



REGISTERED MAIL

Mrs. Shirley Moscovitch
Executive Director
Canadian Magen David Adom for Israel
6900 Décarie Boulevard Suite 218
Montréal (QC) H3X 2T8

JUL 10 2001

**Re: Notice of Intent to Revoke, Canadian Magen David Adom for Israel/
Magen David Adom Canadien Pour Israël**

Dear Mrs. Moscovitch:

In our letter dated December 14, 1998, (copy attached for your convenience), we invited Canadian Magen David Adom for Israel (hereinafter, "CAMDI"), to submit representations as to why the Minister of National Revenue should not revoke its registration. This is in response to CAMDI's letter dated July 6, 1999, as well as the meeting (hereinafter, the "meeting") that was held on May 17, 1999, between representatives of CAMDI and officials from the Charities Directorate. Due to workload demands in the Charities Directorate, we apologize that we were unable to communicate with you sooner.

We have carefully reviewed the representations included in the July 6, 1999 letter, as well as those presented at the meeting, and it is our conclusion that these submissions do not provide sufficient reason why CAMDI's status as a registered charity should not be revoked. We offer the following explanations to help you understand our decision.

At the meeting, several of the areas of concern identified by the audit were discussed. These included:

1. The gifting of resources to Magen David Adom (hereinafter, "MDA");
2. CAMDI's activities in contravention of Canadian public policy; and,
3. Improper receipting practices.

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These echoed the concerns that we identified in our letters dated April 15, 1998, and December 14, 1998.

1. The gifting of resources to MDA

a) What the Income Tax Act requires and what CAMDI was told

Statutory provisions concerning the tax treatment of charitable gifts generally do not provide tax relief for donations made to charities or other organizations outside of Canada, nor does the legislative scheme permit registered Canadian charities to collect and receipt donations on behalf of such organizations. The *Income Tax Act* (hereinafter, the "Act") states in subsection 149.1(1) that a charitable organization must devote all its resources to charitable activities carried on by the organization itself.

CAMDI was informed of these statutory provisions in letters dated June 20, 1975, (attached for your convenience) as well as when it was notified that it was recognized as a charitable organization under the *Act* in the letter dated September 9, 1976, (attached for your convenience).

In addition, the Canada Customs and Revenue Agency (hereinafter the "CCRA") also advised CAMDI in letters dated August 14, 1986, October 22, 1986, October 21, 1993, January 23, 1997, April 15, 1998 and December 14, 1998 (all attached for your convenience) of the requirement of an adequate principle-agent relationship to meet the requirements of the *Act*.

Moreover, as a result of the previous audits, we also advised CAMDI that we would recognize the activities carried on in Israel as its own if it maintained an adequate principal-agent relationship between itself and MDA. As such, only by establishing that it was the guiding mind behind the activities undertaken in Israel would CAMDI be in a position to substantiate that it carried out those activities in accordance with the *Act*.

The *Act* reinforces the requirement that a charitable organization devote all its resources to charitable activities carried on by the organization itself by authorizing the Minister to revoke the registration of a charity if it fails to make required expenditures on charitable activities carried on by it and by way of gifts to qualified donees. The legislative intent conveyed by the expression "carried on by the organization itself" of paragraph 149.1(1)(a) is to require a registered charity to actively engage in its own charitable activities.

A charity is allowed to have another organization or individual carry on activities on its behalf. In such a relationship however, the registered Canadian charity must be and is responsible in a direct, effectual, and constant manner for charitable activities to which its resources are being applied. The fact that the activities being undertaken by another organization may be consistent with the goals and objectives of the registered charity or any other registered charity is insufficient to meet this operational test.

In order to give meaning and effect to the *Act*, a charity must continue to meet all of its obligations whether the activities are undertaken directly, through agency agreements or through other contractual arrangements. Notwithstanding the means it chooses to meet its obligations, the onus is on the charity to show that it carried on charitable activities itself. It must provide documentation or other tangible evidence to substantiate that it met the requirements of the *Act* with respect to the direction and control of its resources.

By observing guidelines given at the time of registration, as well as those available through our information channels such as our toll free telephone numbers, our Internet site and more particularly, our educational letters, and by keeping proper books and records, a charity should be able to discharge its evidentiary burden of establishing that its principal-agent relationship exists in fact, and that the charity maintains effective direction and actual control over its resources at all times. In the final analysis, the true test of whether a charity is responsible in a direct, effectual, and constant manner over its resources and activities is not shown by how well it crafts an agreement; but rather, how well it implements it through time. Therefore, it is incumbent upon the charity to show that it properly implements any agreement it claims to be in place.

Furthermore, the charity, through documented evidence, must demonstrate that actual events transpired which prove the continued existence of the principal-agent relationship. Thus, the charity must provide the CCRA with a means of examining the internal decision-making mechanisms within the charity's own structure through records, such as: minutes of board meetings; inspections reports; internal communications (i.e., memoranda); as well as, policies and procedures that show that the charity, by directing and controlling each of its activities, acted as the guiding-mind in the principal-agent relationship. In addition, the charity must provide source documentation, reports, and the various other instruments it received from its agent showing that throughout the life of the principal-agent relationship, the agent reported back to the principal in such a manner and frequency as to allow the principal to make informed decisions about the resources and projects for which the principal was responsible.

For purposes of the *Act*, when a registered charity merely transfers its resources to another entity (assuming the entity is a non-qualified donee), but fails to maintain effective direction and actual control over those resources, the result is the same as a gift to a non-qualified donee. Allowing a non-qualified donee to take complete control of the resources of a registered charity nullifies the purpose and intent of the *Act*.

b) CCRA findings

As discussed at the May 17, 1999 meeting, the CCRA had audited the books and records of CAMDI on a number of occasions (please refer to Appendix 3). Each audit revealed that CAMDI exercised little or no control over the activities carried on in Israel to which its resources were devoted. In fact, CAMDI's only function was to raise funds in Canada and to gift its resources to MDA, a non-qualified donee (refer to Appendix 2 for a list of qualified donees).

Audit evidence, gathered during each of the previous audits shows that CAMDI did not implement an agency relationship between itself and MDA, notwithstanding our express recommendation to that effect, or CAMDI's undertakings to that effect. As a result, CAMDI could not prove that an appropriate principal-agent relationship existed between itself and MDA. In every tangible respect, CAMDI failed to establish that it acted as the principal in conformity with the *Act*. For all intents and purposes, all resources sent to Israel by CAMDI are controlled by non-qualified donees.

As a result of the meeting, it was decided that the CCRA would defer the revocation of CAMDI's status as a registered charity as long as CAMDI could meet the following conditions:

- ◆ establish that it had not gifted its resources to non-qualified donees;
- ◆ implement an agency agreement which would allow it to maintain effective direction and actual control over its resources and the programs undertaken on its behalf;
- ◆ carry out exclusively charitable activities;
- ◆ not have its activities carried out in the Occupied Territories;
- ◆ not have its resources used in the Occupied Territories; and,
- ◆ respect all the other requirements of the *Act* as they pertain to registered charities.

On July 6, 1999, as a follow up to the May 17, 1999, meeting, CAMDI sent a letter that, in part, stated:

"(...) we submit a list of the locations of the ambulances donated to Israel, we are enclosing such a list prepared by the Israel Magen David Adom. We trust that this list, the agency agreement previously provided and the various undertakings provided by the executive of the association will enable your department to conclude that this charity merits registration with Revenue Canada."

According to the list of ambulances provided with this letter with their locations noted by MDA, not only has CAMDI gifted its resources to MDA, the ambulance bearing the inscription *Sherman MICU*, license number 82-380-00, was given to the I.D.F. (Israeli Defense Forces) on June 14, 1999. We take special note that this ambulance was gifted to the I.D.F. less than 6 months after CAMDI signed an agency agreement with MDA on January 11, 1999, and less than a month after the meeting. We conclude that by gifting its resources to non-qualified donees such as the I.D.F., CAMDI did not devote its resources to the pursuit of exclusively charitable purposes.

In addition, I further conclude that if CAMDI's had directed and controlled its resources as it could have by virtue of the January 11, 1999 agency agreement, the transfer of the ambulance to the I.D.F. would not have occurred. However, CAMDI chose to simply gift its resources to non-qualified donees even after it supposedly put in place the January 11, 1999 agency agreement. Therefore, even after signing the January 11, 1999 agency agreement, CAMDI was not was responsible in a direct, effectual, and constant manner over its resources in a manner consistent with the *Act*.

c) Basis for revocation

Despite the myriad of letters and communications that have ensued since CAMDI was registered as a Canadian charity, your letter confirms the results of the fourth audit; namely, that CAMDI has continued its practice of simply gifting its resources to non-qualified donees.

2. CAMDI's Activities Contravened Canada's Public Policy

a) What CAMDI was told

A purpose will not be charitable at law if it contravenes public policy. The Government of Canada's widely known and consistent position over the years is that it does not recognize permanent Israeli control over the territories occupied by Israel since 1967 (the Golan Heights, the West Bank, East Jerusalem and the Gaza Strip) and opposes all unilateral actions intended to predetermine the outcome of negotiations concerning these territories. This includes the establishment of Israeli settlements in the territories and Israel's unilateral moves to annex East Jerusalem and the Golan Heights, which Canada regards as being contrary to international law and unhelpful to the peace process. This policy is grounded in Canada's Support for the United Nations Security Council Resolutions 242, 338 and 478 and in the belief that the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949 (the "Fourth Geneva Convention") is applicable to the "Occupied Territories" and imposes certain obligations on Israel, as the occupying power.

Resolutions 242 and 338 call for Israel's withdrawal from territories occupied since 1967 in exchange for secure and recognized boundaries. Resolution 478 censures the annexation of East Jerusalem by Israel, reaffirms the application of the Fourth Geneva Convention to Jerusalem, and determines that any measures taken by Israel aimed at altering the character of Jerusalem are null and void.

Article 49 of the Fourth Geneva Convention (which both Israel and Canada have ratified) provides that the "Occupying Power shall not deport or transfer part of its own civilian population into the territory it occupies". Canada has also ratified the 1977 Protocols of the Geneva Conventions. Article 85 of Protocol I makes "the transfer by the occupying Power of parts of its own civilian population into the territory it occupies" a grave breach of that Protocol.

Consistent with these instruments and with the position articulated by successive Canadian governments since 1967, it is the CCRA's view that providing assistance to Israeli settlements in the Occupied Territories, including assistance in establishing and maintaining physical and social infrastructure elements, serves to encourage and enhance the permanency of settlements and therefore is contrary to Canadian public policy on this issue. Consequently, it is our position that Canadian organizations that wish to sustain or augment services provided by the institutions located within Israeli settlements outside Israel's 1967 border are not eligible for registration as charities for Canadian income tax purposes.

As previously indicated, at the conclusion of the meeting, the CCRA still needed to be certain that CAMDI would neither have its activities carried out in the Occupied Territories nor have its resources used in the Occupied Territories. Even if the list compiled by MDA does not indicate that any of the ambulances that were gifted to it are stationed within the Occupied Territories, CAMDI has not put into place any formal mechanism to ensure that they could not be used there.

b) CCRA findings

As it has unfettered control over the use of its ambulances, nothing prevents MDA from using the ambulances where it wishes in fulfilling its stated mandate of operating throughout all of Israel. It should be emphasized that for MDA, "All of Israel" includes the Occupied Territories. For instance, on its Internet site at page <http://magendavidadom.org/newsflash6.html>, MDA speaks of its involvement in Arab Jerusalem as well as in Gaza. Furthermore, many of the first aid stations it lists at <http://magendavidadom.org/stations.html> are located in the Occupied Territories.

We further note that the aforementioned list compiled by MDA does not indicate where the ambulance gifted to the Israeli Defense Forces is stationed. But like all the other ambulances, where the ambulance is stationed is rather inconsequential given that there is no reason why it could not be used in the Occupied Territories by the I.D.F., or otherwise used for non-charitable purposes by its owners, the I.D.F.

As you may note from our guide RC 4106 *Registered Charities: Operating Outside Canada*, the CCRA exceptionally allows certain gifts of certain goods to non-qualified donees where it is demonstrated that the goods in question (i.e., medical supplies) can only be used by the recipient for charitable purposes. However, where the non-qualified donee plans to use those goods in a non-charitable manner for which the charity had prior knowledge, the gift in question cannot qualify as being for a charitable purpose and would thus not be allowed by the *Act ab initio*. On October 5, 1993, CAMDI wrote to ask permission to buy a telecommunication system in the amount of \$84,000 to replace MDA's old ambulance communication system. We approved the project on the understanding that the goods would be used exclusively for a charitable purpose. However, CAMDI failed to inform us at the time that:

"MAGEN DAVID ADOM in Israel provides all the Emergency Medical Services in times of PEACE and WAR. The entire High Frequency FM Radio Network of the MDA system is immediately available to the Israel Defense Forces in times of crises."
(emphasis as found on CAMDI's Internet site) (Copy attached for your convenience)

When CAMDI gifted the communication system and ambulances to MDA or the I.D.F., CAMDI should have known that these resources could be used for non-charitable purposes and purposes contrary to stated Canadian government policy. Therefore, these gifts could not be considered as charitable expenditures even by application of the aforementioned exception.

c) Basis for revocation

Gifts to non-qualified donees are not considered charitable expenditures for the purposes of the Act. For the most recent fiscal year that was audited, expenditures were made by CAMDI that were claimed to be charitable, but were in fact gifts made to non-qualified donees. Consequently, CAMDI has not demonstrated that these expenditures were charitable in nature. Moreover, CAMDI did not unequivocally show that all similar expenditures claimed in prior years were in fact charitable expenditures.

3. Improper receipting practices

a) What the ITA requires and what CAMDI was told

The issuance of official donation receipts must adhere to specific requirements outlined in the Act. Regulation 3501 of the Act and Interpretation Bulletin 110R3 (IT-110R3) outlines the requirements of the CCRA for official donation receipts. The CCRA expects full compliance with these provisions of the Act.

i) *Dinner*

The provisions of IT-110R3 paragraphs 4, to 7 outline the requirements for issuing receipts when a donation includes the purchase price to attend a dinner, ball, concert or show. Paragraph 6 states:

"To calculate the gift portion, the charity may consider two payments have been received: one for the fair market value of admission and the second as a gift to the charity."

b) CCRA findings

CAMDI issued official donation receipts for the full price of admission to a concert. The fair market value of the admission to the concert should have been subtracted from the ticket price to establish the amount of the donation. This deficiency was also identified to CAMDI in our letter dated January 23, 1997, March 22, 1991 and April 16, 1991 for a similar event.

ii) Spoiled Receipts

a) What the ITA requires and what CAMDI was told

A spoiled official donation receipt shall be marked "cancelled" and such form, together with the duplicate thereof, shall be retained by the charity (Regulation 3501(5) of the Act). Also, an official donation receipt replacement shall show clearly that it replaces the original receipt and, in addition to its own serial number, shall show the serial number of the original receipt (Regulation 3501(4) of the Act).

b) CCRA findings

The audit report included copies of receipts that showed that CAMDI was not meeting this requirement. However, in a response dated April 28, 1998, CAMDI indicated that they were meeting this requirement, but did not provide copies of the donation receipts. Accordingly, our original position that CAMDI is not meeting the requirements of regulation 3501(4) and 3501(5) of the Act is confirmed.

c) Basis for revocation

CAMDI's receipt issuing practices with respect to dinners and spoiled receipts are in contravention of the ITA requirements.

Conclusion

I therefore conclude that CAMDI does not meet the requirements of a charitable organization under subsection 149.1(1) of the Act.

Consequently, I wish to advise that for the reasons outlined above and pursuant to the authority granted to the Minister in subsection 168(1)(b) of the *Act* and delegated me by the Minister, I propose to revoke the registration of CAMDI. 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), of the *Income Tax Act*, that I propose to revoke the registration of the organization listed below and that the revocation of registration is effective on the date of publication of this notice.

Business Number	Name
106863061 R0001	Canadian Magen David Adom for Israel Montréal (QC)

Should you wish to appeal this notice of intention to revoke the charity registration 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 note that the Federal Court Rules impose particular obligations upon an appellant to be met within restricted time frames. In particular, the appellant is responsible for filing the documents that will form the case material for the Court's review. You can obtain information about these Rules from the Court.

Consequences of a revocation

As of the date of revocation of the registration of CAMDI, which is the date upon which the above-noted notice is published in the Canada Gazette, CAMDI will no longer be exempt from Part I Tax as a registered charity and **will no longer be permitted to issue official donation receipts.**

Additionally, CAMDI may be subject to tax exigible pursuant to Part V, section 188 of the *Act*. For your reference, I have attached a copy of the relevant provisions of the *Act* concerning revocation of registration and the tax applicable to revoked charities as well as appeals against revocation (Appendix 1).

By virtue of subsection 188(1) of the *Act*, CAMDI will be required to pay a tax within one year after the effective date of revocation. This revocation tax is calculated on prescribed form T2046 "Tax Return Where Registration of a Charity is Revoked". The return must be filed and the tax must be paid on or before the day that is one year after the effective date of revocation.

The amount of revocation tax payable will be equal to the total fair market value of CAMDI's assets on valuation day plus the amount of receipted donations and gifts from other charities received by the charity after that day. Valuation day is 120 days before the date of mailing of this Notice of Intent to Revoke. The amount of tax payable will then be reduced by the value of any assets or funds that the organization transferred to qualified donees, disbursed on its own charitable activities, used to repay its debts and/or used to cover reasonable expenses in the period from the valuation day to one year from the date on which the revocation is effective. A copy of form T2046 has been included for your information.

I also wish to advise you that organizations that lose their registered charity status may be subject to the requirements of section 150 of the *Act* for filing returns of income. Accordingly, a return of income that is in prescribed form and that contains prescribed information shall be filed with the Minister, without notice or demand for the return, for each taxation year of a taxpayer.

However, CAMDI might be eligible for non-profit organization status which is defined in paragraph 149(1)(l) of the *Act*. Subsection 149(12) states the filing requirements for a non-profit organization. Determination of an organization's status as a non-profit organization is the responsibility of our Tax Services Offices. I would stress that such recognition does not convey authority to issue official donation receipts for income tax purposes.

If you need further information with regard to non-profit status,
please contact your local Montréal Tax Services Office directly at
305 René-Lévesque Boulevard West, Montréal (QC) H2Z 1A6

Yours sincerely,

A handwritten signature in black ink, appearing to read "Maureen Kidd". The signature is fluid and cursive, with the first name "Maureen" being more prominent than the last name "Kidd".

Maureen Kidd
Director General
Charities Directorate

Attachments

REGISTERED

Mrs Shirley Moscovitch
Executive Director
Canadian Magen David Adom for Israel
218 Decarie Blvd.
Montreal, Quebec
H3X 2T8

Your file Votre référence

Our file Notre référence

REG: 0469825-09
BN:10686 3061 RR0001
Ph.: (613) 954-1362

December 14, 1998

Dear Mrs Moscovitch:

Re: Charity Tax Audit

We acknowledge receipt of your representation dated April 21, 1998 from Mr Donald Hersh, CA, of the firm of Miller Hersh, Chartered Accountants, in response to our letter of April 15, 1998. Since we have no written authorization to communicate with Mr Hersh on matters relating to the Charity, we are addressing our reply to you.

Your representations are well noted, We would, however, like to expand on our explanations to the areas that the Charity contravened various sections of the Income Tax Act (the Act) and generally accepted accounting principles in the execution of its activities as a registered charity. These are characterized as follows:

1. Official Donation Receipts:

a). The discrepancy regarding the issuance of official donation receipt for the full price of admission to a concert was also brought to your attention in our letter dated January 23, 1997 as a result of our audit for the fiscal year ending August 31, 1993. A similar situation was also addressed in our letter dated April 16, 1991. Apparently these observations went unheeded or ignored by you and were brought to your attention again during our audit for the 1996 fiscal year.

b). Notwithstanding that no photocopies of the original and the duplicate copies of the receipts were enclosed as mentioned in your letter, the copies obtained by the auditor clearly shows that the invoices did not contain the notation to the effect that "this receipt cancels and replaces receipt number xxx". For your review, we are enclosing the copies of the said receipts obtained by the auditor. If you claim that the invoices contained the notations referred to above, it may have been made after the audit date.

c). It is not illegal to receive donations in any currency, however, the consistency in reporting financial transactions is contained in the CICA Handbook under the heading "Objectives of Translation" Section 1650.05.

2. Inadequate books and Records:

a). The reconciliation statement sent by you gives the total amount for which the official donation receipts were issued. The auditor had requested a detailed summary of the donors and amounts contributed by each of them. This information was not provided and the auditor therefore could not verify the accuracy of the donations for which official receipts were issued.

b). Agency Requirement:

The Government of Canada's long standing position with respect to Israeli settlements in the Occupied Territories is that it does not recognize permanent control over territories occupied in 1967 (the Golan Heights, the West Bank, East Jerusalem and the Gaza Strip), and opposes all unilateral actions intended to predetermine the outcome of negotiations concerning these territories. This includes the establishment of Israeli settlements in the territories and Israel's unilateral moves to annex East Jerusalem and the Golan Heights, which Canada regards as being contrary to international law and unhelpful to peace process. This policy is grounded in Canada's support for the United Nations Security Council Resolutions 242, 338 and 478 and in the belief that the Geneva Convention Relative to the Protection of Civilian Persons in the Time of War of August 12, 1949 (the "Fourth Geneva Convention") is applicable to the Occupied Territories and imposes certain obligations on Israel, as the occupying power.

Resolutions 242 and 338 call for Israeli withdrawal from territories occupied in 1967 in exchange for secure and recognized boundaries. Resolution 478 censures the annexation of East Jerusalem by Israel, reaffirms the Fourth Geneva Convention to Jerusalem, and determines that any measures taken by Israel and altering the character of Jerusalem are null and void.

Article 49 of the Fourth Geneva Convention (which both Canada and Israel have ratified) provides that the "Occupying Power shall not deport or transfer part of its own civilian population into the territory it occupies". Canada has also ratified the 1977 Protocols to the Geneva Conventions. Article 85 of Protocol I makes "the transfer by the Occupying Power of parts of its own civilian population into the territory it occupies" a grave breach of that Protocol.

Consistent with these instruments, and with the position articulated by successive Canadian governments since 1967, it is the Department's view that providing assistance to Israeli settlements in the Occupied Territories, including assistance in establishing and maintaining physical and social infrastructure elements, serves to encourage and enhance the permanency of settlements and therefore is contrary to Canada's public

policy on this issue. Consequently, it is our position that Canadian organizations that wish to sustain or augment services provided by the institutions located within Israeli settlements outside Israel's 1967 borders are not eligible for registration as charities for Canadian income tax purposes.

Based on the above, a Canadian charity may operate in Israel, other than in the Occupied Territories under an agency agreement, the requirements for which are explained hereunder:

Basically the *Act* permits a registered charity to carry out its charitable purposes, both inside and outside Canada, in only two ways:

- First, it can make gifts to other organizations which are qualified donees as set out in the *Act*.

Qualified donees include Canadian registered charities, certain universities outside Canada, the United Nations and its agencies, along with a few foreign charities.

- Second, it can carry on its own charitable activities. In contrast to the relatively passive transfer of money or other resources involved in making gifts to qualified donees, carrying on one's own activities implies that the Canadian charity is an active participant in a program or project that directly achieves a charitable purpose.

Examples of this type of activities include:

- awarding scholarships to students selected by the registered charity, based on the criteria it has chosen and applied;
- supplying low cost housing to needy individuals; and
- providing medical services to the sick.

The *Act* clearly does not allow a registered charity to carry out its purposes by handing out its money or other resources to another organization that is not a qualified donee.

Yet it may not be practical for the charity to meet the "own activities" test by operating abroad using its own employees. What it can do, is work with or through other organizations providing it employs certain structured arrangements that allow it to retain direction and control over the use of its resources.

The registered charity thus can appoint an agent to act as its representative in carrying out specifically identified tasks on behalf of the charity. The agency agreement must be in writing and should typically include at least the following information:

1. names and addresses of all parties;
2. the duration of the agreement or the deadline by which the project must be completed;
3. a description of the **specific** activities for which the funds or other resources have been transferred, in sufficient detail to outline clearly the limit of the authority given to the recipient to act for the Canadian charity or on its behalf;
4. provision for **written** progress reports from the recipient of the Canadian charity's funds or other resources, or provision for the charity's right to inspect the project on reasonably short notice, or both;
5. provision that the Canadian charity will make payments by installments based on confirmation of reasonable progress and that the resources provided to date have been applied to the specific activities outlined in the agreement;
6. provision for withdrawing or withholding funds or other resources at the Canadian charity's discretion;
7. provision for maintaining adequate records at the charity's address in Canada;
8. in the case of agency agreements, provision for the Canadian charity's funds and property to be segregated from those of the agent and for the agent to keep separate books and records;
9. the signature of all parties, along with the date.

Please note that if a Canadian charity operates outside the country without a written agreement in the suggested form, it will probably have serious difficulty establishing that a project is charitable and that it is carrying on its own activities. This could jeopardize the charity's registered status under the Act.

A charity also has to ensure that its resources are devoted to charitable purposes. Therefore, where resources the charity is proposing to send outside Canada are of general nature and could be used in a wide variety of non-charitable ways (money, for example, could be used for many things, while medicines, such as insulin, are only likely to be used to treat patients), the charity must be particularly careful to retain sufficient control to satisfy the requirements of the law. The more general the nature of the asset, the more structured and formal the arrangements should be for its distribution or use.

All of the above were explained to you in our letters dated October 22, 1986, October 19, 1987, and October 21, 1993. Despite your subsequent undertakings to comply accordingly per your letters dated October 30, 1986 and November 17, 1987, no corrective measures were taken by you to implement the agency requirement. It is noted that our letter of October 21, 1993 went unanswered, hence it is uncertain of your stance on this matter.

Disbursement Quota:

It is understood that the title of ownership of ambulances is transferred to Magen David Adom for Israel. The gifting or lending of assets by one entity to another entity to be used by the latter entity in the conduct of its own charitable activities does not constitute a charitable activity on the part of the first entity. Therefore it appears that the organization is not devoting all of its resources to charitable activities carried on by itself as required under subsection 149.1(6) of the Act. Since the Magen David Adom for Israel is not a qualified donee, the donations fall within the meaning of gifting to another entity and therefore the amounts so expended do not get included in the computation of the disbursement quota per subsection 149.1(1) of the Act.

In response to your question, we confirm that there is no change in the policy of the Department in the calculation of the disbursement quota.

Non-Charitable Activity:

The object of the Charity as per Letters Patent registered with the Minister of Consumer and Corporate Affairs of Canada is "To donate emergency medical supplies and ambulances directly to the people of Israel". With regards to the bullet proof vests, you claim that "the ambulances that we supply are required to service areas unlike Canada, that are most dangerous, often having to assist people who have been subjected to terrorist attacks. To enter into such a scene requires equipment to protect the injured as well as the drivers". It would therefore be appreciated if you could provide us with at least ten instances of the locations (e.g. streets, town or cities) where these ambulance drivers, while rendering their services, had to encounter terrorist bullets.

In our opinion, the donation of bullet proof vests (which may be used by anyone) are too indirect to be considered charitable.

Conclusion:

Your explanation of the Charity's existence per your penultimate paragraph is appreciated. It is also the Charity's duties to comply with its mandate, and in accordance with the Act and Regulations thereby avoiding "technical imperfections". The Charity has failed repeatedly to comply accordingly.

If you still do not agree with the facts outlined above, or if you wish to present any 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**. If you wish to obtain an extension, please contact the undersigned. Subsequent to this date, the Director of the Charities Division 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 send us a written authorisation naming that individual and explicitly authorising that individual to discuss your *Charity's* file with us.

Should you have any questions on these matters, please contact Danny Rai at [redacted] or myself at [redacted], or write to Charities Division, 320 Queen Street, 18th Floor, Ottawa, Ontario, K1A 0L5.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Rhéal Dorval', written in a cursive style.

Rhéal Dorval, CGA.
Assistant Director - Audit
Charities Division

Enclosures



Revenue
Canada

Revenu
Canada

Handwritten signature

REGISTERED

Mrs Shirley Moscovitch
Executive Director
Canadian Magen David Adom for Israel
218- Decarie Blvd.
Montreal, Quebec
H3X 2T8

Your file Votre référence

Our file Notre référence

REG : 0469825-09
Ph: (613) 954 1362

April 15, 1998

Dear Mrs Moscovitch:

Re: Charity Tax Audit

As stated in our letter of December 15, 1997, we audited the books and records of Canadian Magen David Adom for Israel (the "*Charity*") for its fiscal period ending August 31, 1996, and the auditor discussed certain non-compliance issues with you during the debriefing meeting at the end of the audit. However, the results from this audit were not formally communicated to you because of the workload demands in the Charities Division. We apologize for this delay. This letter addresses issues identified during the field audit and the review of the *Charity's* file.

This review has raised serious concerns about the *Charity's* compliance with certain provisions of the Income Tax Act (the "Act"). For a registered charity to retain its registration, it must comply with the provisions of the Act. If a particular registered charity does not comply with these provisions, even if the amounts are small and you requested permission to derogate these provisions, the Minister may revoke that charity's registration in a manner described in subsection 168(2) of the Act.

The audit identified the following deficiencies:

1. Official Donation Receipts:

The act provides various requirements in respect of official donation receipts issued by registered charities. The donation receipts issued by the *Charity* did not comply with the requirements of the Act and related Regulations as follows:

- a) The *Charity* issued official donation receipts for the full price of admission (\$500 and \$1,000) to a concert. The fair market value of the admission to the concert should have been subtracted from the ticket price to establish the amount of the donation. This deficiency was also identified during our last two audits covering the period ending August 31, 1987 and 1988, and for the period ending August 31, 1993.

Canada

213
b). The *Charity* replaced two official receipts issued to individuals (\$15,000 and \$11,000) without indicating on the new receipts with a notation to the effect that "this receipt cancels and replaces receipt number xxx".

c.) The *Charity* issued receipt number 83217 to a Canadian foundation in the amount of \$US25,000.00. The receipt should have been issued in Canadian currency denomination.

Under paragraph 168(1)(d) of the Act, the Minister may, by registered mail, give notice to the *Charity* that he proposes to revoke its registration because it issues receipts otherwise than in accordance with the Act and the Regulations.

2. Inadequate Books and Records:

The Act, per subsection 230(2), requires that registered charities maintain adequate books and records of account. The purpose of this requirement is to enable the charity to accurately provide Revenue Canada with the information required by the Act as well as to enable Revenue Canada to verify the accuracy of the reported information.

The *Charity* failed to maintain adequate books and records in that:

- a) it could not provide a reconciliation of total gifts received for which official receipts were issued as per line 100 of T3010 with duplicates of official receipts kept on file.
- b) the *Charity* transferred funds to Magen David Adom in Israel for the purchase of emergency medical supplies, ambulances and other equipment. It also purchased equipment and transferred to the same organization in Israel. However, there is no formal agency agreement between the two parties. This deficiency was also identified during our last audit for the fiscal period ending August 31, 1993 in our letter dated January 23, 1997. A review of the file has indicated that the need for and the purpose of the agency relationship was also communicated to you in our letter dated October 18, 1987.

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

3. 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 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 donation less certain types of gifts received (paragraph 149.1(2)(b) of the Act). Disbursing funds to third parties who are not qualified donees (as defined by subsection 149.1(1) of the Act) is not considered as being a charitable activity.

An audit of the 1993 fiscal period indicated that the Charity did not meet its disbursement quota. The shortfall of \$113,377 was brought to your attention in our letter of January 23, 1997. The subsequent audit for the 1996 fiscal year indicated that the Charity again did not meet the disbursement quotas for the 1995 and 1996 years. The shortfall for these years was \$26,931 and \$141,519 respectively. Our review confirmed that the non-conformity persists.

Under subsection 168(1)(b) of the Act, the Minister may give notice to the *Charity* that he proposes to revoke its registration because it fails to expend in any taxation year its disbursement quota.

Non-Charitable Activity:

The objects of the *Charity*, as filed with the Department, are to donate emergency medical supplies and ambulances directly to the people of Israel. The audit indicated that the *Charity* was involved in the purchase of 60 bullet proof vests at a cost of \$US146.00 each for a total expenditure of \$US10,249.00. A deposit of \$US3,075 was transferred to Hagor Industries Ltd. in Israel, with the balance payable upon receipt of the merchandise by the Magen David Adom in Israel.

Purchasing of bullet proof vests is not considered, per subsection 149.1(6.2) of the Act, to be an expenditure of a charitable activity. Accordingly, under paragraph 168(1)(b) of the Act, the minister may give notice to the *Charity* that he proposes to revoke its registration because it fails to comply with the requirements of this Act for its registration as such.

Conclusion:

For all of the reasons and discrepancies indicated above, it appears to us that there are grounds for revocation of charitable status of the *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*.

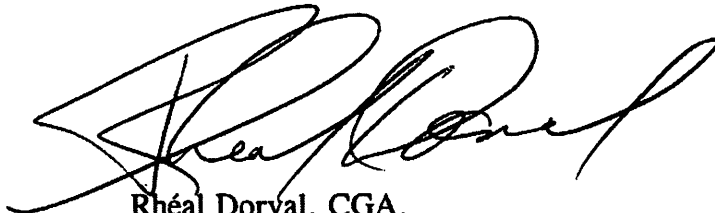
For your reference, we have attached a copy of the relevant provisions of the *Income Tax Act* concerning revocation of registration and the tax applicable to revoked charities as well as appeals against revocation.

If you do not agree with the facts outlined above, or if you wish to present any 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**. If you wish to obtain an extension, please contact the undersigned. Subsequent to this date, the Director of the Charities Division 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 send us a written authorization naming that individual and explicitly authorizing that individual to discuss your *Charity's* file with us.

Should you have any questions on these matters, please contact Danny Rai at [redacted] or myself at [redacted], or write to Charities Division, 320 Queen Street, 18th Floor, Ottawa, Ontario, K1A 0L5.

Yours sincerely,



Rhéal Dorval, CGA.
Assistant Director - Audit
Charities Division

Enclosures