	559,390	119,933	655,761	
Excess applied to the short.	(104,232)	(188,354) (152,310) (218,726)	(119,993)	(655,761)	104,232 188,354
Short.					0
Excess left	0	0	0	0	0

(1) Based on audit results for period ending in 1987 and 1988.

(2) Based on financial statements.

(3) The bank charges and the professional fees were taken out of the charitable expenses.

Schedule 1-b)

DISBURSEMENT QUOTA CALCULATION

YEARS	1990(2)	1991(2)	1992(2)	1993(2)	1994(2)	1995(2)
Off. don. receipts issued in the previous year	2,627,747	4,297,139	5,701,985	7,877,177	8,172,498	8,802,147
80% of above amount	2,102,198	3,437,711	4,561,588	6,301,741	6,537,998	7,041,717
Charitable expenses.	2,470,160	3,285,401	3,306,393	4,138,017	3,140,024	4,961,440 (4)
Shortfall		(152,310)	1,255,195	2,163,724	3,397,974	2,080,277
Excess	367,962					
Excess applied to the deficit	(260,715) (107,247)	152,310	655,761 218,726 119,993 260,715	107,247		
Final Shortfall after using all excess	0	0	0	2,056,477	3,397,974	2,080,277

(4) Expenses identified as non charitable (\$18,664) were subtracted from the expenses.

Purchase of a car -\$5,000

Nursing expenses

for the Rabbi's Wife-\$9,011

Political Cont. -\$ 150

Mastercard -\$4,503

REGISTERED MAIL

Collège Rabbinique de Montréal Oir Hachaim D'Tash
c/o Grand Rabbi Lowy
[REDACTED]

MAR 3 2000

Dear Grand Rabbi Lowy:

Subject: Collège Rabbinique de Montréal Oir Hachaim D'Tash

This letter is further to a letter dated January 3, 1991 following an audit conducted of the Collège Rabbinique de Montréal Oir Hachaim D'Tash (the "Collège") and also to an administrative fairness letter that was sent to you on August 15, 1997 in which we contend that the Minister of National Revenue may revoke the registration of the Collège Rabbinique de Montréal Oir Hachaim D'Tash (the "Collège") in accordance with subsection 168(1) of the Income Tax Act. We received your representations dated October 8, 1997.

This letter also follows several items of correspondence exchanged between the representatives of the Collège and the Department. Please note that as of November 1, 1999 Revenue Canada became the Canada Customs and Revenue Agency ("CCRA"). The correspondence and meetings dealt with the question of whether Communauté Oir Hachaim, the organization which resulted from the merger of Collège Rabbinique de Montréal Oir Hachaim D'Tash and [REDACTED] could be recognized as a charitable organization.

A search of the Collège conducted by the Montreal Investigations Section on April 29, 1999 uncovered some new elements that were not reflected in our letter dated August 15, 1997.

I will begin by stating some of the non-compliance issues raised in our letter dated August 15, 1997, including the new elements revealed from the search conducted by the Investigations Section.

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DEVOTION OF RESOURCES

LOAN TO NON-QUALIFIED DONEE

As previously mentioned in our letter of August 15, 1997, should a charity wish to loan funds to a non-profit entity, the transaction would have to be viewed as an investment. The loan should be for a reasonable term, be adequately secured and should be at arm's length's rate (the interest charged and received by a charity would be similar to that charged in the open market between two entities acting independently of each other).

An audit following the search revealed that the funds transferred to [REDACTED] were adjusted through the accounts receivable account; the amount owing to the College was \$10,195,730 on December 31, 1995. Numerous entries were made to the account each month, the overall effect of which has been to increase the account receivable by \$3,337,311 from 1994 to 1995.

The loan receivable cannot be considered to be an investment of the Collège as it is not structured in a way which would be considered to be operating at arm's length. There was no supporting documentation regarding the loan. The audit results indicated that the loan was non-interest bearing, had no specific terms of repayment, was unsecured and increased year after year from 1990 to 1995. The auditors were told that the

[REDACTED] was an organization in the United States and were denied the right to see the bank statements and/or the financial statements. Mr. Kraus from the Collège told us that they did not have the documents regarding the loan since they were the property of another entity in the United States. According to Mr. Kraus, [REDACTED] was using the money to pay for additions on buildings such as doors etc.

The bank accounts of [REDACTED] (one in Canadian and one in US currency) were found and seized during the search conducted by the Investigations Section. The bank accounts were from the Bank of Montréal [REDACTED] and Mr. Lowen who is a representative of the Collège has the signing authority on both of them. All the cheques were signed by Mr. Lowen. There is no sign of money being transferred to the United States.

In the representations, you indicate that the loan has been repaid to the Collège, however, no supporting documents were provided to that effect.

Also, it was found during the audit of the year ending in December 1995, that money was being transferred to other non-qualified donees namely [REDACTED] and [REDACTED]. Again there was no supporting documentation available regarding the terms of repayment of the loans.

[REDACTED] has never been registered as a registered charity. However, we found at least 2 properties [REDACTED] [REDACTED] that were transferred from the Collège to [REDACTED] for one dollar. The latter received a property for an amount below the fair market value which is considered to be an inadequate consideration according to Section 69 of the *Income Tax Act*. Moreover, these were gifts to a non-qualified donee.

Many invoices found during the audit confirm that some personal expenses incurred by some members of the community were paid by the Collège resulting in a personal benefit to the recipients. Without any evidence of the contrary, we can conclude that the Collège did not devote all of its resources to charitable activities.

As a result, it appears that the Collège has failed to demonstrate that all of its resources has been devoted to charitable activities, and therefore does not meet the definition of a charitable organization pursuant to paragraph 149.1(1)(b) of the Act.

For a registered charity to retain its registered status, it is required to comply with the requirements of the Act relative to its registration as such. If a registered charity ceases to comply with these requirements, the Minister may give notice to the charity that he proposes to revoke its registration as provided by paragraph 168(1)(b).

BOOKS AND RECORDS

Pursuant to subsection 230(2) of the Act, "every registered charity is required to keep records and books of accounts (including a duplicate of each receipt containing prescribed information for donation received by it) at an address in Canada recorded with the Minister in such form and containing such information as will enable the donations to it that are deductible under the Act to be verified.

The audit results indicated that the Collège had not retained a duplicate of all official donation receipts issued. The minutes provided were insufficient, there were no

documentation regarding the loans receivable and the real nature of some expenses could not be determined due to the lack of documentation and explanation.

As mentioned above, some existing documents were denied to the auditors despite the fact that they existed and the Collège was authorised to perform transactions in the accounts requested.

We noted many of the above deficiencies in our letter to you dated January 3, 1991. The latter was sent following an audit related to the operations of the Collège for its fiscal periods ended June 30, 1987 and June 30, 1988.

Under paragraph 168(1)(e) of the Act, the Minister may, by registered mail, give notice to a registered charity that he proposes to revoke its registration if it fails to comply with or contravenes section 230 of the *Act dealing with Books and Records*.

PARTISAN POLITICAL ACTIVITIES

Subsection 149.1(6.2) of the Act permits a charitable organization to devote some of its resources to non-partisan political activities provided that such political activities are ancillary and incidental to its charitable activities and that substantially all of its resources are dedicated to charitable activities carried on by it.

As per information letter 87-1, a charity may not oppose or endorse a named candidate, party, or politician. The charity's resources may not be devoted directly to such activities, or devoted indirectly through provision of resources to a third party engaged in partisan political activities.

It was discovered that the Collège sent a cheque of \$150 to the [REDACTED]. The Collège has failed to meet the prerequisite of subsection 149.1(6.2) of the Act.

Once again, pursuant to paragraph 168(1)(b) of the Act, failure to comply with the provisions of the Act relating to a charity's registration may cause the Minister to propose revocation.

The second part of this letter deals with the creation of [REDACTED]

The creation of [REDACTED] resulted from the amalgamation of Collège Rabbinique de Montréal Oir Hachaim and [REDACTED] Collège

Rabbinique de Montréal Oir Hachaim Tash was a registered charity prior to the amalgamation and [REDACTED] has never been a registered charity.

The amalgamation was done pursuant to Article 18 of "Loi sur les compagnies" (L.R.Q., chap. C-38). An amalgamation results in the cessation of the legal existence of the organizations involved in the process. We refer you to the case Fawcett & Grant Limited v. Minister of National Revenue, 65 DTC 313.

On November 12, 1997, we received letters patents issued November 5, 1997 describing the amalgamation of [REDACTED] [REDACTED] not a registered charity, however it continues to issue official donation receipts using the name of Collège Rabbinique de Montréal Oir Hachaim D'Tash. The latter has ceased to exist since the amalgamation. In 1997, the Department recognizing that the [REDACTED] is highly dependent on donations allowed the [REDACTED] to issue receipts on a strictly temporary basis.

In view of the information contained in this letter, we consider that it is no longer acceptable for [REDACTED] to issue official donation receipts using the Collège Rabbinique de Montréal Oir Hachaim D'Tash.

On November 5, 1997, the Collège has ceased to exist. Consequently, we advise you to stop the issuance of official donation receipts through the [REDACTED]

Conclusion

Considering all the above mentioned facts, I have concluded that the charitable registration of the Collège Rabbinique de Montréal Oir Hachaim should be revoked for the reasons described above. In summary, these are that:

- The Collège has provided official donation receipts for amounts that are not "gifts" within the meaning of subsection 118.1(1) of the Act;
- The Collège's resources have not all been devoted to charitable purposes and activities;
- The Collège has not maintained adequate books and records; -
- The Collège engaged in partisan political activities;
- The Collège has ceased to exist as a legal entity and hence as a registered charity as of November 5, 1997.

Therefore, I wish to advise that pursuant to the authority granted to the Minister in subsections 149.1(3) and 168(1) of the *Act* and delegated to me in subsection 900(8) of the Regulations to the *Act*, I propose to revoke the registration of Collège Rabbinique de Montréal Oir Hachaim D'Tash. By virtue of subsection 168(2) of the *Act*, the revocation will be effective on the date of publication in the Canada Gazette of the following notice:

Notice is hereby given, pursuant to paragraphs 168(1)(b), (c), and (d) 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.

Registration number: 0179713-20

Business number: 118868090 RR0001

Name: Collège Rabbinique de Montréal Oir Hachaim D'Tash

Should you wish to appeal this notice of intention to revoke in accordance with subsections 172(3) and 180(1) of the *Act*, you are advised to file a Notice of Appeal with the Federal Court of Appeal within 30 days from the mailing of this letter. The address of the Federal Court of Appeal is:

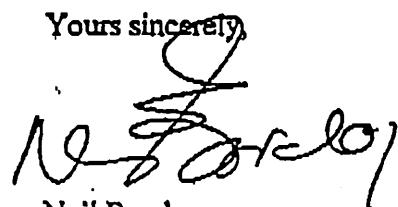
Supreme Court Building
Wellington Street
Ottawa, Ontario
K1A 0H9

Please take note that the *Federal Court Rules, 1998* came into force on April 25, 1998, and apply to proceedings commenced after that date. These new rules impose particular obligations upon an appellant to be met within restricted time-frames. Your attention is drawn in this regard to sections 337, 339, 343, 344, 345, 346, 347 and 348 of the *Rules* concerning the content of a notice of appeal, persons to be included as respondents, service of the notice of appeal, proof of service, agreement re appeal book, preparation and content of appeal book, service and filing of appeal book, appellant's memorandum, requisition for hearing, and filing of a joint book of authorities.

Additionally, the organization may be subject to tax eligible pursuant to Part V, section 188 of the *Act*. For your reference, I have attached a copy of the relevant provisions of the *Income Tax Act* concerning revocation of registration and the tax applicable to revoked charities as well as appeals against revocation.

I wish to advise you that pursuant to subsection 150(1) of the *Act* a return of income for each taxation year in the case of a corporation (other than a corporation that was a registered charity throughout the year) shall, without notice or demand therefore, be filed with the Minister in prescribed form containing prescribed information. Also, we draw your attention to paragraph 149(1)(l) of the *Act*, which states the definition of a non-profit organization and subsection 149(12) which states the filing requirements of a non-profit organization.

Yours sincerely,



Neil Barclay
Director
Charities Division