



REGISTERED MAIL

BN: 11880 7080RR0001
File: 0599530

Dear [REDACTED]

DEC 03 2018

**Subject: Notice of intention to revoke
Beth Oloth Charitable Organization**

We are writing with respect to our letter dated March 12, 2018¹, (copy enclosed), in which Beth Oloth Charitable Organization (the Organization) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA), and explain why the registration of the Organization should not be revoked in accordance with subsection 168(1) of the Income Tax Act.

We have reviewed and considered your written responses dated February 8, 2018, and May 9, 2018 (attached). Your replies have not alleviated our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity. Our concerns are explained in Appendix A attached.

Conclusion

The audit by the CRA found that the Organization is not complying with the requirements set out in the Act. In particular, it was found that the Organization failed to be constituted exclusively for charitable purposes due to non-charitable/broad purposes and unstated purposes; failed to devote resources to charitable activities carried on by the Organization itself due to lack of direction and control over the use of resources/resourcing non-qualified donees and conduct of non-charitable activities; failed to maintain adequate books and records; issued receipts not in accordance with the Act; and failed to file an Information Return as and when required by the Act and/or its Regulations. For all of these reasons, and for each reason alone, it is the position of the CRA that the Organization no longer meets the requirements for charitable registration and should be revoked in the manner described in subsection 168(1) of the Act.

For each of the reasons mentioned in our letter dated March 12, 2018, pursuant to subsection 168(1) and 149.1(2) of the Act, we propose to revoke the registration of the Organization. By

¹ This letter was originally sent October 31, 2017. The letter was reissued on March 12, 2018, in which we revised two incorrectly numbered footnotes, but otherwise it remained identical to the original letter.

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)(c), 168(1)(d), 168(1)(e), subsection 149.1(2), and paragraph 149.1(2)(c), of the Income Tax Act, that I propose to revoke the registration of the charity listed below and that by virtue of paragraph 168(2)(b) thereof, the revocation of registration is effective on the date of publication of this notice in the Canada Gazette.

Business number	Name
118807080RR0001	Beth Oloth Charitable Organization Toronto ON

Should the Organization choose to object to this notice of intention to revoke the Organization's registration in accordance with subsection 168(4) of the Act, a written notice of objection, with the reasons for objection and all relevant facts, must be filed within **90 days** from the day 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

However, 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. As such, the Organization'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 Organization must obtain a stay to suspend the revocation process, even though it may have filed a notice of objection.

A copy of the relevant provisions of the Act concerning revocation of registration, including appeals from a notice of intention to revoke registration, can be found in Appendix B, attached.

Consequences of revocation

As of the effective date of revocation:

- a) the Organization 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 Organization 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 Organization 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 Form T2046, 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. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix B. Form T2046 and the related Guide RC4424, Completing the Tax Return Where Registration of a Charity is Revoked, are available on our website at canada.ca/charities-giving;
- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the Excise Tax Act. As a result, the Organization may be subject to obligations and entitlements under the Excise Tax Act that apply to organizations other than charities. If you have any questions about your Goods and Services Tax/Harmonized Sales Tax (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, we advise that subsection 150(1) of the Income Tax 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,



Tony Manconi
Director General
Charities Directorate

Enclosures:

- CRA letter dated November 4, 2016
- CRA letter dated December 7, 2016
- CRA letter dated March 12, 2018
- Organization's response, letter dated February 8, 2018
- Organization's response, letter dated May 9, 2018
- Appendix A, Comments on Representations
- Appendix B, Relevant provisions of the Act

c.c.: Mr. David Ehrentreu
Beth Oloth Charitable Organization
525 Coldstream Avenue
Toronto ON M6B 2K7



CANADA REVENUE
AGENCY

AGENCE DU REVENU
DU CANADA

2016-11-04

Beth Oloth Charitable Organization
[REDACTED]

Attention: [REDACTED] /David Ehrentreu

Re: Beth Oloth Charitable Organization
Audit of Registered Charity Information Return
For the Fiscal Periods Ending 2012-09-30, 2013-09-30 and 2014-09-30
Business Number: 118807080RR0001RR0001

Dear [REDACTED] and Mr. Ehrentreu:

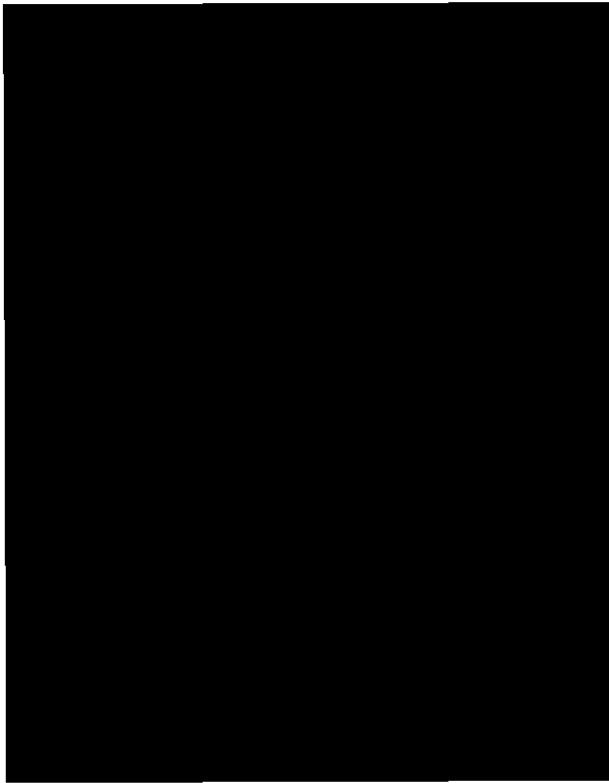
Further to our telephone conversations regarding the audit review of **Beth Oloth Charitable Organization** "the Organization", this letter is to confirm our meeting scheduled to commence at 10:00AM on **Tuesday, November 29th**, [REDACTED] in Toronto.

We have attached a general list of information/documents that is required for the audit.

In addition to these general queries, please be advised that our review will include a focus on the following items:

1. A review of the May 27, 2016 response provided by the [REDACTED] on behalf of the Organization.
2. A review of the reporting requirements for agents/beneficiaries and any other communication between the Organization and its agents/beneficiaries.
3. A review of any written agreements with agents, contractors
4. A review of the mechanisms by which funds of the Organization are kept segregated from other funds that an agent might have. Are funds forwarded to an agent required to be maintained in a separate bank account? Does the agent require any authorization from the Organization prior to disbursing funds?
5. Where funds are used to construct immovable property in foreign countries, who owns this property and under what types of agreements? If the property is not owned by the Organization, what assurances does the Organization have that this property will continue to be used for charitable purposes?

6. Confirmation of the current official objects of the Organization. We have noted a letter in the permanent documents file from [REDACTED] that requests feedback on proposed new objects but there does not appear to be any follow up documentation confirming that objects have been revised.
7. A review of how various activities of the Organization fit within the scope of the official objects of the Organization. This includes past, current and future planned activities.
8. What are the reporting requirements of agents and any examples available.
9. A review of the actual activities carried out by a selection of agents including, but not limited to:



Additional information, not included on the list, may be requested at the time of the review.

Relating to foreign activities, the Organization has provided numerous soft copy .pdf documents consisting generally of agency agreements, letters from agents requesting funds, scholarship applications, and in some cases assorted other documentation. The Organization also confirmed in the May 27, 2016 response, that "there was other documentation, however it was not saved." Please note that this meeting represents a final opportunity to present any additional documentation.

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Should you have any concerns or questions, please contact the undersigned or you may contact my Team Leader Maria Grieco at [REDACTED]

Sincerely,



Luke Jantzi
Audit Division
Kitchener Tax Services Office

Telephone: [REDACTED] Internet: www.cra-arc.gc.ca
Fax: (519) 585-2803
Address: 166 Frederick St.
Kitchener, ON N2H 0A9
Email: Luke.Jantzi@cra-arc.gc.ca

Telephone: (519) 896-3544
Fax: (519) 585-2803
Address: 166 Frederick Street, Kitchener, ON, N2G-4N1

Toll free: 1-800-959-8281 (Individual)
1-800-959-5525 (Business)
Internet: www.CRA-adr.gc.ca



2016-12-07

Beth Oloth Charitable Organization
[REDACTED]

Attention: [REDACTED]

Re: Beth Oloth Charitable Organization
Audit of Registered Charity Information Returns
For the Fiscal Periods Ending 2012-09-30, 2013-09-30 and 2014-09-30
Business Number: 118807080RR0001RR0001

Dear [REDACTED]:

Further to our most recent telephone conversations regarding the audit of Beth Oloth Charitable Organization (the Organization), wherein you advised us that all communication regarding this audit is now to be addressed directly to you, please see the following request for the books and records required from the Organization.

We have attached a list of information as well as documents that are required for our audit.

In addition to these queries, please provide the following:

1. A detailed written explanation of the Organization's own activities carried out by each intermediary receiving funds from the Organization during the review period, including an explanation for how these activities fit within the scope of the official objects of the Organization as is listed in their Letters Patent dated October 29, 1980.
2. Relating to foreign activities, the Organization has provided numerous soft copy .pdf documents consisting generally of agency agreements, letters from intermediaries requesting funds, scholarship applications, and in some cases assorted other documentation. The Organization also confirmed in the May 27, 2016, response, that "there was other documentation, however it was not saved." Please note that this is a final opportunity to present any additional documentation to show that the Organization has maintained direction and control of the activities of each intermediary. This documentation could include, but is not limited to:
 - a. Confirmation if the intermediary is a qualified donee under the *Income Tax Act*;
 - b. A detailed set of criteria used to assess what activities the Organization will consider supporting;
 - c. Applications made by each intermediary assessed against criteria outlined by the Organization,

- d. An assessment of the capacity/ability/reputation of each intermediary used by the Organization;
- e. A completed need assessment for each program;
- f. Copies of agency or similar written agreements between the Organization and each intermediary including any appendices;
- g. A detailed listing of all activities carried out by each intermediary if this is not already contained within the agency or similar written agreements and appendices;
- h. Support for the existence of ongoing monitoring, reporting and communication of each program including detailed narrative and financial reports, written communication between the Organization and each intermediary, reports summarizing any other communication between the Organization and the intermediary, emails, photos etc.;
- i. Source documents to support all disbursements made by intermediaries;
- j. Copies of all cancelled cheques and wire transfer documents to support each disbursement of funds made by the Organization;
- k. Where the intermediary uses a separate bank account to segregate funds provided by the Organization from all other funds received by the intermediary, the account number, and branch information, the owner of each of these bank accounts, and the signatories on each account;
- l. Documentation to support any direct supervision of projects by the staff or volunteers of the Organization;
- m. Where any capital or immovable property is constructed using funds of the Organization documentation to show that the Organization retains ownership of these assets and where this is not possible, documentation showing that the Organization has obtained reasonable assurance that the asset will continue to be used for charitable purposes; and
- n. Any other documentation that the Organization has maintained to show that it has maintained direction and control of all activities that it carries out either directly or through intermediaries.

3. If the Organization is working with any other organizations (qualified donees or not) to accomplish any of its activities, please provide the following details:

- a. Details on the activity and what exactly is the Organization's 'own activity';
- b. Details on the other organization, including registration number if applicable;
- c. Documentation of how the resources, both human and financial, are kept separate;
- d. Copies of any written agreements between the organizations;
- e. Copies showing how decisions are reached between the two organizations, including the allocation of donations, collecting donations, and planning projects;
- f. Copies of any reporting or documentation to show clear separation between the two organizations.

4. A copy of the current governing documents for the Organization.

5. Copies of all emails sent and received by the Organization including all emails sent and received by directors, officers and any general email addresses associated with the Organization.

Please ensure that all relevant records are mailed to the undersigned's attention at the Kitchener Tax Services Office (see address in signature block below) no later than 15 days

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from the date of this letter. If you prefer, we can arrange to have the records picked up at the offices of the Organization.

We expect that an interview will be necessary to address any outstanding questions after we have completed our review of the documentation. Since you have indicated a preference that we not contact the Organization directly, we would propose that this interview take place at your office in Ottawa. Representatives from the Organization would be welcome to attend this interview.

Should you have any concerns or questions, please contact the undersigned or you may contact my Team Leader Maria Grieco at [REDACTED]

Sincerely,



Luke Jantzi
Audit Division
Kitchener Tax Services Office

Telephone	[REDACTED]	Internet. www.cra-arc.gc.ca
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REGISTERED MAIL

CANADA REVENUE
AGENCYAGENCE DU REVENU
DU CANADABeth Oloth Charitable Organization
[REDACTED]

BN: 118807080RR0001

Attention: [REDACTED]

File #:0599530

March 12, 2018

Subject: Audit of Beth Oloth Charitable Organization

Dear [REDACTED]:

This letter is further to the audit of the books and records of the Beth Oloth Charitable Organization (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from October 1, 2011 to September 30, 2014.

The CRA has identified specific areas of non-compliance with the provisions of the *Income Tax Act* and/or its *Regulations* in the following areas.

AREAS OF NON-COMPLIANCE		
	Issue	Reference
1.	Failure to be Constituted for Exclusively Charitable Purposes a) Non-Charitable/Broad Purposes b) Unstated Purpose	149.1(2), 168(1)(b)
2.	Failure to Devote Resources to Charitable Activities Carried on by the Organization itself: a) Lack of direction and control over the use of resources/resourcing non-qualified donees b) Conduct of non-charitable activities	149.1(1), 168(1)(b)

3.	Failure To Maintain Adequate Books and Records	149.1(2), 230(2), 168(1)(b), 168(1)(e), 188.2(2)(a)
4.	Issuing Receipts Not in Accordance with the Act	149.1(2), 168(1)(d), 188.1(7) Regulation 3500, 3501
5.	Failure to File an Information Return as and When Required by the Act and/or its Regulations	149.1(2), 149.1(14) 168(1)(c), 188.1(6)

The purpose of this letter is to describe the areas of non-compliance identified by the CRA during the course of the audit as they relate to the legislative and common law requirements applicable to registered charities, and to provide the Organization with the opportunity to make additional representations or present additional information. Registered charities must comply with the law, failing which the Organization's registered status may be revoked in the manner described in section 168 of the Act.

General legal principles

In order to maintain charitable registration under the Act, Canadian law requires that an organization demonstrate that it is constituted exclusively for charitable purposes (or purposes), and that it devotes its resources to charitable activities carried on by the organization itself in furtherance thereof.¹ To be exclusively charitable, a purpose must fall within one or more of the following four categories (also known as "heads") of charity² and deliver a public benefit:

- relief of poverty (first category)
- advancement of education (second category)
- advancement of religion (third category) or

¹ See subsection 149.1(1) of the Act, which requires that a charitable organization devote all of its resources to "charitable activities carried on by the organization itself" except to the extent that an activity falls within specific exemptions of subsections 149.1(6.1) or (6.2) of the Act relating to political activities, and *Vancouver Society of Immigrant and Visible Minority Women v. Minister of National Revenue*, [1999] 1 S.C.R. 10 (Vancouver Society) at paras. 155-159. A registered charity may also devote resources to activities that, while not charitable in and of themselves, are necessary to accomplish their charitable objectives (such as expenditures on fundraising and administration). However, any resources so devoted must be within acceptable legal parameters and associated activities must not become ends in and of themselves.

² The Act does not define charity or what is charitable. The exception is subsection 149.1(1) which defines charitable purposes/objects as including "the disbursement of funds to qualified donees." The CRA must therefore rely on the common law definition, which sets out four broad categories of charity. The four broad charitable purpose/object categories, also known as the four heads of charity, were outlined by Lord Macnaughten in *Commissioners for Special Purposes of the Income Tax v. Pemsel*, [1891] A.C. 531 (P.C.) (Pemsel). The classification approach was explicitly approved by the Supreme Court of Canada in *Guaranty Trust Co. of Canada v. Minister of National Revenue*, [1967] S.C.R. 133, and confirmed in *Vancouver Society*, supra note 1.

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- certain other purposes beneficial to the community in a way the law regards as charitable (fourth category).

The public benefit requirement involves a two-part test:

- The first part of the test requires the delivery of a **benefit** that is recognizable and capable of being proved, and socially useful. To be recognizable and capable of being proved, a benefit must generally be tangible or objectively measureable. Benefits that are not tangible or objectively measureable must be shown to be valuable or approved by "the common understanding of enlightened opinion for the time being."³ To be socially useful, a benefit must have public value and a demonstrable impact on the public.⁴ In most cases, the benefit should be a necessary and reasonably direct result of how the purpose will be achieved and of the activities that will be conducted to further the purpose, and reasonably achievable in the circumstances.⁵ An "assumed prospect or possibility of gain" that is vague, indescribable or uncertain, or incapable of proof, cannot be said to provide a charitable benefit.⁶
- The second part of the test requires the benefit be directed to the **public** or a sufficient section of the public. This means a charity cannot:
 - have an eligible beneficiary group that is negligible in size or restricted based on criteria that are not justified based on the charitable purpose(s); or
 - provide an unacceptable private benefit. Typically, a private benefit is a benefit provided to a person or organization that is not a charitable beneficiary, or to a charitable beneficiary that exceeds the bounds of charity. A private benefit will usually be acceptable if it is incidental, meaning it is necessary, reasonable, and not disproportionate to the resulting public benefit.⁷

³ See, generally, *Vancouver Society*, *supra* note 1 at para 41 per Mr Justice Gonthier (dissenting in the result), *Gilmore v. Coats, et al*, [1949] 1 All ER 848 (*Gilmore*), and *National Anti-Vivisection Society v. I.R.C.*, [1947] 2 All ER 217 (HL) (*National Anti-Vivisection Society*) per Lord Wright at p 224.

⁴ See, for example, *National Antivivisection Society*, *supra* note 4 per Lord Wright at p 49 "The law may well say that quite apart from any question of balancing values, an assumed prospect, or possibility of gain so vague, intangible and remote cannot justly be treated as a benefit to humanity, and that the appellant cannot get into the class of charities at all unless it can establish that benefit."

⁵ See, for example, *In re Grove-Grady, Plowden v. Lawrence*, [1929] 1 Ch 557 per Russell L J at p 588, *National Anti-Vivisection Society*, *supra* note 4 per Lord Wright at p 49, *I.R.C. v. Oldham Training and Enterprise Council*, [1996] B T C 539 (*Oldham*), and *Pemsel*, *supra* note 3 at p 583.

⁶ *National Anti-Vivisection Society*, *supra* note 4 per Lord Wright at p 49. See also, for example, *In re Shaw decd*, [1957] 1WLR 729, and *Gilmore*, *supra* note 4 per Lord Simonds at pp 446-447.

⁷ See CRA Policy Statement CPS-024, *Guidelines for Registering a Charity: Meeting the Public Benefit Test* for more information about public benefit

To comply with the requirement that it devote all of its resources to charitable activities carried on by the organization itself, a registered charity may only use its resources (funds, personnel and/or property) in two ways:

- for its own *charitable activities* – undertaken by the charity itself under its continued supervision, direction and control; and
- for gifting to “qualified donees” as defined in the Act.⁸

A charity’s own charitable activities may be carried out by its directors, employees or volunteers, or through intermediaries (a person or non-qualified donee that is separate from the charity, but that the charity works with or through, such as an agent, contractor or partner). If acting through an intermediary, the charity must establish that the activity to be conducted will further its charitable purposes, and that it maintains continued direction and control over the activity and over the use of the resources it provides to the intermediary to carry out the activity on its behalf.⁹

Although there is no legal requirement to do so, and the same result might be achieved through other arrangements or means, entering into a written agreement can be an effective way to help meet the own activities test. However, the existence of an agreement is not enough to prove that a charity meets the own activities test. The charity must be able to show that the terms establish a real, ongoing, active relationship with the intermediary,¹⁰ and are actually implemented. A charity must record all steps taken to exercise direction and control as part of its books and records, to allow the CRA to verify that the charity’s funds have been spent on its own activities. While the nature and extent of the required direction and control may vary based on the particular activity and circumstances, the absence of appropriate direction and control indicates that an organization is resourcing a non-qualified donee in contravention of the Act.

To summarize, the CRA must be satisfied that an organization’s purposes are exclusively charitable in law, and that its activities directly further these charitable purposes in a manner permitted under the Act. In making a determination, we are obliged to take into account all relevant information. Accordingly, the audit encompassed an enquiry into all aspects of the Organization’s operations.

⁸ A “qualified donee” means a donee described in any of paragraphs 110 1(1)(a) and (b) and the definitions “total charitable gifts” and “total Crown gifts” in subsection 118 1. As per subsection 149 1(6)(b), 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% of its income for that year to qualified donees.

⁹ For more information, see CRA Guidance CG-002, *Canadian Registered Charities Carrying Out Activities Outside Canada and Guidance CG-004, Using an Intermediary to Carry Out Activities Within Canada*

¹⁰ See, for example, *The Canadian Committee for the Tel Aviv Foundation v. Her Majesty the Queen*, 2002 FCA 72 (Canadian Committee for the Tel Aviv Foundation) at para 30

Background

Financial History

The Organization received its charitable registration effective October 1, 1980. Until 2003, the Organization generally reported relatively small revenues and expenses. From 2003 to 2011, the Organization was inactive with the exception of the 2006 and 2008 years where revenues of \$16,764 and \$21,280 were reported.

During the 2012 fiscal year, and in particular, beginning in April of 2012, the Organization shifted from a period of inactivity, to a period of rapid revenue growth. During the half-year stub period from April to September of 2012, the Organization reported \$9,474,256 in revenue, and for the 2013 and 2014 years, total revenues were \$26,995,056 and \$35,543,784 respectively.

The Organization carries out its activities primarily through foreign intermediaries. According to the "List of Agents Outside Canada Summary Listing" provided by the Organization, it distributed \$8,134,038, \$23,919,348 and \$31,592,328 to agents in 2012, 2013 and 2014 respectively. These lists included 713 agents in 2012, 1,784 agents in 2013, and 2,274 agents in 2014.

Relationship with former director

The Organization continues to maintain a relationship with a former director, Shmuel Reidel. In a letter, dated May 27, 2016, representatives for the Organization confirmed that Mr. Reidel "is not actively involved with Beth Oloth," but "has an Advisory Role." Individuals who are non-arm's length with Mr. Reidel were employed by the Organization during the audit period.

Mr. Reidel is a director of Gates of Mercy, another registered charity. We have identified a number of instances where donations were deposited into the Organization's bank accounts in the form of cheques addressed to this separate registered charity. This concern is addressed in more detail in the Inadequate Books and Records and Issuing Receipts Not in Accordance with the Act sections below.

Chronology of the audit

During the initial stages of the audit, the Organization made its books and records and its directors available to CRA auditors. We issued a follow up letter with some clarifying questions on May 2, 2016. One of our questions asked for clarification on whether the Organization had any correspondence related to the foreign activities it had been carrying out, such as emails, reports from agents/scholarship recipients etc. which had not already been provided to CRA. These documents were required so that CRA could verify if the Organization was maintaining adequate direction or control over its

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resources, over the activities being conducted with its resources and over the agents conducting such activities. In a letter dated May 27, 2016, the Organization advised that "there was other documentation, however it was not saved." We then requested a second opportunity to meet with the directors and review additional books and records that might be available. The Organization requested clarification on what items we would be focusing on during this second review and were provided with our letter dated November 4, 2016. A meeting was scheduled for November 29, 2016.

On November 21, 2016, we received a fax from a newly retained legal representative of the Organization with an attached Business Consent form and a request that we call to discuss our proposed meeting. We discussed our preference with the legal representative to have access to the books and records of the Organization at its place of operation, and to meet with the directors of the Organization and any other parties who wished to participate. The legal representative requested that all further communication be in the form of letters and advised that the legal firm would now be the sole point of contact for the audit. The legal representative also confirmed that our scheduled meeting with the directors of the Organization would not take place and that the Organization would be willing to mail its additional books and records to us for review.

In response, we issued a letter dated December 7, 2016, wherein we requested the books and records of the Organization, and outlined a number of specific items that should be provided if available. The Organization's legal representative provided a response dated January 13, 2017. The response was three pages in length and included a listing of all disbursements to qualified donees. The response did not adequately address our queries, and has limited our ability to draw audit conclusions regarding the charitable nature of the Organization's activities, adequacy of direction and control over its resources and over the conduct of its activities, adequacy of books and records, and various other areas of non-compliance, outlined in more detail below.

The Organization had acknowledged the existence of "additional information which may be relevant" and advised it would provide emails as requested in our December 7, 2016, letter, but did not provide a timeframe for when these emails would be made available. On June 16, 2017, a package containing three folders of printed emails was received. The contents of the emails were reviewed, however none of the emails included sufficient details to show that the Organization was maintaining adequate direction and control over its resources.

It was our preference, as communicated to the legal representative, that all books and records of the Organization be made available for review, and the directors of the Organization be made available to answer any questions related to the books and records and the charitable operations of the Organization. However, the Organization chose to cancel the meeting, not make its books and records available for our review, discontinue having its directors speak to CRA directly, and simply provided a list of

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disbursements to qualified donees and a selection of printed email correspondence in response to our December 7, 2016 letter. As such, we are proceeding based on available information.

The balance of this letter describes the identified areas of non-compliance in further detail.

Identified areas of non-compliance

1. Failure to be Constituted for Exclusively Charitable Purposes

a) Non-Charitable/Broad Purposes

As mentioned above, to be registered as a charity under the Act, Canadian law requires that an organization's purposes be exclusively charitable, and define the scope of the activities that can be engaged in by the organization.¹¹

The question of whether an organization is constituted exclusively for charitable purposes cannot be determined solely by reference to its stated purposes, but must take into account the activities in which the organization currently engages. In *Vancouver Society of Immigrant and Visible Minority Women v MNR*, the Supreme Court of Canada stated as follows:

But the inquiry cannot stop there. In *Guaranty Trust*, *supra* at p.144, this Court expressed the view that the question of whether an organization was constituted exclusively for charitable purposes cannot be determined solely by reference to the objects and purposes for which it was originally established. It is also necessary to consider the nature of the activities presently carried on by the organization as a potential indicator of whether it has since adopted other purposes. In other words, as Lord Denning put it in *Institution of Mechanical Engineers v Cane*, [1961] A.C. 696 (H.L.), at p. 723, the real question is, "for what purpose is the Society *at present* instituted?"¹²

A charitable activity is one that directly furthers a charitable purpose, which requires a clear relationship and link between the activity and the purpose it purports to further. If an activity is, or becomes, a substantial focus of an organization, it may no longer be in furtherance of a stated purpose. Instead, the activity may further a separate or collateral purpose. An organization with a collateral non-charitable purpose is ineligible for registration under the Act.

¹¹ See *Vancouver Society*, *supra* note 1 at para 158 per Iacobucci J and *Travel Just v. Canada Revenue Agency*, 2006 FCA 343, [2007] 1 C.T.C. 294

¹² *Vancouver Society*, *supra* note 4 at para 194. See also *AYSA Amateur Youth Soccer Association v Canada (Revenue Agency)*, 2007 SCC 42 at para 42, [2007] 3 SCR 217.

While we recognize that the Organization's purposes are those with which it was originally registered on October 1, 1980, our consideration of both purposes and activities must be based on current legislation, court decisions and Charities Directorate regulations and policies.

The purposes of the Organization are as follows:

1. To stimulate interest in providing higher Jewish education and Jewish religious training for the perpetuation of the Jewish religion and the training of teachers of the Jewish religion.
2. To pursue, develop and advance Jewish religious scholarship, literature and philosophy and for this purpose to commission authors and scholars to write articles, monographs and books on the subjects of bible interpretation, Jewish religious philosophy, Jewish religious law and all other topics which, in the opinion of the directors, will aid in the advancement of the Jewish religion and culture, to provide awards, grants and prizes to authors and scholars who write works on the aforementioned subjects; to acquire and maintain and aid in acquiring and maintaining research and library facilities for the use of scholars and authors who write works on the aforementioned subjects; to publish and aid in the publishing of books and monographs in the aforementioned subjects; to organize, finance, operate and participate in the organization, financing or operation of scholarly and other journals and periodicals which publish articles on the aforementioned subjects.
3. To promote and distribute said books, monographs and journals to universities, schools, institutions and other scholars and students of Jewish religion, literature and philosophy.
4. To establish and maintain a library and circulate, sell or give away books and periodicals in the advancement of its purposes.

In our opinion, the Organization's stated purposes are broad and lack the degree of certainty and clarity required to restrict the Organization to exclusively charitable activities.

b) Unstated purpose

We reviewed a sample of the documentation for the 2,274 agents used by the Organization in 2014. Our assessment of those documents has led us to conclude that the Organization's purported activities show that the Organization is carrying out activities in furtherance of purposes other than those in its governing documents.

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The following are a few examples of those purported activities.

Agent Name	Activity

¹³ [http://\[REDACTED\]](http://[REDACTED]) - Accessed April 3, 2017

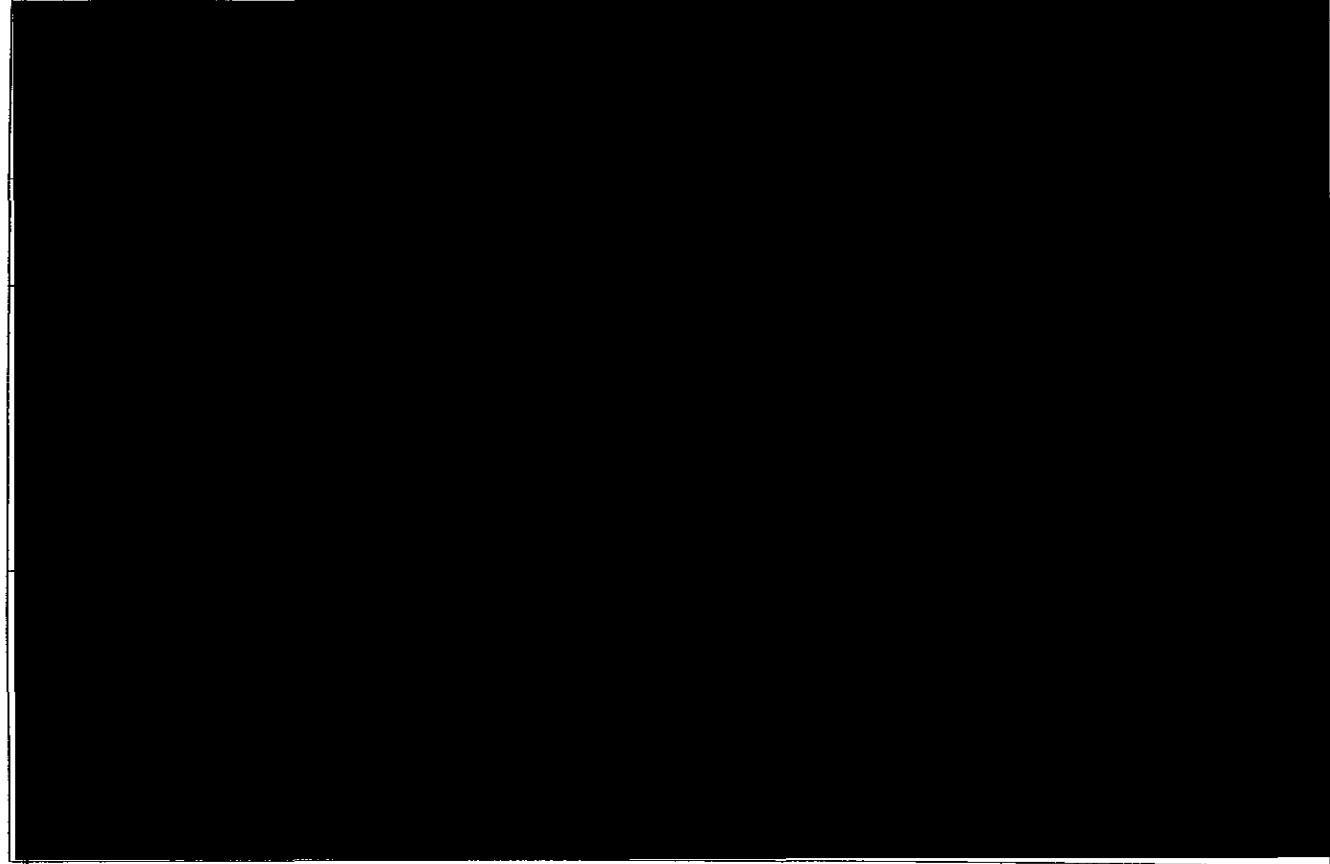
¹⁴ [http://www\[REDACTED\]](http://www[REDACTED]) Accessed April 3, 2017

¹⁵ [https://www\[REDACTED\]](https://www[REDACTED])

Accessed April 11, 2017

¹⁶ [http://www\[REDACTED\]](http://www[REDACTED]) Accessed April 11, 2017

¹⁷ [http://\[REDACTED\]](http://[REDACTED]) Accessed April 11, 2017



The Organization has acknowledged that many of its activities fall outside of its current purposes. In a letter, dated January 12, 2017, the Organization's legal representative stated:

"We have reviewed the list of objects and the intermediaries with the Charity and it is clear that there was a fundamental misunderstanding as to the content of the objects. Specifically, the Charity understood that the objects included a wide variety of causes of interest to the Orthodox Jewish community. While we believe that the objects pursued would have been charitable if the Organization were constituted to fulfill those objects and that the error was entirely innocent it would be an insult to the audit process if we took the position that many of the causes undertaken were properly covered by the objects."

However, we disagree that all of the unstated objects would be charitable, for example, the following are not recognized charitable purposes: to "protect the country's and the

¹⁸ [https://\[REDACTED\]](https://[REDACTED]) - Accessed April 11, 2017
¹⁹ [http://\[REDACTED\]](http://[REDACTED]) - Accessed April 11, 2017
²⁰ [http://www.\[REDACTED\]](http://www.[REDACTED]) - Accessed April 11, 2017

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Jewish people's national interests, promote Zionist values in Israeli society", "challenging biased media coverage", "fights the BDS movement" and "defending against lawfare suits fighting academic and economic boycotts".

Further, while increasing the effectiveness and efficiency of Canada's armed forces is charitable, supporting the armed forces of another country is not. It is our position that many of the Organization's purported activities described in section 2 b) - non-charitable activities below, are to further the purpose of increasing the efficiency and effectiveness of the Israeli armed forces, which is not a recognized charitable purpose in Canada.

As well, given the Organization's lack of direction and control over its purported activities, and its receipting practices, as described in detail below, it is our position that the Organization is also established to gift funds to non-qualified donees. Funding entities that are not qualified donees is not a charitable purpose.

Accordingly, it is our position that neither the Organization's stated nor its unstated purposes are exclusively charitable. For this reason, it appears there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

2. Failure to devote resources to charitable activities carried on by the Organization itself

a) Lack of direction and control over the use of resources / resourcing non-qualified donees

We refer to the comments of the Federal Court of Appeal in *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*²¹:

"Pursuant to subsection 149.1(1) of the [Income Tax Act], a charity must devote all its resources to charitable activities carried on by the organization itself. While a charity may carry on its charitable activities through an agent, the charity must be prepared to satisfy the Minister that it is at all times both in control of the agent, and in a position to report on the agent's activities..."

And

"Under the scheme of the Act, it is open to a charity to conduct its overseas activities either using its own personnel or through an agent. However, it cannot merely be a conduit to funnel donations overseas".

²¹ *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*, 2002 FCA 72 (FCA) at paragraphs 40 and 30 respectively

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As re-iterated by the Court in *Lepletot v MNR*²², an organization may carry on charitable activities through an agent if the activities are conducted on behalf of the organization. However, it is not enough for an organization to fund an intermediary that carries on certain activities. The Act requires that the intermediary actually conduct those activities on the organization's behalf. Likewise, the Court in *Canadian Magen David Adom for Israel* mentions the importance of monitoring the activities when it stated that:

[A] charity that chooses to carry out its activities in a foreign country through an agent or otherwise must be in a position to establish that any acts that purport to be those of the charity are effectively authorized, controlled and monitored by the charity.²³

The Organization is conducting its purported activities through agents that are pre-existing entities, and, most, if not all, the purported activities are already being conducted by those pre-existing entities. For these reasons, the existence of an arrangement between the Organization and the entities that demonstrates that the Organization exercises sufficient and continuing direction and control over, and full accountability for, all its resources and related activities, is critical.

Given the information we have received and reviewed, it is our position that the Organization does not exercise the required degree of direction and control over the use of its funds, or over the activities conducted with those funds, to establish that it is carrying out its own charitable activities in accordance with the provisions of the Act. Rather, it appears that the Organization is acting as a conduit: funding the programs of its agents. The following outlines the basis for our concerns.

Agency Agreement

During the audit period the Organization provided general agency agreements with multiple agents. The Organization, as Principal, appointed the agents to assist it in carrying out its charitable activities.

The audit findings disclosed that:

1. The agency agreement does not contain the exact physical addresses of the two parties.
2. Provision 1 of the agreement requires a detailed listing of activities. The Organization failed to provide a clear, complete, and detailed description of the activities to be carried out by the agent. There were limited descriptions as to the

²⁴ *Lepletot v MNR*, 2006 FCA 128 at para 5, [2006] 3 CTC 252

²⁵ *Canadian Magen David Adom for Israel v MNR*, 2002 FCA 323 at para 66, [2002] FCJ no 1260

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location of the proposed activities, but no timeframes, or deadlines for completion of activities. Absent specification of the precise role the Organization will assume in the conduct of an activity, it cannot be concluded that the activity will be carried out in a manner that maintains ongoing direction and control. A general description allows for the Organization to simply act as a conduit, channelling monies to fund projects being conducted by others;

3. Provision 3 requires funds of the Organization be segregated from any other funds that the agent receives. Absent financial reports from the agents, we were unable to verify if this requirement was met.
4. Provision 4 of the agreement states "Where any of the Principle's funds are used in the acquisition, construction or improvement of any immoveable capital property, legal title shall be held in the name of the Principle". It is our understanding that Israeli law does not permit foreign ownership of capital property.
5. Provisions 7 and 8 require ongoing written instructions on the part of the Organization; we found no instances where such instructions were provided. Absent supporting documentation we could not verify if the Organization maintains communication with any of its agents beyond the initial application process and if its purported activities are being carried out according to its intended purpose.
6. Provisions 6-8 require budgets and complete reports, including a detailed breakdown of expenditures. We identified some limited budgets included with applications made by agents; however, the budgets lacked detail and often were not specific to the request for funds. We identified no examples of financial or narrative reports received from agents.
7. The agreements are generally signed but not dated.

Based on our review, we are concerned that, notwithstanding the agreements in place, it appears that the purpose of the Organization may not be to carry out its own activities, but to fund and facilitate the work of the agents. Our concerns are further substantiated by the following factors:

Scholarships/Stipends/Awards

Scholarships, bursaries and prizes are often awarded to assist in the education of qualified students. As the advancement of education is a charitable purpose according to common law, an entity established to award scholarships, bursaries or prizes may be

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eligible for registration as a charity under the Act. There are however, certain criteria that have to be met in order for an entity to qualify as charitable under this purpose.

In respect of criteria, as with other purposes the presence of "public benefit" is an essential element in determining whether a particular purpose and activity in furtherance of that purpose is charitable at law. The criteria used in selecting the recipients of a scholarship, for example, must be such that those who are eligible for consideration constitute a sufficient section of the public. Further, a charity should ensure that it has in place certain controls such as a committee responsible for reviewing applications, selecting eligible candidates, awarding the scholarship, and ensuring the funds are being used to advance education. Absent eligibility criteria and the appropriate controls in place, a purpose to provide scholarships/bursaries/prizes/ would likely fail the public benefit test.

Assessment of Applicants

A charity that is adequately directing and controlling its activities should identify the type of activities it wishes to conduct, set criteria for how it will choose which activities to support, and assess applicants against this criteria.

That said, based on documentation provided by the Organization its main focus is in support of religious scholars studying within various institutions in Israel. The Organization's funds are generally wired to institutions then transferred to individuals in the form of student scholarships and post graduate rabbi stipends. From a sample of agents who received funds from the Organization in 2014, approximately 75-80% of those funds went to agents associated or connected to Jewish religious educational institutions. This amounts to between approximately \$24 to \$25 million dollars in 2014.

The Organization provided two different documents that outline its mission statement and its criteria for selecting students and agents; however, both documents appear to refer only to the issuance of scholarships, stipends and other awards to religious scholars. See Appendices A and B.

Other activities, such as those identified in section 1 b) – Unstated purpose above, do not appear to be considered in the mission statement or in the assessing criteria. As a result, it is unclear what process, or merit criteria the Organization is using to assess applicants not requesting funds for scholarships, stipends or other awards. We have seen no documentation to show that any assessment of the non-scholarship/stipend/reward applicants has occurred.

There are no dates on the documents that form Appendices A or B. As a result, we are unsure which document applied during the audit period. We have not been provided with adequate documentation to show that the procedures outlined in either document are being followed.

We have reviewed the assessment process described in Appendix A, and offer the following comments:

- a) "Two letters of recommendation or two references to verify their information." We have not been given any letters of recommendation or reference letters.
- b) "Interview with a representative of Beth Oloth...or with one of our agents in the country of residence. For the interview they are required to bring all supporting documentation." We have not received supporting documentation to substantiate that these interviews took place.
- c) "If they are approved a file is set up for the individual and all subsequent files are placed in the file." Apart from the one page stipend or scholarship application, we have not been given documents associated with individual applicants, such as interview questionnaires, notes, or supporting documentation that an individual brought to their interview.

The procedures identified in Appendix B are less rigorous; our comments follow:

- a) "If the applicant is known to the committee of Beth Oloth no further documentation is needed. However, if necessary, Beth Oloth will seek references from a rabbi and/or mentor." We have not been given documents to show that this step was taken for any of the applicants.
- b) The requirement for an interview is similar, as in Appendix A, but there is no requirement for the applicant to bring supporting documentation. We have not been given documents to show that the interviews took place.
- c) A file is to be set up for each successful applicant. We have not been given such files, apart from a one-page application per applicant.

Sample recipient of funds

We reviewed the documentation available for one of the largest recipients of funds, [REDACTED], which is also referred to in the Organization's documents as [REDACTED] [REDACTED] or by the names [REDACTED] [REDACTED].

At its November 2013 board meeting, the Organization approved a grant [REDACTED] [REDACTED] of \$1,500,000 for the 2014 fiscal year. We searched the agency agreements provided by the Organization and were unable to locate any associated [REDACTED] [REDACTED] for the 2014 fiscal year and were unable to verify if any other agency agreement under the alternative names listed above were for the approved grant.

No documentation was provided to verify on what basis the Organization approved the \$1,500,000 grant (the actual amount transferred was \$1,352,236.47) [REDACTED] and what the funds were used for.

We were provided with an agency agreement for the 2014 year, dated October 1, 2014 (the first day of the 2015 fiscal year) and the attached scholarship/stipend applications are dated in 2015.

We reviewed the documentation attached to the October 1, 2014, agency agreement, the one-page agency agreement described above, and 82 one-page applications for either postgraduate rabbi stipends or for student scholarships. We have the following concerns:

- a) The section on the stipend application forms indicating what amount the applicant was approved to receive was not completed by the Organization.
- b) The stipend application includes figures for family income and expenses for apartment rental and total expenses; however, no supporting documentation was provided to verify the accuracy of these figures.
- c) The scholarship application includes figures for income of parents but no income figures for the applicant, and no indication of the amount the applicant was applying for. No supporting documentation was provided to verify the accuracy of the reported income figures.
- d) The scholarship application includes a section where the Organization indicates whether the individual received a full or partial scholarship, and the amount. This section was not completed.

It is our position that the Organization has not exercised the required degree of direction and control over the use of its funds, or over the activities to be conducted with those funds. Rather, in our assessment, the Organization has acted as a conduit, funding the programs of the agents.

Gifting to Qualified Donees as defined in the Act

While most disbursements listed on the "List of Agents Outside Canada Summary Listing" appear to be supported by agency agreements, we were unable to identify agency agreements for a smaller number of disbursements. These disbursements include:

• [REDACTED]

- [REDACTED]
- [REDACTED]

Given the absence of appropriately structured arrangements (such as agency agreements) establishing the Organization's necessary direction and control over its funds and purported activities, we conclude that the Organization was funding non-qualified donees, contrary to the provisions of the Act.

The Organization has failed to demonstrate that it restricted its activities to carrying on its own charitable activities or making gifts only to qualified donees as required by the Act.

Given that the Organization has not established that it is operationally or administratively separate and apart from the agents, it is our position that the Organization's purpose is to further the activities of the agents by accepting donations for the agents' programs from, and issuing receipts to, Canadian donors. This view is substantiated by the following factors:

Board Meeting Minutes

The board minutes consist of a listing of individuals/organizations who have applied for funding, their location, the amount requested, approval/denial, notes and an indication of whether the Organization considers the applicant to be an agent. (See Appendix E for a sample page). According to the Organization, the board of directors meet on a monthly basis to review the applications for funding, including scholarships.

The minutes do not specify who attended the meetings. In a letter dated May 27, 2016, the Organization confirmed that all meetings were attended by David Ehrentreu and Binyomin Labkovsky. The third member of the board, Chana Hirschman was apparently inactive during the three years under audit.

According to the board minutes, the designation of a particular applicant as an agent appears to be based on a \$10,000 threshold, where those receiving \$10,000 or more are designated as agents and those receiving less are not. The minutes do not clarify how the Organization characterizes its relationship with those receiving less than \$10,000. As well, the Organization has provided agency agreements for many applicants who received less than \$10,000. Based on this, it is not clear which recipients of funds the Organization considers to be agents.

The directors have rejected 5.96 percent of applicants during the 2014 year. For example, within the October 2013 board minutes the Organization reviewed 366 applications and rejected nine (2.46%). Reasons for rejection include references not submitted, disqualified, doesn't meet criteria, incomplete application and over committed in this field. The Organization has not provided documentation to support its rationale

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for rejection of the particular applicants. For example, the Organization has not provided analysis or guidelines regarding the amount of resources it was attempting to allocate to specific fields of work. The Organization also has not provided documentation showing that it has reviewed the references for any of the approved applicants.

The minutes do not contain any additional information on governance issues. For example, there is no record of any discussions as to where, why, or on what basis the Organization allocated its resources. There is also no discussion of the financial situation of the Organization, such as a periodic review of financial statements. We are unsure how the board of directors determined that it has enough resources available to cover the disbursements that it approved at each meeting. Finally, there is no record of discussions regarding the performance of any recipients of Organization funding, or record of any other assessment of the impact of any disbursements made by the Organization.

Human Resources

The Organization employed two part-time employees, who were collectively paid \$6,158 as reported on Schedule 3 of Form T3010, *Registered Charity Information Return* for the 2013 and 2014 fiscal years (no expenses were reported in 2012). The Organization has only two active directors. During the audit period, there were approximately 2,274 projects in progress as per the Organization's "List of Agents Outside Canada Summary Listing", with a reported total of \$35,151,894 in expenditures. Given the volume of projects, it is difficult to accept that any real supervision could be exercised on a regular and on-going basis by the Organization through these positions, even should their involvement extend to the substantive charitable activities. Absent supporting documentation, it is not clear that the Organization maintains communication with any of its agents beyond the initial application process and subsequent disbursement of funds. It appears that once the Organization approves an application, its involvement in, and authority over, the actual conduct of any substantive activity is limited to providing the funds to the agent.

Multiple Administrative Layers

We identified numerous instances where the Organization is forwarding funds to agents with the name [REDACTED]. For example the Organization forwards funds to [REDACTED] and others. It is our assumption that these agents then forward the funds along to other agents such as [REDACTED]. Where there are multiple layers of agents, achieving an adequate level of direction and control is more difficult.

Given that the Organization has not devoted all of its resources to its own charitable activities or to gifting to qualified donees, it has failed to meet the definitional

requirements of paragraphs 149.1(1) and 149.1(2) of the Act. For this reason, it is our position that there are grounds for the Minister to revoke the charitable status of the Organization under paragraph 168(1)(b) of the Act.

b) Non-Charitable Activities

In our opinion, even should the Organization be able to establish the activities conducted through its agents in the course of the selected projects to be its own, not all projects are charitable in law.

Audit Findings

Support for Armed Forces of another Country

Mechinot

The Organization forwards funds to a number of agents who appear to be Mechinot. "A Mechina (plural Mechinot) is an Israeli educational program that prepares high school graduates for serving in the Israeli Army or study at an institution of higher learning in Israel."²⁴ While there appear to be both pre-army and college preparatory mechinot, the agents listed below are all identified as pre-army mechinot. We reviewed additional information for Mechinat [REDACTED]. A description of its activities is as follows:

[REDACTED]

Based on the Mechina website, the program intends to empower participants [REDACTED]

[REDACTED]
There is also physical training that includes fitness-training, martial arts training, learning to abseil, navigation training, weapons training, mentoring by IDF officers, visits to army bases and sites of historic battles.²⁶

It is our position that these pre-army mechinot exist to provide support to the Israel Defense Forces, and that funds forwarded to these mechinot are therefore in support of foreign armed forces.

Moreover, the following is a list of agents provided by the Organization that may be supporting a mechina, or directly operating a mechina. In all cases, the lack of

²⁴ https://en.wikipedia.org/wiki/Mechina#College_preparatory_programs – Accessed April 4, 2017

²⁵ [http://www\[REDACTED\]](http://www[REDACTED]) Accessed April 13, 2016

²⁶ [https://www\[REDACTED\]](https://www[REDACTED]) Accessed April 4, 2017

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documentation makes it difficult to determine the specific activities that were carried out by these agents using the resources of the Organization.

Agent Name(s)	2014 Amount Received	Notes
	\$38,213.17	The agency agreement appears to refer to one entity called [REDACTED], but the name and address on the "List of Agents Outside Canada Summary Listing" match to a mechina. ²⁸
	18,179.60	This agent appears to operate a mechina along with other programs. ^{29,30}
	10,811.77 3,052.88 13,864.65	See notes under <i>Mechinot</i> paragraph above.
	9,248.91	There is a mechina in [REDACTED]. ^{31,32} We are unable to confirm if funds directed to [REDACTED] were forwarded to the mechina or devoted to a different activity.
Total Disbursements in 2014	\$79,506.33	

Other Support

[REDACTED] hereafter referred to as " [REDACTED] " – These four names appear to represent the same agent. Each name is listed at the same address in the "List of Agents Outside Canada Summary Listing" provided by the Organization. Based on its application for funds, the agent is involved in teacher training, teaching mothers, and training in high schools, kibbutz and universities. A lack of documentation makes it difficult to determine the specific activities that were carried out by the agent using the resources of the Organization; however, we noted the following items which confirm a relationship between [REDACTED] and the [REDACTED]:

27

28

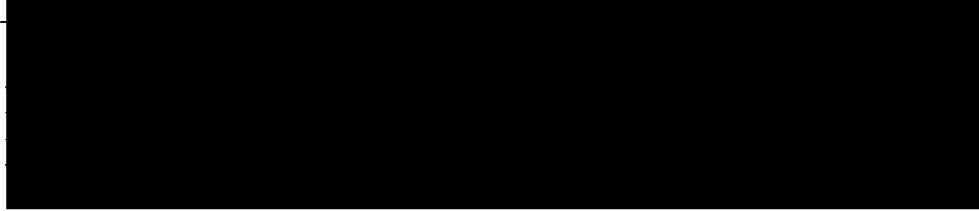
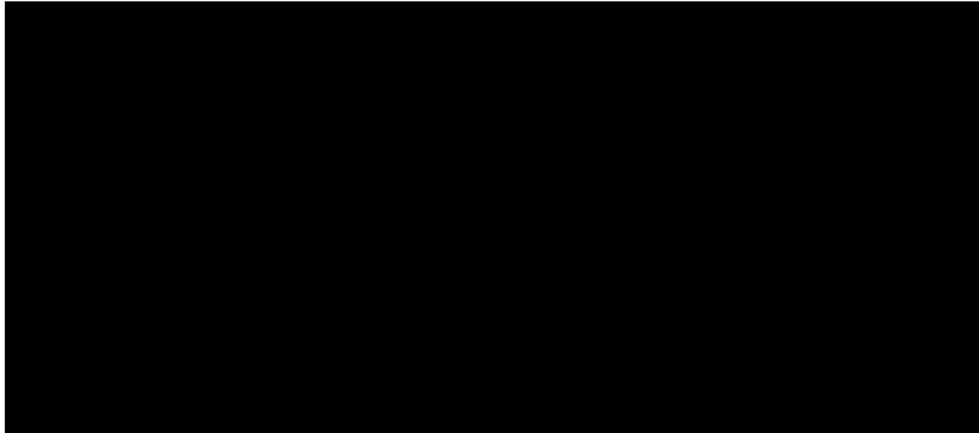
29

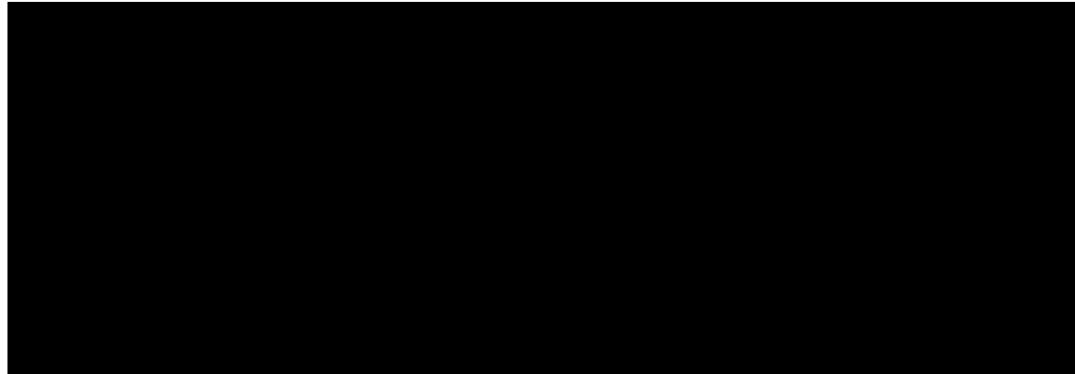
30

31

32

In an interview, [REDACTED] made the following comments regarding the message that [REDACTED] brings to [REDACTED]:





[REDACTED] hereafter referred to as "██████████"

These three names appear to represent the same agent. Its applications for funds refer to support for education, welfare and well-being for young Israelis through educational, psychological, social and cultural programs. A lack of documentation makes it difficult to determine the specific activities that were carried out by the agent using the resources of the Organization; however, we noted the following items that confirm a relationship between █████ and the █████

Based on a United States government website, █████ purpose is similar to its application for funds description except that it includes the additional phrase that narrows its targeted group of beneficiaries to young Israelis, "before, during and after their military service."⁴⁰

Based on the agent's website, its purpose is to █████

⁴¹██████████

Activities of FIT for the benefit of IDF soldiers include lectures at IDF bases, trips to Jerusalem, care packages, and support for special events such as bar/bat mitzvoth.

██████████
Based on its application for funds, █████ provides tours for tourists, workshops for birthright students, seminars for students from abroad, and bar mitzvah celebrations. The application is a general request for funds and does not specify which programs of █████ require funding.

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[REDACTED] attached a 2015 proposed budget to its application. The four programs listed in its budget are [REDACTED]

[REDACTED] We noted that the [REDACTED] budget line was in a different font, and that the figure to be allocated to this budget line was listed as \$270,000. Both the text and the numeric figure were not aligned with other figures in their respective columns within the budget.

We located the [REDACTED] 2015 annual report online.⁴² This annual report included a graphic that listed comparable information to the budget included with the application to the Organization except that " [REDACTED]" was listed as " [REDACTED]", with a figure of \$270,000. (See Appendix C)

Based on the 2012 annual report, its [REDACTED] programs " [REDACTED]" [REDACTED] " The agent lists [REDACTED] [REDACTED] and [REDACTED] among its collaborators. It also notes that it looks forward to [REDACTED]⁴³ [REDACTED]

Conducting projects in the Occupied Territories

The courts have held that an organization is not charitable in law if its activities are contrary to public policy. An activity cannot be held to be contrary to public policy unless there is a definite and officially declared and implemented policy (that is, found in an Act of Parliament, a regulation or other publicly available government document of any kind).⁴⁴

That being said, Global Affairs Canada has officially declared and implemented a policy entitled "Canadian Policy on Key Issues in the Israeli-Palestinian Conflict"⁴⁵. In part, it reads

"Canada's policy on Occupied Territories and Settlements

Canada does not recognize permanent Israeli control over territories occupied in 1967 (the Golan Heights, the West Bank, East Jerusalem and the Gaza Strip). The Fourth Geneva Convention applies in the occupied territories and establishes Israel's obligations as an occupying power, in particular with respect to the humane treatment of the inhabitants of the occupied territories. As referred to in UN Security Council Resolutions 446 and 465, Israeli settlements in the

⁴²

[REDACTED] Accessed April 12, 2017

⁴³

[REDACTED] - Accessed April 12, 2017

⁴⁴ See CRA Summary Policy CSP-P13 *Public policy*

⁴⁵ http://www.international.gc.ca/namo/peace_process-processus_paix/canadian_policy-politique_canadienne.aspx?lang=eng

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occupied territories are a violation of the Fourth Geneva Convention. The settlements also constitute a serious obstacle to achieving a comprehensive, just and lasting peace.

Canada believes that both Israel and the Palestinian Authority must fully respect international human rights and humanitarian law which is key to ensuring the protection of civilians, and can contribute to the creation of a climate conducive to achieving a just, lasting and comprehensive peace settlement.

United Nations Resolutions on the Middle East

Every year, resolutions addressing the Arab-Israeli conflict are tabled in the United Nations, such as at the United Nations General Assembly and the Human Rights Council. Canada assesses each resolution on its merits and consistency with our principles. We support resolutions that are consistent with Canadian policy on the Middle East, are rooted in international law, reflect current dynamics, contribute to the goal of a negotiated two-state solution to the Arab-Israeli conflict, and address fairly and constructively the obligations and responsibilities of all parties to the conflict. Canada advocates a fair-minded approach and rejects one-sided resolutions and any politicization of the issues. Successive Canadian governments have been concerned about the polemical and repetitive nature of many of the numerous resolutions. Canada believes that the United Nations and its member states have a responsibility to contribute constructively to efforts to resolve the Israeli-Arab conflict. Canada will continue to examine carefully each of these resolutions as they come forward".

Moreover, the U.N. Security Council Resolution 2334 adopted by the Security Council at its 7853rd meeting, on 23 December 2016, reaffirmed its relevant resolutions, including resolutions **446** (1979), and **465** (1980) which Canada supports. Resolution 2334 "reaffirms that the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace."

The Fourth Geneva Convention also establishes Israel's obligations as an occupying power, in particular Article 49 which 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 Convention. Article 85 of Protocol 1 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.

It is our understanding that the projects listed in Appendix G are being conducted in the Occupied Territories.

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It is our position that establishing and maintaining physical and social infrastructure elements and providing assistance to Israeli settlements in the Occupied Territories, serves to encourage and enhance the permanency of the infrastructure and settlements and therefore is contrary to Canada's public policy and international law on this issue.

While it is our opinion that the Organization does not maintain direction and control over the activities conducted through its projects, in our view, even should the Organization establish that it maintains direction and control over these activities, the Organization has exceeded acceptable legislative parameters, constituting a failure to devote resources to charitable activities.

Summary

To summarize, it is our position that the Organization has failed to devote its resources to exclusively charitable activities due to the:

- a. absence of direction and control over the use of resources/resourcing non-qualified donees; and
- b. conduct of non-charitable activities.

Accordingly, it is our position that the Organization has failed to meet the requirements of subsection 149.1(1) of the Act that it devote substantially all its resources to charitable activities carried on by the Organization itself. For these reasons, and each of these reasons, it appears there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

3. Failure to Maintain Adequate Books and Records

Legislation and Jurisprudence

Pursuant to subsection 230(2) of the Act, every registered charity "shall keep records and books of account [...] at an address in Canada recorded with the Minister or designated by the Minister containing:

- a) information in such form as will enable the Minister to determine whether there are any grounds for revocation of its registration under the Act;
- b) a duplicate of each receipt containing prescribed information for a donation received by it;
- c) other information in such form as will enable the Minister to verify the donations to it for which a deduction or tax credit is available under this Act."

In addition, subsection 230(4) of the Act also states "Every person required by this section to keep records and books of account shall retain:

- a) the records and books of account referred to in this section in respect of which a period is prescribed, together with every account and voucher necessary to verify the information contained therein, for such a period as is prescribed;
- b) all other records and books of account referred to in this section, together with every account and voucher necessary to verify the information contained therein, until the expiration of six years from the end of the last taxation year to which the records and books of account relate."

The policy of the CRA relating to the maintenance of books and records, and books of account, is based on several judicial determinations and the law, which have held that:

- i. it is the responsibility of the registered charity to prove that its charitable status should not be revoked;⁴⁶
- ii. a registered charity must maintain, and make available to the CRA at the *time of an audit*, meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required documentation and records subsequent thereto;⁴⁷ and
- iii. the failure to maintain proper books, records, and records of account in accordance with the requirements of the Act is itself sufficient reason to revoke an organization's charitable status in the case of material or repeated non-compliance.⁴⁸

Audit Findings

Due to inadequate books and records we were unable to verify the accuracy of reported disbursements, and to determine if the Organization maintained ongoing direction and control over the funds transferred to the agents, and over the activities conducted by the agents. Specifically,

- a) Where an intermediary disburses the Organization's funds for any expense, the Organization must be able to support those expenses with source documentation. For example, if [REDACTED] uses funds from the Organization to purchase office supplies or pay salaries, the receipt for purchase of office supplies or the T4 (or comparable foreign document) is a source document of the Organization and must be maintained with the books and records of the Organization. With the exception of some documentation related to the

⁴⁶ See *Canadian Committee for the Tel Aviv Foundation*, 2002 FCA 72 at paras 26-27, [2002] 2 CTC 93

⁴⁷ *Canadian Committee for the Tel Aviv Foundation*, 2002 FCA 72 at para 39, [2002] 2 CTC 93. Furthermore, failing to comply with the requirements of section 230 of the Act by refusing to make documents available can lead to a fine and imprisonment, in addition to the penalty otherwise provided. See subsection 238(1) of the Act.

⁴⁸ See *Prescient Foundation v MNR*, 2013 FCA 120 at para 51, [2013] FCJ no 512

disbursement to [REDACTED], we have identified no such documentation.

- b) The agency agreements we reviewed are inadequate to establish that any activities that purport to be those of the Organization are effectively authorized, controlled and monitored by the Organization (see Appendix D).
- c) There was a lack of documentation to show that the Organization had been assessing potential agents and beneficiaries against a set of defined criteria.
- d) Board minutes were limited to lists of approved recipients of funds (see Appendix E).
- e) We were not given financial or narrative reports from any of the intermediaries the Organization identified as carrying out its purported activities.
- f) With the exception of some limited correspondence between the Organization and [REDACTED], we have identified no examples of communication between the Organization and its intermediaries beyond the initial application for funds.
- g) Stipend and scholarship application forms are incomplete, and in particular do not indicate the amount of funding that each applicant was approved to receive.
- h) Supporting documents related to stipend and scholarship applications are also incomplete. For example, we did not see examples of reference letters, letters of recommendation, proof of eligibility, or record of interviews with each candidate.
- i) Many of the student scholarship and rabbi stipend applications are completed in Hebrew. While the Act does not explicitly require records to be kept in one of the two official languages of Canada (English or French), charities are strongly advised to do so. Records in other languages cannot be interpreted by the CRA and therefore are not effective in meeting the requirements of the Act at paragraph 230(2), which states that information must be kept "in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under this Act."
- j) The Organization appears to have deposited a number of cheques that are addressed to other entities. Examples of cheques addressed to Gates of Mercy but deposited into the account of the Organization include November 13, 2012, a cheque for \$13,000 and October 8, 2013, a cheque for \$18,600.

Under paragraph 188.2(2)(a), a charity may receive a notice of suspension of its authority to issue an official donations receipt (ODR) if it contravenes subsection 230(2), which is related to books and records.

As well, under paragraph 168(1)(e) of the Act, the registration of a charity may be revoked if it fails to comply with or contravenes subsection 230(2) of the Act.

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Given the Organization's serious failure to fulfill its requirement to maintain and make available adequate books and records, as described above, it is our position that the present case constitutes material non-compliance. For this reason, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(e) of the Act.

4. Issuing Receipts not in Accordance with the Act

a) Inappropriately issuing donation receipts on behalf of non-qualified donees – directed donations

A registered charity cannot issue an official donation receipt if a donor has directed the charity to give the donated funds to a non-qualified donee or to specified persons or entities. Such a donation is not a gift to the charity, but to the specified recipient. In effect, the Organization is an instrument to allow for receipts to be issued for donations made to non-qualified donees, or to persons or entities that are not at arm's length to the donor which deliver an unacceptable private benefit, and is in contravention of the Act.⁴⁹

Donations subject to a general donor direction that it be used in a particular program operated by a charity are acceptable, provided that all decisions regarding utilization of the donation within a program rest with the charity, donations are used for the charity's own charitable activities - undertaken by the charity itself under its continued supervision, direction and control or for gifting to qualified donees as defined in the Act, and no unacceptable private benefit accrues to the donor or any other person or entity. Compliance with these legal requirements means it is necessary to ensure that:

- i. any donor direction is general in nature;
- ii. the Organization itself assumes actual responsibility for making the final decisions regarding usage; and,
- iii. donors relinquish ownership and custody of the gift.

If donors are using a charity as a conduit to donate to non-qualified donees, even if it is to fulfill what appears to be a charitable purpose, or to provide a non- incidental private benefit, the donation is not a gift to the charity, and cannot be receipted.

Given the documents we have reviewed, it is our finding, that the Organization solicits and receives directed donations for non-qualified donees in the context of its projects' activities. For example,

Individuals

⁴⁹ See IT 110R3 "Gifts and Official Donation Receipts" <http://www.cra-arc.gc.ca/E/pub/tp/it110r3/README.html> at paras 15 (f) and (g)

We reviewed a small sample of cancelled cheques for donations received by the Organization. This sample included a number of instances where the Organization appears to be receiving donations designated for specific individuals or families. We reviewed a cheque dated July 30, 2013 for \$500 with a memo that states "██████████" and another cheque on July 31, 2013 for \$1,000 with a memo that states "██████████".

Potential Tuition Payments

We reviewed a cheque dated October 21, 2013, for \$1,000 with a memo that states "tuition for" along with what appears to be the name of the child of the donors.

We reviewed a cheque dated November 18th, 2013, for \$5,792.20 with a memo that lists a Jewish educational facility ██████████, along with what appear to be the names of two parents and a child.

We reviewed a cheque dated November 30, 2013, for \$900 with a memo that lists a Jewish education facility ██████████, along with what appears to be the name of the child of the donors.

Weddings

We identified four instances where memos on cheques appear to indicate donations in support of a wedding for a specified couple. For example from September 9 to September 16, 2013, the Organization received at least six cheques for a total amount of \$2,620. Each of the cheques references the wedding of the same rabbi.

Other Concerns

The Organization received six cheques from November 13 to November 21, 2013, for a total amount of \$2,102, which were designated for a specific woman. We did not identify this individual among the listing of agents who received funds from the Organization.

We reviewed a cheque dated November 18, 2013, for \$12,000 with a memo that stated "Rabbi Reidel ██████████." We are concerned that this donation may represent funds directed for the personal use of Rabbi Reidel.

We also identified a Go Fund Me website for a couple living in the United States who were raising funds for adopting a child. The website stated, "To receive a tax-deductible receipt for your check... In Canada payable to: Beth Oloth, and mail to: Rabbi Reidel,

[REDACTED] Please note "XXXX Adoption Fund" on memo line.⁵⁰

b) Issuing receipts on behalf of non-qualified donees

A charity may only issue receipts for gifts made to *it*, for activities that further its charitable purposes. Organizations with receipting privileges may not issue receipts for gifts to third parties.

The audit has revealed that the Organization does not demonstrate direction and control over its purported projects, and in our opinion the Organization is effectively lending its charitable registration number and corresponding tax-receipting privileges to non-qualified donees. The following examples, while not an exhaustive list, support our findings:

We conducted internet searches and identified 21 organizations who advise their Canadian donors to direct their donations to the Organization (See Appendix F). From our review of disbursements made by the Organization to foreign agents, these 21 organizations received \$105,200 in 2012, \$436,928.55 in 2013 and \$761,501.08 in 2014. These figures may not be complete as variations in spellings and agent names, and funds disbursed to individual rabbis rather than to agents, make it difficult to determine the amount of funding received by each non-QD.

The following are three specific examples of the arrangement described above:

[REDACTED]
[REDACTED] received \$34,575 from the Organization in 2012, \$40,796 in 2013 and \$54,430 in 2014. [REDACTED] asks Canadian donors to send checks "C/O Beth Oloth, [REDACTED] Dr. [REDACTED] (cheque payable to Beth Oloth with " [REDACTED] " in the note)."⁵¹ The 2012 Annual Report of Ascent includes wire details for the Organization and asks donors to "Please let Beth Oloth and [REDACTED] know that a donation is being made and for how much."⁵²

[REDACTED]
[REDACTED] has received \$175,942 in 2013 and \$36,497 in 2014. From the 2014 Annual report of [REDACTED] "To make a tax deductible donation in Canada, please make your check payable to Beth Oloth and earmark it to [REDACTED]. Please send

⁵⁰ [https://www.\[REDACTED\].org](https://www.[REDACTED].org) Accessed April 12, 2017

⁵¹ [http://www.\[REDACTED\].org](http://www.[REDACTED].org) Accessed April 12, 2017

⁵² [https://www.\[REDACTED\].org](https://www.[REDACTED].org) Accessed April 12, 2017

the check to: [REDACTED]

[REDACTED]⁵³

[REDACTED] has received \$98,510 in 2013 and \$205,294 in 2014. From their website, "
[REDACTED]

⁵⁴

c) Inappropriately issuing donation receipts where no gift made (cheques addressed to third parties)

The Act permits a registered charity to issue official donation receipts (ODRs) for income tax purposes for donations that legally qualify as gifts. The term 'gift' is not defined in the Act and therefore assumes its common law meaning. Under common law, "a gift is a voluntary transfer of property owned by a donor to a donee, in return for which no benefit or consideration flows to the donor,"⁵⁵ directly, indirectly or anticipatorily.⁵⁶ Generally, for purposes of sections 110.1 and 118.1, a gift under common law is made if a taxpayer has donative intent, and all three of the following conditions are satisfied:

- there must be a voluntary transfer of property to a qualified donee;
- the property transferred must be owned by the donor; and
- no benefit or consideration must flow to the donor.

We identified numerous instances where cheques received and deposited by the Organization were addressed to parties other than the Organization. Based on this information, it does not appear that these donors intended to make a gift to the Organization. As a result, the Organization should not have issued an ODR for these donations. Of particular concern are a number of cheques that are addressed to "Gates of Mercy," another registered charity of which Rabbi Reidel is a director. In its letter dated May 27, 2016, the Organization claimed, "there is no ongoing relationship between [the Organization] and Gates of Mercy."

d) Required elements and practices where issuing Official Donation Receipts

⁵³ [http://\[REDACTED\]](http://[REDACTED])

- Accessed April 12, 2017

⁵⁴ [https://\[REDACTED\]](https://[REDACTED])

Accessed

April 13, 2017

⁵⁵ *The Queen v. Friedberg*, 92 D.T.C. 6031, [1992] 1 C.T.C. 1 at p 2, [1991] F.C.J. No. 1255, (1991) 135 N.R. 61 (F.C.A.) (Friedberg), and see also *McPherson v. The Queen*, [2006] T.C.C. 648 at para 19 per Little, J., [2007] 2 C.T.C. 2277, 2007 D.T.C. 326 (T.C.C.)

⁵⁶ *Webb v. The Queen*, [2004] T.C.C. 619, [2005] 3 C.T.C. 2068 (T.C.C.) per Bowie J. at para 16

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The law provides various requirements with respect to the issuing of ODRs by registered charities. These requirements are contained in Regulations 3500 and 3501 of the Act and are described in some detail in Folio S7-F1-C1, *Split-receipting and Deemed Fair Market Value*.

ODRs issued by the Organization do not contain the following required items:

- i. The date on or year in which the donation was received where this date varies from the date of issuance (note there is only one date on the ODR which appears to be the date of issuance)
- ii. The place or locality where the receipt was issued
- iii. The full address of the donor (from a review of ODRs 9400-9499 we identified 7 ODRs that did not contain full address information - 9426-28, 9449, 9454, 9483 and 9497)
- iv. For Gifts-in-Kind, a brief description of the donated property (see ODR 9684)

Control of ODRs

- i. The Organization does not maintain an exact copy of each ODR issued. Electronic copies of ODRs provided during the audit do not include the statement "Official Receipt for Income Tax Purposes"
- ii. Not all serially numbered ODRs are accounted for. For the 2014 year, we identified 106 instances of gaps in the sequence of ODRs issued.
- iii. For computer generated receipts, the system should be able to print out a listing of ODRs issued, including the donor's name and address, the date of the donation, the date of the receipt if that date differs from the date of the donation, the serial number of the receipt, the type of gift and the donation amount. The summary listing we received does not include the date of donation, or date of issuance of each ODR.

e) Issuing ODRs to other registered charities

ODRs should not be issued to other registered charities to acknowledge gifts nor should other registered charities insist on receiving ODRs.⁵⁷ ODRs that bear a charity's registration number and other information required by the Act are for tax deduction or credit purposes only.

We identified a number of instances where the Organization issued ODRs to other registered charities including ODRs number 5589, 5625, 5987 and 6614. Under paragraph 168(1)(d), the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and its Regulations. Issuing a

⁵⁷ See section 3500 of the Regulations

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donation receipt where there is no gift, no donative intent or the information on the receipt is false, is not in accordance with the Act. It is our position that the Organization issued receipts otherwise than in accordance with the Act and the Regulations. For each reason identified above, there may be grounds for revocation of the Organization's charitable status.

5. Failure to File an Information Return as and when Required by the Act and/or its Regulations

Legislation and Jurisprudence

Subsection 149.1(14) of the Act states that:

Every registered charity and registered Canadian amateur athletic association shall, within six months from the end of each taxation year of the charity or association and without notice or demand, file with the Minister both an information return and a public information return for the year in prescribed form and containing prescribed information.

It is the responsibility of a charity to ensure that the information provided in its Form T3010, schedules and statements, is factual and complete in every respect. A charity is not meeting its requirements to file an information return in prescribed form if it fails to exercise due care with respect to ensuring the accuracy thereof. The Federal Court of Appeal has confirmed that major inaccuracies in a completed Form T3010 are a sufficient basis for revocation.⁵⁸

Audit Findings

- a) There are discrepancies in the Organization's reporting of its foreign activities on Schedule 2. In 2014, the Organization reported total expenditures on activities outside Canada (Line 200) of \$31,592,328, and that \$27,059,820 of this amount was carried out through intermediaries as per the list attached to the T3010. During our audit, the Organization provided a listing of "Agents Outside Canada Summary Listing" which includes total disbursements of \$31,592,328 through 2,274 agents. On Line 210 of Schedule 2, the Organization included amounts disbursed to only 694 of these agents. The Organization reported total "Charitable distributions" of \$32,699,609 on its Financial Statements. This leaves a balance of \$1,107,281 unaccounted for on Form T3010. In addition, in 2014 the Organization reported disbursement of funds in Brazil, Israel, the United Kingdom and the US on Schedule 2. Per the attached schedule, the Organization disbursed no funds to Brazil, but did make disbursements in Argentina, France

⁵⁸ *Opportunities for the Disabled Foundation v MNR*, 2016 FCA 94 at paras 48-51

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and Australia. Issues similar to those identified on the 2014 Form T3010 are also a concern in prior audit years.

- b) The Organization reported the majority of its disbursements on Line 4920. This was primarily because it included all disbursements to agents on this line. Line 4920 is intended to include expenses that do not fit into any of the expense lines between Lines 4800 and 4910. Where an organization funds activities through an agent, it should be receiving sufficiently detailed financial reports to allow it to allocate the expenses among other expense lines to demonstrate a breakdown of such. For example, if the agent spends funds from the Organization on travel or vehicle expense, these disbursements should be reported on Line 4810 – Travel and vehicle expenses. Reporting all disbursements to agents on Line 4920 is inadequate and indicates that the Organization was not maintaining adequate direction and control of the activities carried out through its agents.
- c) The Organization has included Form TF725, the Registered Charity Basic Information Worksheet but has not completed the Program areas section of this sheet.

The Organization's options:

a) No response

You may choose not to respond. In that case, the Director General of the Charities Directorate may give notice of its intention to revoke the registration of the Organization by issuing a notice of intention in the manner described in subsection 168(1) of the Act.

b) Response

Should you choose to respond, please provide your written representations and any additional information regarding the findings outlined above **within 30 days** from the date of this letter. After considering the representations submitted by the Organization, the Director General of the Charities Directorate will decide on the appropriate course of action, which may include:

- no compliance action necessary;
- the issuance of an educational letter;
- resolving these issues through the implementation of a Compliance Agreement;
- the application of penalties and/or suspensions provided for in sections 188.1 and/or 188.2 of the Act; or

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- giving notice of its intention to revoke the registration of the Organization by issuing a notice of intention to revoke in the manner described in subsection 168(1) of the Act.

If you have any questions or require further information or clarification, please do not hesitate to contact me at the numbers indicated below. My team leader, Maria Grieco, may also be reached at [REDACTED].

Yours sincerely,

[REDACTED]

Luke Pantzi
Charities Audit
Kitchener TSO
Telephone: [REDACTED]
Facsimile: 519-585-2803
Address: 166 Frederick Street
Kitchener ON N2H 0A9

Enclosures (7)

Appendix A

PROTECTED B

Beth Oloth

525 Coldstream Ave. Toronto, Ont.
M6B 2K7

Mission Statement

The goal of Beth Oloth is to further Jewish Education. Our mission is to stimulate Scholars and serious Judaic students to have a greater interest in furthering the study of the Torah, Talmud and Jewish Law thereby furthering and perpetuating the study of Jewish education. We focus on the diligent minds and students showing potential to enable them to continue their studies. We also encourage those showing the aptitude and ability to teach others by giving them grants enabling them to stay in the Education field. These Scholarships/grants show them that their work is valuable and appreciated. Beth Oloth is not affiliated to any political party or organization, our sole purpose and focus is Jewish Education.

Criteria

- 1) Scholars, Students, and teachers, who show passion in perpetuating Jewish Religious studies and Jewish law.
- 2) Showing interest in advancing Jewish Studies
- 3) The scholar/student must have a mentor/rabbi who is aware of his studies and is ready to vouch for his diligence and passion.

Procedure for vetting Students for Scholarships

- 1) Fill out an application form (please find attached).
- 2) Two letters of recommendation or two references to verify their information.
- 3) Interview with a representative of Beth Oloth here in Toronto or with one of our agents in the country of residence. For the interview they are required to bring all the supporting documentation.
- 4) If they are approved a file is set up for the individual and all subsequent files are placed in the file.

Appendix B

PROTECTED B

- adult education
- spreading religion amongst the masses (outreach)

Considerations

- Quality of academics
- Previous success rate
- Present and potential need in any area and field of education and learning.
- Future impact in the community with a primary focus on perpetuating Jewish Heritage.

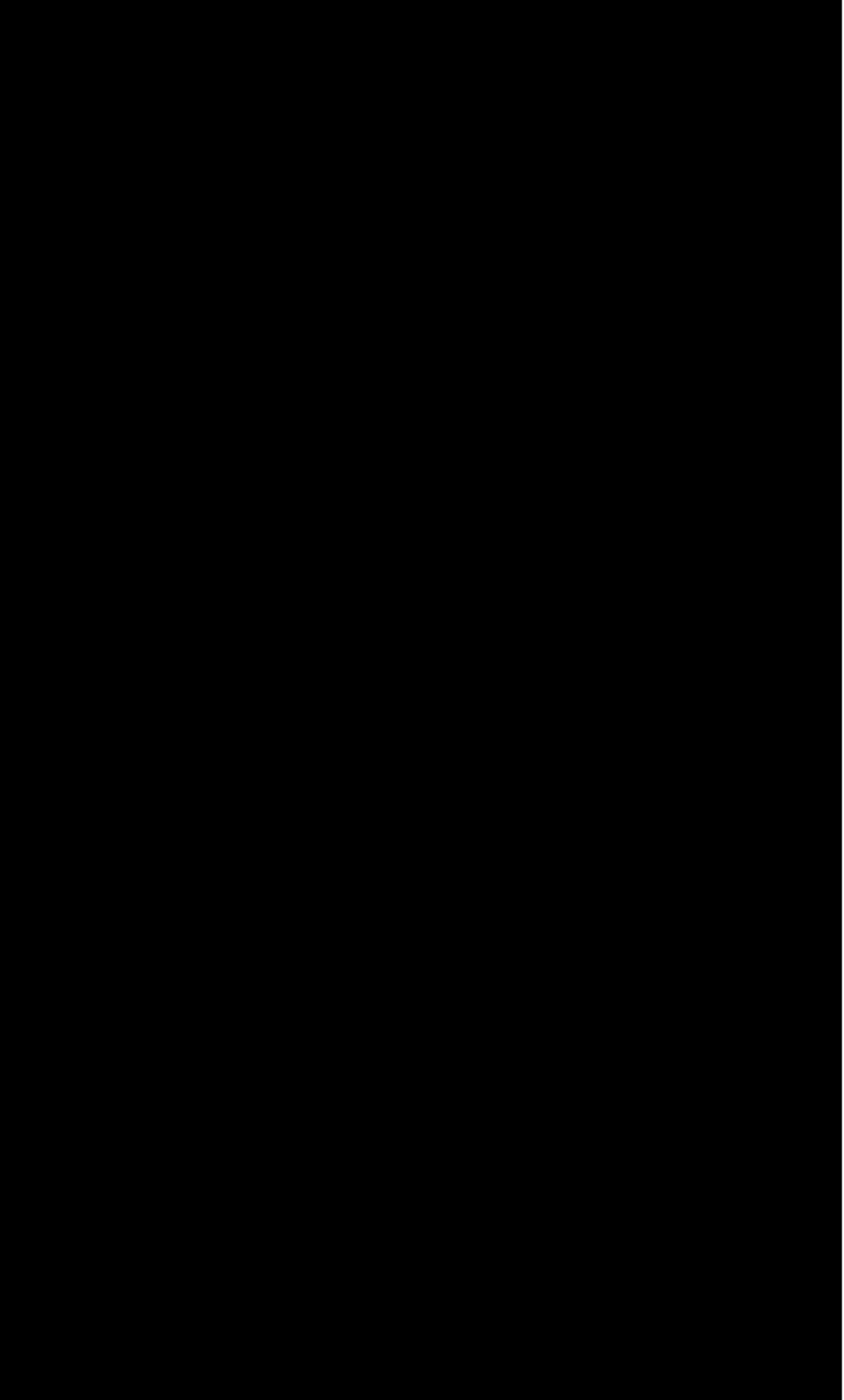
Agents

To qualify as an agent we look for a person with leadership and people's skills. We require the person to have the ability to interview and evaluate people. The agent either approaches us and request to be an agent (many are already running institutions or organizations) or we approach them after they have been recommended.

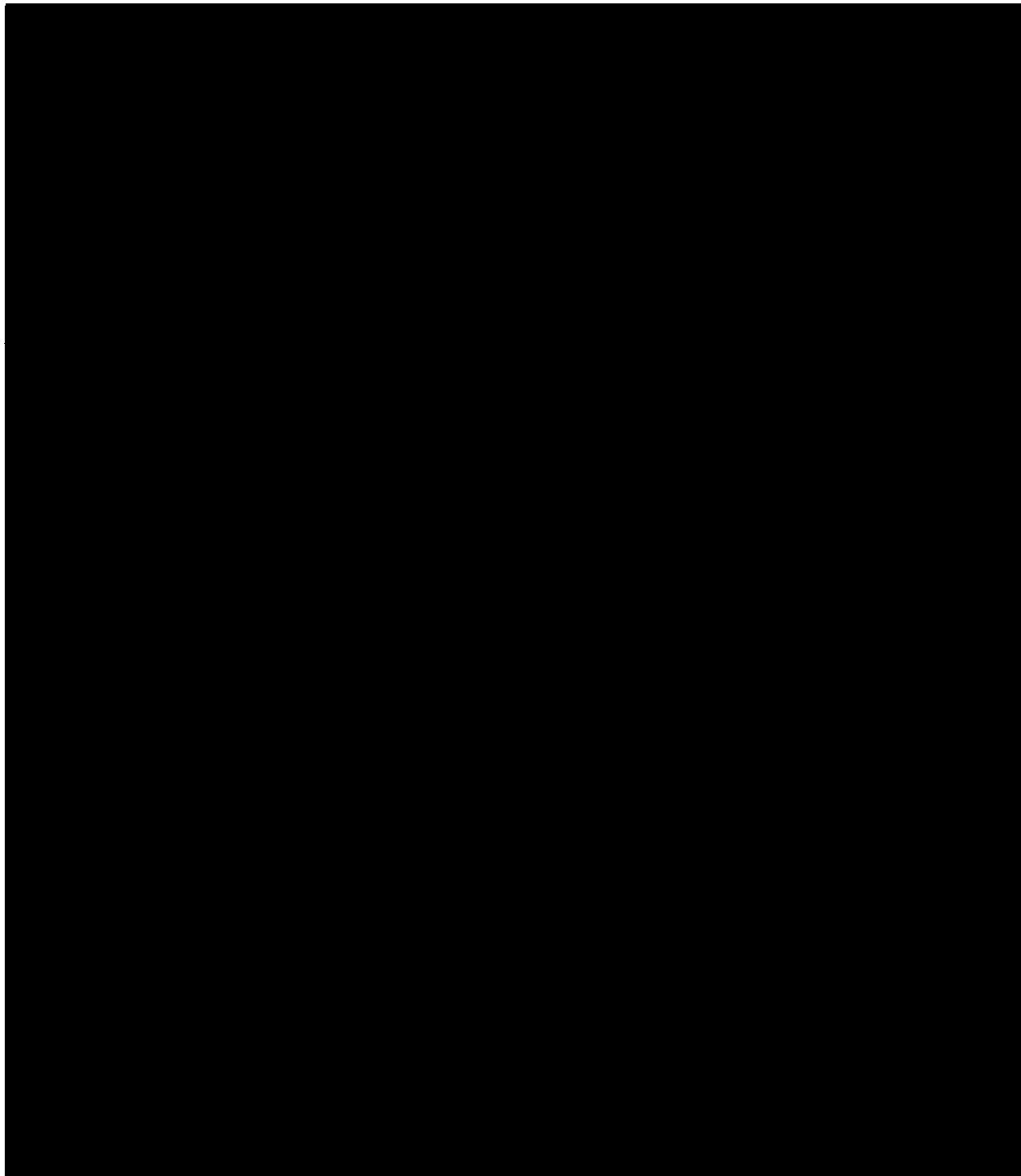
The needs of our community are many. We realize the challenges and understand that we are unable to help everyone. Therefore, considerations and choices are done with discernment, good insight and astuteness.

Appendix C

85'd



Appendix C



Appendix D

PROTECTED B

This agreement made in duplicate this 1 day of OCT 20 14

Beth Oloth Charitable Organization

(Hereinafter called the "Principal")

OF THE FIRST PART

---And---

[REDACTED] (Hereinafter called the agent)

OF THE SECOND PART

Whereas the principal is a Canadian registered charity and wishes to retain the Agent to assist in the administration of the charitable activities of the principal;

And whereas this agreement is to be carried out in compliance with the requirements of the income tax act that as a registered charity, the principal must direct and control the administration of its charitable activities

Therefore the parties agree as follows:

1. The Agent agrees to assist in the administration of the following charitable activities and programs of the principal.
NOTE: The specific activities and programs the Principal wishes the agent to assist in administering MUST be included.
2. The agent agrees that the Principal shall have and will maintain full and complete direction, control and supervision over the application of its funds.
3. The funds of the Principal shall remain segregated and apart from the funds of the Agent so that the role of the Principal in any particular activity or program is separately identifiable as its own charitable activity.
4. Where any of the Principal's funds are used in the acquisition, construction or improvement of any immovable capital property, legal title shall be held in the name of the Principal.
5. The Agent shall submit a budget in a form acceptable to the Principal two (2) months before the first day of the Principal's fiscal year
6. The Agent shall maintain full complete books and records of, and shall provide to the Principal on a regular basis, or at any time upon request, full and complete reports on, the administration and application of the funds of the Principal's funds received by the agent and a detailed breakdown of expenditures made in respect of the charitable activities performed so as to enable the Principal to make informed decisions as to the application of its funds and to maintain full and complete books and records of same. These reports will be in a form acceptable to the Principal.
7. All expenditures of the funds of the Principal will be pursuant to the written direction of the Principal and will be supported by vouchers and/or other relevant documentation.
8. The Agent agrees that he will, upon request, be available for consultation with a representative or representatives of the Principal.
9. The Agent will permit the Principal's Board of Directors to enter at reasonable times, any premises used by the Agent in connection with the activities and programs for which he is responsible pursuant to this agreement in order to observe and evaluate the activities and programs and inspect all records relating to the same
10. The agreement will be in force from the 1 day of OCT until it is superseded or replaced by a subsequent agreement or until it is terminated by either party by giving thirty (30) days written notice. In the event of termination, the Agent will refund forthwith to the Principal any monies advanced by the Principal and not expended in accordance with the approved budget.

[REDACTED] (For the principal)

Witness

Appendix F - Directed Donations

Organization	Rabbi	Website	Website Reference to Beth Cloth	2012	2013	2014	Notes
				\$ 21,650.00	\$ 5,201.52	\$ 216.52	
				\$ -	\$ -	\$ 220,270.48	
				\$ -	\$ 98,510.59	\$ 205,394.46	
				\$ -	\$ -	\$ 6,530.32	
				\$ -	\$ -	\$ 19,091.94	
				\$ -	\$ -	\$ -	
				\$ -	\$ 4,834.55	\$ 2,566.35	
				\$ -	\$ 28,943.07	\$ 69,120.40	

\$ - \$ - \$ 5,419.71

\$ 34,575.00 \$ 40,796.21 \$ 54,430.32

\$ - \$ - \$ -

\$ 240.00 \$ 1,781.85 \$ 349.06

\$ - \$ - \$ -

\$ - \$ - \$ -

\$ 700.00 \$ 254.78 \$ 4,520.25

\$ 6,255.00 \$ 24,170.84 \$ 42,657.57

\$ - \$ - \$ -

\$ - \$ 3,312.59 \$ 27,249.10 Reference to Beth Oloth
has been removed as of
April 13, 2017 but was
there on April 4, 2017

\$ 41,780.00 \$ 53,180.37 \$ 60,984.18

\$ - \$ 175,942.18 \$ 36,497.23

\$ - \$ - \$ 6,203.19

\$ - \$ - \$ -

Total Disbursements 105,200.00 436,928.55 761,501.08

Appendix G - Projects Conducted in the Occupied Territories

Organization	2014	Address Details
	\$113,970.32	
	\$112,216.61	
	\$82,730.53	
	\$80,853.47	
	\$76,932.86	
	\$67,161.28	
	\$45,815.14	
	\$44,225.98	
	\$42,762.12	
	\$39,414.44	
	\$30,811.15	
	\$26,851.02	
	\$24,910.07	
	\$18,200.58	
	\$17,770.97	
	\$17,760.02	
	\$17,229.51	
	\$16,770.57	
	\$16,410.77	
	\$13,586.74	
	\$12,588.30	
	\$12,256.60	
	\$11,545.94	
	\$10,811.77	
	\$9,380.00	
	\$9,152.74	
	\$9,000.00	
	\$9,000.00	
	\$8,691.94	
	\$7,259.25	
	\$7,116.15	
	\$7,100.00	
	\$7,034.97	
	\$6,713.76	
	\$6,417.39	
	\$6,300.10	
	\$6,203.19	
	\$6,048.91	
	\$5,776.33	
	\$5,530.32	
	\$5,521.40	
	\$5,412.90	
	\$5,370.20	
	\$5,140.22	
	\$5,108.97	
	\$5,101.69	
	\$5,000.00	
	\$4,830.76	
	\$4,518.38	
	\$4,308.15	

\$4,117.58
\$4,075.01
\$4,000.00
\$3,600.00
\$3,301.26
\$3,222.12
\$3,052.88
\$2,910.65
\$2,747.55
\$2,722.13
\$2,260.00
\$2,165.16
\$2,059.53
\$1,948.65
\$1,866.80
\$1,638.29
\$1,555.10
\$1,445.20
\$1,431.76
\$1,280.00
\$1,099.02
\$1,092.20
\$1,088.85
\$1,074.04
\$1,063.71
\$1,000.00
\$1,000.00
\$967.81
\$881.08
\$762.20
\$688.35
\$656.91
\$549.51
\$541.29
\$109.22
\$105.52
\$99.66
\$98.54
\$98.54
\$98.49
\$10,990.19
\$6,362.04

Total Disbursements: \$1,202,451.29

A facsimile from

To: Katie Kesselring
Charities Audit
Kitchener Tax Services Office
Canada Revenue Agency

Fax number: (519) 585-2803

Date: 2018-02-08

Regarding: Beth Oloth Charitable Organization

Comments:

There are thirteen (13) pages enclosed including this cover. In the event of a transmission problem, please contact [REDACTED].

February 8, 2018

VIA FAX (519) 585-2803

*Kitchener Tax Services Office
166 Frederick Street
Kitchener, Ontario N2H 0A9*

Attention: Katie Kesselring

Dear Ms. Kesselring

**Re: Audit of the Beth Oloth Charitable Organization
Business No. 118807080RR0001
Your File No.: 0599530
Our File No.: [REDACTED]**

This letter is in response to your letter to my attention dated October 31, 2017, regarding Beth Oloth Charitable Organization (the "Charity" or the "Organization"). Your letter raises five separate areas of concern. We did provide some part of the Organization's positions with respect to these concerns in our previous letter, but will take the opportunity now to provide a response to the points that you specifically raise in your latest letter. Your letter is effectively divided into areas of background and information, followed by specific comments regarding potential areas of non-compliance. We take it that there is no specific need to comment on every element of what you call background, except where we disagree with your review of the facts or law and where your conclusion turns on that interpretation. We have limited our comments accordingly.

Preliminary Issues

Notwithstanding our above comments, we take some issue with your assertion that the books and records of the Organization were not made available to you. As you would know from the Federal Court of Appeal's decision in the *Prescient Foundation*¹ case, an allegation by CRA of insufficient books and records is limited to those books and records which are necessary to illustrate the answer to the questions posed. Your allegation on page six that the Organization did not make its books and records available for your review is clearly incorrect. Your letter itself refers to the fact documents were provided to you, including emails, agency agreements, financial records, minutes and other documents. To our knowledge, all the relevant documentation was provided to you.

¹ *Prescient Foundation v. Minister of National Revenue*, 2013 FCA 120

Furthermore, you insinuate that the directors of the Organization have an obligation to meet personally with the CRA. If you have authority for this proposition we would appreciate you providing it to us, but short of such authority, no negative inference can be drawn from their unwillingness to meet with you.

Finally, and most importantly, your contention that the contents of the email did not include sufficient detail to show that the Charity is maintaining adequate direction and control over its resources may have resulted from a misunderstanding of the situation. We intend to describe that situation more fully under another part of this letter, and once you understand the full situation we would anticipate a change or reversal in your position. However, if you have any concrete points you wish to cite in this regard, we would be prepared to answer them specifically.

Purposes of the Organization

We understand your concerns about the Organization's activities not matching up with its stated objects (indeed, we addressed some of them in a previous letter) but it is nevertheless clear that there is a basic misunderstanding about those activities. Fundamentally, the Organization exists to fund religious scholarships, although it also engages in some other activities as well.

It is important to understand that there exists in the ultra-Orthodox Jewish world a large contingent of men who take literally the biblical precept to "dwell on the words of the holy text day and night."² That is to say, these men do not work, but rather are dedicated to full-time study. Typically, these men are fathers to large families. Consequently, poverty is widespread amongst the ultra-Orthodox communities.³ While statistical research is mostly done in Israel, some is available outside of Israel as well.⁴ This research indicates that the same religious observance that results in poverty in Israel also leads to the same result elsewhere.

The poverty that is endemic in these communities is addressed through a variety of social service organizations. Different organizations exist to provide food, or counselling, or tuition for boys and girls to attend school, or the necessities of religious life. Beth Oloth works almost entirely to help these poor individuals with their various needs.

In this context, what is important to understand is that the financial assistance termed "scholarships" by the Organization were not specifically for the advancement of education, but rather for the

² See the book of Joshua 1:8.

³ See for example this 2017 report by the Taub Center for Social Policy Studies <http://taubcenter.org.il/pon-2017/> and Measuring and Assessing Well Being in Israel http://www.keepeek.com/Digital-Asset-Management/oecd/social-issues-migration-health/measuring-and-assessing-well-being-in-israel_9789264246034-en#.WnOSh7ynFpg#page52 at page 52

⁴ These statistics are from a predominantly ultra orthodox community

advancement of religion and the relief of poverty. The aid provided by the Charity came in various forms. Many grants were made to religious men to continue in their religious study, while others were made to provide tuition for younger students or for more 'typical' relief of poverty activities.

Clearly, some of the Charity's activities were outside of this core set, but they represent a relatively minor percentage of the Charity's overall disbursements and, to our knowledge, also qualify as charitable. We would submit that this is a very important discussion to have, but we would suggest that this discussion can only be had after some of the issues you raised in your letter are resolved.

Objects

As a preliminary note, your letter implicitly uses backward reasoning to suggest that the activities of the agent are necessarily the activities of the principal (in this case the Charity). We would point out that while case law suggests that the principal should pick agents directly involved in the specific activities of the Charity,⁵ there is nothing to suggest that the agents cannot also be involved in other activities as well. As a matter of law, the agent is only the agent of the principal for those activities specifically identified in its agency agreement, and not every action of the agent is necessarily undertaken on behalf of the principal. If you have legal arguments to the contrary, please refer us to your authority for this proposition so that we may make a full response to it.

With respect to the specific organizations you cite in your letter, the fact that the [REDACTED] [REDACTED] describes its mission publicly as [REDACTED]' is quite irrelevant where the activity it undertakes as the agent of the principal is specifically limited to the typical charitable activity to which the Organization held itself. We will therefore not make any additional comments on those situations in which the basis of your position is seemingly taken from a website. On the other hand, the application for funds that you cite is, we would think, a somewhat better source of information. However, even there, the fact remains that the description of the Organization is not in and of itself determinative of how the Charity uses its funds and whether it exerts sufficient control and direction.

The application for funds of the five organizations whose descriptions you took from those applications can all be explained within the general paradigm of relief of poverty to which the Organization generally subscribes. For example, [REDACTED], is effectively a [REDACTED] [REDACTED] that exists throughout Israel. Typically, in poor areas, streets are more crowded, making it more difficult to reach people in an emergency. [REDACTED] exists to supplement the [REDACTED] and to provide [REDACTED] to the ultra-Orthodox communities in particular.

⁵ *Bayit Lepletot v. Canada (Minister of National Revenue)*, 2006 FCA 128

With respect to [REDACTED], the activities you cite are, again, within the general context of the relief of poverty and the advancement of religion. While it may not be clear, perhaps because some of the wording is transliterated from Hebrew, essentially the funds are provided for children and orphans, for food and aid to the needy (clearly, the relief of poverty), and for religious gatherings. The Organization never provided funds for the provision of weddings.

In the case [REDACTED], again, notwithstanding the description in the application for funds, the Organization never helped people marry off children and provide funds for weddings. You will note that the specific description also includes information that this particular agent [REDACTED]

[REDACTED] provides counselling [REDACTED]
[REDACTED], so again, we see no reason why this would not be charitable.

Finally, you cite [REDACTED] application for funds. There may be more than one organization with this name. The particular [REDACTED] that worked with the Organization is effectively [REDACTED]

As you have cited only a few organizations in your letter as examples of the unstated purpose of the Charity, we have limited our comments to those agents where you have pulled information from the actual application for funds. We are happy to clarify any additional misunderstandings that may exist but, clearly, as these are only examples, it may be best to do this in a more fulsome manner. We remain at your disposal to help clarify the purposes for which funds were advanced to a specific agent.

We maintain our position that while the Charity's activities are not covered by its objects (mostly due to the evolution of the Charity's activities, as happens in this sector from time to time) those unstated purposes are charitable. Your conclusion that the Charity's unstated purposes encompasses the full mission of its agents is, respectfully, based on faulty reasoning and is ultimately untenable.

On page 11, you reference other sections of your letter that are related to the funding of non-qualified donees. While we acknowledge the organization of your letter, we will respond to these particular points in the sections in which they are raised.

Direction and control over the use of resources

In this section of your letter, you cite law and come to the conclusion that the Organization does not have sufficient direction and control over its funds or over the activities conducted with those funds. You then make a finding that the Organization is acting as a conduit and funding the programs of its agents. We believe there is an inherent contradiction in your position. An Organization that is a conduit has no control or direction over its funds. Your point is that the Organization does not have sufficient control and direction over its funds, and while this distinction may seem minimal, much may turn on it, as we are not sufficiently advised of the Crown's position on this point. For example, are we discussing whether or not the Organization was a conduit, or are we discussing the more technical question about sufficient control and direction? We are going to assume for the moment that we are discussing the question about technical control and direction.

In this context you list a variety of "problems that you find with the agency agreement". We would point out that there is no requirement of the law that agency agreements be in writing. As such, the fact that the particular agency agreements may have what you find to be deficiencies, is quite irrelevant; there is no specific form that an agency agreement must take. For further example, you said that the agency agreement does not contain the exact physical addresses of the two parties. There is no requirement that it should do so, and if you can point to an authority for your position, we would appreciate you disclosing it to us. Our point about the requirements is an answer to several of the comments you have made.

You also comment that it is unclear to you whether the particular agency agreements were actually followed. On this we may be able to help. For example, in many cases the Organization did not send funds without first having invoices which had to be paid for the activities. In these cases, one would not expect to see a separate, segregated, account. Similarly, when the Organization decided that certain individuals were going to be funded by the Organization, the allocation of funds and payment of tuition at their school could be made without a segregated account. This is not to say that, in an operation as large as this one, mistakes did not happen. Human error is always a possibility, but we anticipate that a new understanding of the Charity may well change the nature of your questions so we will await any specific instances for which you require an explanation.

Scholarships/stipends/awards

At the end of page 13 of your letter, you made an analysis of the provision of scholarships. As explained above, describing these payments as scholarships is likely contributing to a misunderstanding. In the non-Jewish context, scholarships are granted to a student in order to carry out (secular) studies according to criteria of academic merit, financial need, or both. However, in the Orthodox Jewish context—as we mentioned above—it is used to refer to the support of men who spend their lives in the study of Jewish texts, regardless of scholarly ability. These men do not engage

in full-time work. As a result, these amounts are more akin to subsidies (or alms) for the poor who are also students than scholarships in the usual use of that word.

This context also helps explain the Charity's procedures in assessing its potential beneficiaries. Fundamentally, there are two concerns: first, whether these individuals were in fact engaged in full time Torah studies, and second, whether they were poor.

Given that these types of institutions do not necessarily have the same type of rigorous student rolls that are typical of universities here, the Charity obtains letters of recommendation or accepts the attestation of the agent if the agent knows the student personally.

The second question is whether or not a particular individual is poor. The Organization's position is that it is entitled to rely on the statistical data that an individual engaged in full time Torah study and living in a particular neighbourhood with a particular family size is going to be poor and require financial help. Nevertheless, the Organization has often relied on applications, recommendations or references in this context as well, in order to better ascertain and understand an individual's financial situation. We also would be pleased to discuss how the Organization applied what was, effectively, statistical data to the provision of religious stipends. The Organization is entitled to rely on statistical information, no less than a charity distributing food to the needy in the slums of San Paolo. Clearly, individuals who arrive at a soup kitchen in an economically depressed area can presumed to be poor. The Organization thus relied on statistical presumption.

You asked who conducted these assessment interviews and how they were conducted. Where necessary, this work was done by the agents. The principal relied on the agents' work in this regard. The nature of these interviews was to confirm the individual was engaged in religious learning and to get a sense of a family's financial needs.

At the bottom of page 15 you cite comments regarding an organization called [REDACTED], along with the names of two other potential organizations and individuals. [REDACTED] can be translated as [REDACTED]. The original [REDACTED] was eventually [REDACTED] [REDACTED], hence your understandable confusion. One is called [REDACTED] and was run by [REDACTED], the other is called [REDACTED] and is run by [REDACTED]. For the purposes of our discussion, we will call one of the organizations [REDACTED] and the other one [REDACTED].

Our understanding is that the "grant" provided was, in fact, the dispensation of religious stipends for the poor in the manner discussed above. It would appear that the information you may have reviewed

[REDACTED]

related specifically to the stipends that were provided to the ultimate recipients. The "grant" was not actually a grant to [REDACTED] or [REDACTED] but rather they were the agents of the Organization and disbursed these funds to the various recipients. This arrangement would seem to be preferable for ensuring control and direction over funds, notwithstanding some concerns you have about the actual application forms.

We trust that the information provided regarding the context in which the Organization operated is helpful to you in understanding the stipend application forms. As a preliminary point, we would suggest that the fact that the application forms were not completed by the Charity are not determinant of anything. The key is that the Charity had the necessary information to make decisions over its funds. Put another way, the Charity may have decided not to complete those forms, but incomplete forms are not indicative of a lack of control and direction over the funds.

We are investigating the disbursements listed at the bottom of page 16 and the top of page 17 of your letter. We believe that at least some of these are simply errors in the documentation but we will be providing more information shortly. You have also cited board records and the human resources of the Organization to substantiate your position that the Organization did not have oversight over the activities of the organizations. It is our understanding that the Organization operated with volunteers, and these volunteers provided this kind of oversight. Respectfully, this is not evidence of a lack of control and direction. To use an aphorism: 'absence of evidence is not evidence of absence', particularly when there are other explanation for the same result.

Your comments at the bottom page 18 are well taken. It appears that over time the Organization made errors in dealing with agents. It would seem that the [REDACTED] organizations were improperly named as agents when, of course, they were not the organizations carrying out the activities. That being said, it is our understanding that the volunteers of the Organization were in fact in contact with the deliverer of the programs on the ground in Israel and so control and direction was provided in this way. We would suggest, though, that these errors are best dealt with in the context of a compliance agreement.

Armed forces of another country

We understand your concerns about the Mechinot programs in Israel and specifically your concern that they are preparation for military service. As a preliminary comment, we would point out that Israel has mandatory conscription. Therefore, providing any aid to anyone under the age of 18 may be construed as providing preparation for entrance into the military. Nevertheless, that is not the specific position of the Organization in this context.

As described above, the various agents of the Organization have their own programs. The Mechinot may provide military training, but the nature of their programs (other than the agency relationship)

[REDACTED]

are outside the purview of the Charity. The Charity engages in religious programs and it is only to that extent that the Mechinot program act as agents of the Charity.

The provision of religious training to individuals who are not in the army (although who, as a matter of Israeli law, will have to go to the army) is charitable under Canadian law. The agent simply provided funding for teachers to provide religious training in these various schools. Your citation of various general comments about Mechinot are inapplicable to this specific situation.

As a further point, we would suggest that the entire Old Testament is filled with the connections of the Jewish people to the land of Israel and its military conquests. That a given teacher might believe that the study of these ancient stories would provide a specific connection and make one a better soldier is irrelevant. Fundamentally, the study constitutes advancement religion in the same way that the study of Muhammad's military conquests in the Quran are advancement of religion, notwithstanding the fact that may instill a love for the land of Arabia in its readers.

Again, at the bottom of page 22 and the top of page 23 you cited the [REDACTED] program. To our knowledge this has nothing to do with the activities of [REDACTED] where it acted as agent for the Organization. We have no position to take on this. We would however point out that when we attempted to investigate some of the footnotes listed on pages 21 to 23 of your letter, the footnote numbering seems to be in error and as such we could not follow up on some of your arguments. We would appreciate if you could forward us a corrected copy of these specific footnotes so that we might investigate further.

Conducting projects in the Occupied Territories

We read your comments regarding Canada's public policy statements with interest. We have been attempting to do research on the specific policy in order to determine the dates on which the relevant aspects of the policy became public. Clearly, the Charity cannot be held responsible if the policy was not made public. (Indeed, there may be other reasons why the Charity should not be held responsible but at the very least we must begin with an understanding of the policy as it existed at the time of the audit). We have made assiduous inquiries of the Department of Global Affairs to determine this information and our requests have gone unanswered.

It is the Charity's position that the relevant policy is the one that was a) promulgated during the audit period and b) made public during that time. We would suggest that the Directorate cannot proceed with any action against the Charity on this basis until the relevant information regarding the policy is provided to the Charity. We would request that you provide this information to us (on the assumption it is made available to you) so that we can make further submissions on this point.

Notwithstanding our lack of specific information as detailed above, we make one additional point. We understand that you are citing this policy for the proposition that the Charity cannot engage in any activities which may establish or maintain physical and social infrastructure elements in Jewish settlements or provide assistance to Israeli settlements in Judea and Samaria. We reiterate our earlier point that the vast majority of the Organization's work in fact involves providing stipends to the poor for the observance of religious life. This would seem to fall outside the scope of the policy. Indeed, we are hopeful that it does; otherwise we would have to think that the Canadian Government would be effectively outlawing the support of Jewish religious practice in particular places in the world in contravention of the Charter and of Canada's international obligations to refrain from religious discrimination.

Further, if this continues to be your position, we would appreciate knowing specifically in what context you are applying the policy so that the issue would be clear before the Courts, should this appeal proceed to that point.

Books and Records

On pages 25 and 26 you cite a CRA policy regarding the maintenance of books and records. We note that you did not cite the Federal Court of Appeals' decision in *Prescient*⁶ that requires the CRA to provide some nuance and reasoning, to effectively restrain the CRA from habitual claims of insufficient books and records.

We are also quite concerned about your comment in footnote 45 about potential criminal conviction regarding the provision of documents. We believe that all relevant documents have been provided to you, but if you have a specific concern about missing documents we would be happy to advise our client to look more carefully through its records to ensure that you have been provided with all requested information.

We have reviewed your findings regarding the books and records of the Organization and believe that there is some room for discussion. We hope that our description of the Organization's activities put the books and records in context. Clearly, if there was a disbursement of funds to poor individuals you would not necessarily expect there to be ongoing discussion with, or financial reports from, the intermediaries carrying out activities. This is not to say that there was no room for improving the Charity's books and records as kept during the audit period. Indeed, since then the Charity has become much more adept at ensuring that its books and records are complete. We would be pleased to translate the information that was provided to you in Hebrew so you can have a better sense of the full extent of the books and records of the Organization. If this would be helpful to you, please advise and we will provide this to you as soon as possible.

⁶ *Supra*, n. 1

Directed Donations

First, we would note that the amounts that you cite in this section are extremely small, relative to the overall operations of the Charity. This is not to say that issues cannot be raised, but of course, they should be kept in context. Clearly, the Charity has no control over what is written on a cheque by specific individual, and if a donor wants to write a particular program on a cheque that is their purview. Such a cheque can not be taken as a directed donation if there is no evidence that the recipient itself has not accepted and applied the money as such.

You have also cited instances on memos that suggest that payments were made in support of a wedding for a specified couple. We checked into this with the Organization and no amounts were used to support a wedding. Rather, provisions provided to this newly married couple that was in financial need so that the husband could engage in full-time religious study in the context of the overall philosophical underpinnings of the Charity as we have described above. With respect to cheques for a specific woman, we would appreciate if you could provide us with name of this individual so that we could better investigate the situation.

You have also cited a cheque with respect to Rabbi Reidel [REDACTED]. These were not amounts directed for the personal use of Rabbi Reidel. Rather, Rabbi Reidel requested that a donation be made to the Organization for distribution as charity. The Hebrew word for charity is "Tzedake" but can be spelt in various ways.

We can provide no information for you on a third party website of individuals living in the United States. We have no additional information on this topic to provide you with.

At the bottom of page 32, you cite as evidence of some sort of wrong doing, the presence of the Charity's name on the websites of its various agents, directing funds to be given to the Charity in order to support the work the agent does on behalf of the principal. We have not checked into the factual basis for your claim, but, assuming that it is true, we do not understand why you cite this to support a finding that the Charity issues receipts on behalf of non-qualified donees. You are well aware that these organizations are agents of the Charity, and while you may have issues with the control and direction exercised by the Charity, that does not mean that the Charity is issuing receipts on behalf of the agent.

Finally, you cite certain receipts being issued to other registered charities as improper. We are aware that the CRA has issued statement requesting that charities do not do this, but there is no evidence that the receipts are false. We are therefore puzzled by your statement as seeming to make such an assertion. To our knowledge, issuing a donation receipt to another registered charity is, again, not desirable, but is an offence generally dealt with by a compliance agreement. If you have any

[REDACTED]

additional information about these receipts, we would be pleased to see it, as it may help resolve our puzzlement over your raising of this issue.

Information Returns

You allege three instances of misstatements on the information returns filed by the Charity. The first cites an alleged discrepancy of slightly over \$1.1 million dollars between the Organization's financial statements and T3010. We would first point out that the financial statements' description of a charitable distribution is not necessarily the same as the T3010's definition of total expenditures and activities outside Canada at line 200. You cannot cite the difference as a misstatement unless they are reporting on the same situation. That is not the case here. Furthermore, the fact that there is a discrepancy is not necessarily proof that the T3010 was filed inaccurately; it could be that the financial statements are inaccurate. We are investigating the situation.

This issue is symptomatic of the fact that the T3010 is not designed to represent financial statements, it is rather, in fact, designed to elicit information necessary to determine compliance with Act. As a result, a discrepancy between financial statements and the T3010 is, frankly, to be expected in most situations.

You also state that the T3010 lists disbursements of funds in Brazil, Israel, the United Kingdom, and the United States but misstates the actual number of countries involved in the disbursement. You may be correct on that point, but we would suggest that this is not a misstatement of a type that could reasonably invite revocation.

Your paragraph 'b' on page 34 is quite concerning. Clearly, charitable organizations and foundations of both types can err on their T3010s. As you know, this is a common occurrence. The input of certain figures on Line 4920 as opposed to the preceding lines was simply a misunderstanding of the form. We would suggest that even according to the CRA's own Guidance on Intermediate Sanctions, this error is most appropriately dealt with by way of compliance agreement regardless of the size of the actual number.

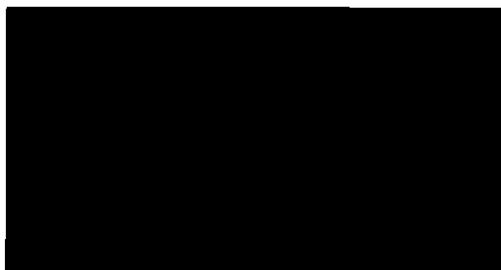
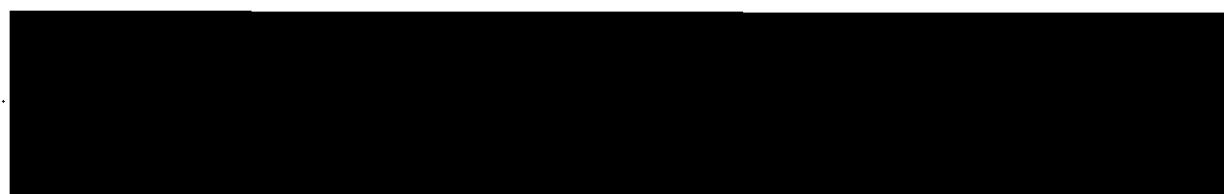
We are however, concerned, that you seem to be using this error to confirm your previously held opinion. You have no evidence for your conclusion and it seems to show a certain confirmation bias in your approach. The error here is simply that: an error. An Organization with limited human resources such as this one frequently makes these types of errors. The error here should not be justification for taking the most dramatic action available to you.

With regard to Paragraph C, we would again suggest that an incomplete programs area section of the T3010 is not a sufficiently large error in the T3010 as to warrant revocation.

Conclusion

Fundamentally, we appreciate the CRA's concerns. This is a vast Organization that is primarily working to help poor Jewish people around the world. They undertook this charity with the best of intentions, not realizing the technical requirements of amending their purposes and dedicated attention to the particular details of their agency agreements. Fundamentally though, the Organization exists to help poor ultra-Orthodox Jews around the world. It is true that they did get involved in certain other activities along the way but this was never the primary focus of the Organization and, fundamentally, the funds of the Organization were distributed to the poor. We would recommend that the Organization be issued a compliance agreement so that their work of aiding the poor can be continued without interruption. We look forward to hearing your reply.

Yours Truly,

A large rectangular black redaction box covering a signature.A large rectangular black redaction box covering a signature.

A facsimile from

To: Kitchener Tax Services
Office
Attn: *Luke Jantzi*
Fax #: **519-585-2803**

Date: 2018-05-09

Regarding: **Beth Oloth Charitable Organization**
BN: **118807080RR0001**
Your File No.: **0599530**
Our File No.: 

Comments:

Please find two (2) pages enclosed including this cover.

May 9, 2018

VIA FACSIMILE: 519-585-2803

*Kitchener Tax Services Office
166 Frederick Street
Kitchener, Ontario N2H 0A9*

Attention: Luke Jantzi

Dear Mr. Jantzi:

**Re: Audit of the Beth Oloth Charitable Organization
Business No. 118807080RR0001
Your File No.: 0599530
Our File No.: [REDACTED]**

This letter is in response to your letter of March 12, 2018, we appreciate the extension of your deadline given to us to respond.

We have investigated the issues you have outlined and have decided that the Organization will not be submitting a reply.

Yours Truly,

[REDACTED]

BETH OLOTH CHARITABLE ORGANIZATION
Comments on Representations

In our administrative fairness letter (AFL) dated March 12, 2018, we explained that the audit conducted by the Canada Revenue Agency (CRA) for the period from October 1, 2011, to September 30, 2014, identified that Beth Oloth Charitable Organization (the Organization) is not operating in compliance with the provisions of the Income Tax Act in the following areas:

1. Failed to be constituted for exclusively charitable purposes
 - a. Non-charitable/Broad purposes
 - b. Unstated purposes
2. Failed to devote resources to charitable activities carried on by the Organization itself
 - a. Lack of direction and control over the use of resources/resourcing non-qualified donees
 - b. Conduct of non-charitable activities
3. Failed to maintain adequate books and records
4. Issued receipts not in accordance with the Act
5. Failed to file an Information Return as and when required by the Act and/or its Regulations

Our letter also outlined the chronology of the audit, including our letters of May 2, 2016, November 4, 2016, and December 7, 2016.

We have reviewed the Organization's representations dated February 8, 2018, and May 9, 2018, and we maintain our position that the non-compliance issues identified during the audit represent a serious breach of the requirements of the Act and that, as a result of this non-compliance, the Organization's registration should be revoked.

We would first like to address the Organization's statement in its February 8, 2018, response, that the areas of non-compliance are not serious enough to warrant revocation and requests that we issue a compliance agreement.

The CRA generally uses revocation as a last resort, however under the Act the CRA can revoke a charity's registration at any time, when it is appropriate. This includes situations where:

- the non-compliance is serious and intentional
- the non-compliance has had a substantial, adverse effect on others (beneficiaries, donors, or funders)
- the charity had a previous record of serious non-compliance or cannot or will not follow the rules¹.

Given our analysis of what we have found in the course of the audit, and the subsequent responses from the Organization (as described below), it is our position that the non-compliance identified during the course of our audit warrants revocation of the charitable status of the Organization.

¹canada.ca/en/revenue-agency/services/charities-giving/charities/compliance-audits/audit-process-charities

The basis for our position is described in detail below, including our responses to the Organization's representations.

1. Failed to be Constituted for Exclusively Charitable Purposes

a) Non-charitable/Broad purposes

In the AFL we explained our position that the purposes of the Organization were broad and lacked the degree of certainty and clarity required to restrict the Organization to exclusively charitable activities.

In its response dated February 8, 2018, the Organization provided some context for the environment that it is primarily working in, and noted that in this environment, funds disbursed as scholarships might not be "specifically for the advancement of education, but rather for the advancement of religion and relief of poverty."

CRA's response

To be registered as a charity, an organization must have purposes that are considered charitable and activities that further those purposes. The Organization's response does not address our concern that its purposes are too broad and do not restrict the Organization's activities to those in furtherance of exclusively charitable purposes. We also note that while the broad purposes of the Organization could encompass activities that further the charitable purposes of advancing education and advancing religion, the Organization does not have a purpose to relieve poverty. As such, activities furthering the relief of poverty, such as providing the poor with scholarships to relieve poverty are *ultra vires*.

Further, during the initial interview the Organization stated:

"...due to the influx of requests for funding/scholarships, the board is considering adding in a financial need component to the criteria. This is something that is being explored, as this will require additional documentation from the prospective individuals and we don't want to cause any anxiety for the dedicated and blooming scholars."

This statement suggests that the Organization had not been considering financial need as part of its criteria during the audit period which contradicts a statement from the Organization's response dated February 8, 2018:

"Beth Oloth [the Organization] works almost entirely to help these poor individuals with their various needs. In this context, what is important to understand is that the financial assistance termed "scholarships" by the Organization were not specifically for the advancement of education' but rather for the advancement of religion and the relief of poverty."

b) Unstated Purposes

As explained in our AFL, we reviewed a sample of the documentation for the 2,274 agents used by the Organization in 2014, where we lacked documents, we relied on information provided on the agent's website. We identified a number of activities that were not in furtherance of the Organization's formal purposes. Further, it was our position that the Organization carried out activities that were not in

furtherance of charitable purposes; namely, increasing the efficiency and effectiveness of the Israeli armed forces, and conducting activities in the occupied territories, which are not charitable in law.

In its response, the Organization made the following statements:

- i) Not every action of the agent is necessarily undertaken on behalf of the principal (in this case the Organization) and that as a result, information on the activities carried out by an agent, taken from the website of an agent, is irrelevant;
- ii) The description of the Organization taken from the application of funds, is not in and of itself determinative of how the Organization uses its funds and whether it exerts sufficient control and direction;
- iii) For the five examples from our AFL where the application for funds (documentation from the agents) includes descriptions that fall outside of the scope of the purposes of the Organization, the activities can all be explained within the general paradigm of relief of poverty to which the Organization generally subscribes; and,
- iv) The Organization never provided funds for the provision of weddings, or to help marry off children.

CRA's response

- i) We acknowledge that an agent is not restricted to simply carrying out specific activities on a charity's behalf. However, due to the Organization's lack of direction and control over its resources and over the conduct of its purported activities, and inadequate books and records, we were unable to verify to what purposes the resources of the Organization were used.

Where we are unable to determine with certainty what specific activities an agent was carrying out on behalf of the Organization, an agent's website information is relevant as it offers some indication as to how the resources of the Organization were used. Where we quoted websites of agents, we attempted to identify the broadest level of mission statement or similar statement that was available. It is reasonable to conclude that specific activities or programs of an agent would generally be in furtherance of these broad mission statements in the same way that the activities of the Organization should be in furtherance of its formal purposes. The agents' mission statements (see pages 9-11 of our AFL) suggest that the activities of these agents are not only outside the scope of the Organization's purposes, but are also non-charitable in law. Though the Organization has challenged our reliance upon the information sources, we note that it failed to substantiate, through documentation or other means, that it maintained the necessary direction and control over its resources and over the conduct of its purported activities to deem the expenditures incurred for its own charitable purposes.

- ii) We acknowledge that the resources of the Organization may have been used for activities other than those identified in the application for funds submitted by the agent. However, the absence of documentation to support that the Organization approved the change of activities further increases our concerns regarding the Organization's lack of direction and control over the conduct of its activities.

- iii) As outlined above, a registered charity must have purposes that are exclusively charitable and activities that further those purposes. While activities that relieve poverty are furthering a charitable purpose, the relief of poverty is not one of the Organization's purposes.
- iv) Assistance in marrying off children, and assistance at weddings and bar mitzvahs, were activities detailed in the agents' applications to obtain funding from the Organization. The Organization granted funds to these agents based on the information contained in these applications. Absent detailed reporting from the agents on how the funds of the Organization were actually used, and evidence that that the Organization authorized and monitored the actual uses, we are unsure how the Organization can be sure that its funds were not used for marrying off children, and assistance at weddings and bar mitzvahs.

The Organization's response has not alleviated our concerns.

Relationship with Gates of Mercy

In the AFL we stated our concerns about the Organization's relationship with a former director Rabbi Reidel who is a director of Gates of Mercy, another registered charity. We noted the following activities, which may not further charitable purposes:

- 1) Instances of donations deposited into the Organization's bank account addressed to Gates of Mercy, and it appears those donors did not intend to gift to the Organization;
- 2) Donations may have been made to direct funds for the personal use of Rabbi Reidel; and
- 3) A Go Fund Me webpage, to help a couple in the United States who were raising funds to adopt a child, told readers how to receive a tax-deductible receipt for their donation by making the cheque payable to the Organization and mailing it to Rabbi Reidel.

In its response, the Organization stated that any amounts were not directed for the personal use of Rabbi Reidel, and that he "requested that a donation be made to the Organization for distribution as charity." The response also stated that the Organization "has no control over what is written on a cheque by specific individual."

CRA's response

The Organization's limited response has not alleviated our concern with the Organization's relationship with Rabbi Reidel or Gates of Mercy.

Our position remains that the Organization's stated and unstated purposes are not exclusively charitable purposes. For this reason, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

2. Failed to Devote Resources to Charitable Activities Carried on by the Organization Itself

a) Lack of direction and control over the use of resources/resourcing non-qualified donees

In our AFL, we stated that it is our position that the Organization:

- 1) Does not exercise the required degree of direction and control over the use of its funds, or over the activities conducted with those funds, to establish that it is carrying out its own charitable activities in accordance with the provisions of the Act, and
- 2) Is acting as a conduit, funding the programs of non-qualified donees.

In its response, the Organization made the following statements:

Scholarships/stipends/awards

- i) There is no requirement of the law that agency agreements be in writing. As a result, findings of deficiencies in the agency agreements are “irrelevant”;
- ii) In many cases, the Organization did not send funds without first having invoices. These invoices would help to verify that the agency agreements are being followed, without requiring a segregation of funds of the Organization from other funds of the agent;
- iii) Scholarships were issued in the Orthodox Jewish community context and therefore were issued based on whether the students were engaged in full time Torah studies and whether they were poor. To verify these conditions, the Organization obtains a letter of recommendation or accepts the attestation of the agent, and relied on statistical presumption similar to the assumption that a soup kitchen operating in an economically depressed area would rely upon; and,
- iv) Agents conducted assessment interviews and the Organization relied on the work of the agents.

CRA's response

- i) We acknowledge there is no legal requirement to have a written agreement, and that there are other means a charity can use to show that it is exercising adequate direction and control. However, a properly written and executed agreement is one effective way to help meet the “own activities” test.

While our AFL did identify deficiencies in the agency agreement, our primary concern was the lack of documentation showing that the Organization and its agents implemented and adhered to the provisions of the agreement. For example, the agency agreement requires ongoing written instructions from the Organization to the agent, yet we found no instances of such ongoing instruction.

ii) We are unsure what invoices the Organization is referring to. In our review of supporting documentation for disbursements made by agents, we did not identify any instances where such disbursements were supported by invoices.

Segregation of funds is a requirement of provision three of the agency agreement. Where the funds of the Organization were not kept separate from other funds of the agent, the agent was not meeting this provision, nor was the Organization compelling the agent to comply with this requirement of the agreement, that both parties had signed.

iii) We have not seen copies of letters of recommendation or attestations from agents for each student in receipt of a scholarship from the Organization.

We do not agree that soup kitchens operating in economically depressed areas are a direct comparison to the provision of scholarships. Soup kitchens generally provide food for immediate consumption. Based on our Guidance CG-002, Canadian registered charities carrying out activities outside Canada, at paragraph 5.2, registered charities can transfer resources to non-qualified donees only when certain specific conditions apply. As explained in CG-002, when transferring resources to a non-qualified donee, “transfers of money are not acceptable, and always require ongoing direction and control.”

iv) We have not seen any documentation to verify that an agent conducted an assessment interview for each beneficiary of a scholarship issued by the Organization.

Further, we refer to the two different documents provided by the Organization that outlined its mission statement and its criteria for selecting students and agents (Appendices A and B). While we have concerns as to the adequacy of these criteria, our primary concern, as stated in our AFL, was that the Organization was not adhering to its own policies. The Organization’s response relating to this activity is not consistent with the contents of these two appendices.

[REDACTED]

In its response, the Organization stated that incomplete application forms are not indicative of a lack of control and direction over funds.

CRA's response

If the Organization had provided additional documentation to show that it had maintained direction and control over its funds, the Organization’s assertion might be true. However, the application forms were the only documents made available to us that could show that funds disbursed to this agent were devoted to activities that further the Organization’s purposes, therefore the incomplete forms are a significant concern.

Further, the Organization’s response did not address the even larger concern relating to the grant of \$1,500,000 to this agent, which it approved in November 2013. No documents were provided to verify on what basis the Organization approved the \$1,500,000 grant and what the funds were used for. The documentation provided to us was from the 2014 year.

Gifting to Non-Qualified Donees

In our AFL, we identified a number of disbursements for which we were unable to identify agency agreements.

In its response of February 8, 2018, the Organization indicated that it would be “providing more information shortly.” As of this date we have not received any further information, and based on its letter of May 9, 2018, the Organization will not be submitting another response.

Board Minutes and Human Resources

In our AFL, we noted significant limitations to the Organization’s human resources, as shown in the board minutes, to meet the substantial administrative burden involved in adequately maintaining direction and control over its resources, and over the conduct of its purported activities being carried out by numerous agents.

In its response, the Organization indicated that oversight was achieved through volunteers and that “absence of evidence is not evidence of absence”.

CRA’s response

Given the documents we have received, the Organization’s only identified volunteers are the two active directors listed in our AFL, and the advisor, Rabbi Reidel. We have not received documents that show the Organization has the capacity to effectively authorize, control and monitor all of its contracts and agreements, or its purported activities.

Multiple Administrative Layers

In our AFL, we identified instances where the Organization was granting funds to [REDACTED] [REDACTED] various foreign intermediaries, as opposed to granting funds directly to the foreign intermediaries carrying out the activities outside of North America.

In its response, the Organization acknowledges this point but indicates volunteers were in contact with the deliverer of the programs on the ground in Israel.

The Organization provided no documentation to support this assertion, and we have seen no documentation in the Organization’s books and records to verify this assertion. Again, we noted a lack of factual material to support the existence of an adequate volunteer base to carry out such monitoring.

In general, the Organization has stated its disagreement with our findings, but has not proffered significant alternative explanations, nor has it presented sufficient documentation to support the positions that it has taken.

Consequently, the Organization’s response has not alleviated our concerns. Our position remains that the Organization has not devoted all of its resources to its own charitable activities or to gifting to qualified donees, it has failed to meet the definitional requirements of paragraphs 149.1(1) and 149.1(2) of the Act. For this reason, it is our position that there are grounds for the Minister to revoke the charitable status of the Organization under paragraph 168(1)(b) of the Act.

b) Non-Charitable Activities

Support for Armed Forces of another Country

In our AFL, we identified funds forwarded to agents to support the Israel Defense Forces (IDF), which is not charitable in law. This included support for various Mechinot, which are schools designed to prepare graduates for service in the Israeli army.

In its response, the Organization made the following statements:

- i) The agent was providing funding to support teachers who provided religious training at these Mechinot;
- ii) Study of Old Testament military conquests is part of a broader study of the Jewish religion; and,
- iii) The activities [REDACTED] that directly support the IDF to our knowledge have nothing to do with the activities [REDACTED] where it acted as agent for the Organization.

CRA's response

Our position remains that support for pre-army Mechinot, which includes support for teachers, represents support for the armed forces of another country, which is not charitable in law.

Further, we remain concerned that the documentation provided to CRA in relation to Ascent included a budget that had been modified to replace “IDF Programs” with “Programs for Israeli Youth.” (See Appendix C to our AFL) The Organization has not provided adequate documentation to show that its funds were not used in part or in full for this “IDF program,” and has not explained who modified the budget provided to CRA, or when and why the budget was modified.

Conducting Projects in the Occupied Territories

In our AFL, we concluded that support for the establishment and maintenance of physical and social infrastructure and other assistance to Israeli settlements in the occupied territories is contrary to Canadian public policy and international law and therefore is not a devotion of resources to charitable activities.

In its response, the Organization made the following statements:

- i) The Organization has been unable to confirm the effective date of the policy quoted in our AFL and believes that this issue is only relevant if the policy was available to the public during the audit period; and,
- ii) Support for the occupied territories relates to “stipends to the poor for the observance of religious life” and our interpretation of the policy would result in effectively outlawing the support of Jewish religious practice in particular places in the world in contravention of the Charter and of Canada’s international obligation to refrain from religious discrimination.

CRA's response

- i) The policy referenced in our AFL is the current policy of the Government of Canada.² The language included in the section entitled “Occupied Territories and Settlements” is identical to previous versions of the same policy, which were available to the public during the audit period. We accessed publicly-available previous versions of the current policy with effective dates of July 21, 2009³, March 10, 2011⁴, October 26, 2012⁵, and January 13, 2014⁶.
- ii) Our concern is not with the vocation of the individuals, but rather with the presence of such individuals in the occupied territories. Providing assistance to Israeli settlements in the occupied territories, serves to encourage and enhance the permanency of the infrastructure and settlements and therefore is contrary to Canada's public policy and international law on this issue.

The Organization's response has not alleviated our concerns. Our position remains that the Organization has devoted resources to activities that are not charitable in law. For this reason, it is our position that there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

3. Failed to maintain adequate books and records

As outlined in our AFL, the audit demonstrated that the Organization has, in general, failed to maintain adequate books and records of account.

In its response, the Organization made the following statements:

- i) We did not cite the Prescient⁷ decision, and the Prescient decision determined that an allegation by CRA of insufficient books and records is limited to those books and records which are necessary to illustrate the answer to the questions posed;
- ii) All relevant documents have been provided;
- iii) Where disbursements are made in the form of funds to poor individuals we would not necessarily expect there to be ongoing discussion with, or financial reports from, the intermediaries carrying out the activities; and,

² http://international.gc.ca/world-monde/international_relations-relations_internationales/mena-moan/israeli-palestinian_policy-politique_israelo-palestinien.aspx?lang=eng

³ http://webarchive.bac-lac.gc.ca:8080/wayback/20100708013530/http://www.international.gc.ca/name-anmo/peace_process-processus_paix/canadian_policy-politique_canadienne.aspx?lang=eng#a06

⁴ http://webarchive.bac-lac.gc.ca:8080/wayback/20110415135553/http://www.international.gc.ca/name-anmo/peace_process-processus_paix/canadian_policy-politique_canadienne.aspx?lang=eng

⁵ http://webarchive.bac-lac.gc.ca:8080/wayback/20131002075213/http://www.international.gc.ca/name-anmo/peace_process-processus_paix/canadian_policy-politique_canadienne.aspx?lang=eng

⁶ http://webarchive.bac-lac.gc.ca:8080/wayback/20141230101312/http://www.international.gc.ca/name-anmo/peace_process-processus_paix/canadian_policy-politique_canadienne.aspx?lang=eng

⁷ See *Prescient Foundation v MNR*, 2013 FCA 120 at para 51, [2013] FCJ no 512.

- iv) No negative inference can be drawn from the unwillingness of any director/volunteer of the Organization to meet with CRA.

CRA's response

- i) The Prescient case was cited in footnote 46 on page 26 of our initial AFL. The letter was re-issued on March 12, 2018, due to some minor errors in footnote numbering at which point the citation was re-numbered as footnote 48, again on page 26 of our letter. We disagree that the Prescient ruling determined that a charity is only required to provide books and records that it believes are necessary to answer specific questions posed during the audit process. The key paragraph in the Prescient ruling relating to the adequacy of books and records can be found in paragraph 47 and it requires that CRA clearly identify the information which the registered charity has failed to keep, and explain why this breach justifies revocation of the charity's registration. We believe our AFL met this requirement. As well, the Organization's repeated failure to maintain proper books meets the requirement as described in Prescient paragraph 56.
- ii) The steps that CRA has taken to secure all books and records from the Organization were outlined in the Chronology of the audit section of our AFL (p. 5-7). We requested specific documentation in our letters dated November 4, 2016, and December 7, 2016 (copies enclosed). We also identified specific shortcomings in the books and records of the Organization in our AFL. The response of February 8, 2018, stated that the Organization's representative is willing to "advise our client to look more carefully through its records if we have specific concerns". However, at this time we have not received all of the previously requested documents.
- iii) We do not agree with this assertion. Even where the activities of an agent are relatively consistent, stable and predictable, a registered charity must continue to show that any acts that purport to be those of the charity are effectively authorized, controlled and monitored by the charity. This requirement can be met through documents that show ongoing communication such as, but not limited to, on-site visits, emails, and regular reports. Financial and narrative reports are also an important part of this monitoring and show how resources are actually spent. Without financial reports, the Organization cannot show how its funds were disbursed beyond confirming that the agent received them. Even if the beneficiaries supported by a particular agent stayed constant for an entire fiscal year, reconciliations between funds forwarded to the agent and funds disbursed by the agent remain an important component of the books and records of the Organization.
- iv) A meeting with the Organization's directors or volunteers would have been another opportunity for them to present a detailed explanation of the activities carried out by the agents on the Organization's behalf and how those responsible for the Organization maintained direction and control over its resources and over the conduct of its activities.

The Organization's response has not alleviated our concerns. The Organization has provided no new documentation to address the concerns listed on pages 26 and 27 of the AFL. Our position remains that the Organization failed to maintain adequate books and records as required under subsection 230(2) of

the Act. As a result it is our position that there are grounds for revocation under paragraphs 168(1)(b) and 168(1)(e) of the Act.

4. Issued receipts not in accordance with the Act

As outlined in the AFL, the Organization issued official donation receipts (ODRs) for directed donations; issued ODRs on behalf of non-qualified donees; issued ODRs where the donation was addressed to another registered charity; issued ODRs without adequate internal controls; issued ODRs that did not contain all required elements; and, issued ODRs to other registered charities.

In its response, the Organization made the following statements:

- i) The amounts involved are relatively immaterial;
- ii) The Organization has no control over what is written on cheques and this is not evidence that the Organization has accepted and applied the money as such;
- iii) The Organization has not provided financial support for a wedding, but provided support for a newly married couple in need, so that the husband could engage in full time religious study;
- iv) The Organization was unable to determine the name of the women referenced in the AFL;
- v) The presence of the name of the Organization on websites of agents does not mean that the Organization is issuing receipts on behalf of the agent; and,
- vi) Receipts issued to other registered charities do not contain false information.

CRA's response

- i) We are assuming this response is in relation to the items identified on page 29 of the AFL. We agree that these amounts are small but they represent concerns identified by reviewing only a small portion of the total cheques received by the Organization. Materiality is difficult to assess without reviewing all cancelled cheques but the non-compliance identified is of concern regardless of the materiality.
- ii) What is written on cheques is highly relevant. Restricted funds must be used by a registered charity for the purpose that the donor intended. We have not seen a restricted fund policy from the Organization that would allow it to apply donations to a purpose other than that intended by the donor. Choosing not to follow the restrictions placed on funds by donors would represent a different but also significant form of non-compliance.
- iii) The Organization appears to have investigated only one of the four separate instances where cheques were received with notes that referenced weddings. We do not understand why donors would specifically reference “a wedding” if funds were intended to support the education of an individual.

- iv) In the AFL we did not give the name of the woman due to confidentiality concerns but expected that the Organization would have been able to identify the specific amounts in question with the information that was provided.
- v) We remain concerned that these funds were directed for the personal use of Rabbi Reidel. We also note that the explanation provided by the Organization suggests that Rabbi Reidel continued as a fundraiser for the Organization, beyond the date [REDACTED]
[REDACTED].
- vi) When a prospective donor reads the website of an organization in Israel that it wants to donate to, and then makes a donation through the Organization for the sole purpose of securing an ODR, the Organization is lending its charitable registration number for a gift that the donor is making to a third party. It is not acceptable for third parties to solicit funds directly and use a Canadian registered charity to make such donations tax deductible for their Canadian donors. For greater clarity, we refer again to an example from the AFL where an agent instructs Canadian donors to “make your check payable to Beth Oloth and earmark it to [REDACTED].” The agent then requests that these cheques be sent to [REDACTED] rather than the address of the Organization.
- vii) We acknowledge there was a problem with spacing in the AFL at the bottom of page 32. It is not clear that the sentence beginning “Under paragraph 168(1)(d)” is a new paragraph summarizing our concerns with the ODRs, not specifically referring to ODRs to other registered charities. It was not our position that ODRs to other registered charities contained false information. However, the Organization should not have issued ODRs to other registered charities and this is another example of the deficiencies of the Organization’s record keeping.

The Organization’s response has not alleviated our concerns. Our position remains that the Organization has issued receipts not in accordance with the Act. For this reason, it is our position that there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(d) of the Act.

5. Failed to file an Information Return as and when required by the Act and/or its Regulations

In the AFL, we identified minor errors with Organization’s completion of the required information return, Form T3010, Registered Charity Information Return.

In its response, the Organization made the following statements:

- i) Form T3010 and financial statements may not be directly comparable or the financial statements may be inaccurate. The Organization is investigating the situation;
- ii) These types of errors would not justify revocation of the charitable status of the Organization; and,

- iii) The conclusion that placing expenses primarily on Line 4920 indicates a lack of adequate books and records and/or direction and control of the resources of the Organization represents confirmation bias in our approach.

CRA's response

- i) The Organization has indicated that it is investigating but has not provided any further explanation. Its May 9, 2018, letter confirms that no further responses are forthcoming.
- ii) The non-compliance relating to the completion of Form T3010 forms part of the overall non-compliance.
- iii) As outlined in our AFL, line 4920 is intended to include expenses that do not fit into any of the expense lines between Lines 4800 and 4910. Where an organization funds activities through an agent, it should be receiving sufficiently detailed financial reports to allow it to properly allocate on Form T3010. Our conclusions were based on the books and records of the Organization as well as other communications provided by the Organization. The books and records were not adequate to allow the Organization to allocate these disbursements to the correct lines on Schedule 6.

The Organization's response has not alleviated our concerns. Our position remains that the Organization has failed to file its information return as and when required by the Act and/or its Regulations. For this reason, it is our position that there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(c) of the Act.

Other Issues

The Organization did not address the following areas of non-compliance identified in the AFL:

- Resources transferred to [REDACTED] which are other examples of resources devoted to support for armed forces of another country.
- Cheques deposited into the bank account of the Organization that were addressed to Gates of Mercy.
- ODRs issued to individuals who made directed donations to cover the cost of tuition for relatives.
- Lack of internal controls surrounding the ODR issuance process, which is a significant concern given the degree of general non-compliance identified during the course of this audit.

Consequently, for the reasons outlined above and in the AFL, it is the CRA's position that the Organization has failed to meet the requirements for registration as a charitable organization as outlined in subsections 149.1(1), 149.1(2), 149.1(1)(14) and 230(2) of the Act or Regulations 3500, and 3501(1) to the Act and as such, should have its charitable status revoked pursuant to subsection 168(1) of the Act.

Section 149.1 Qualified Donees

149.1(2) Revocation of registration of charitable organization

The Minister may, in the manner described in section 168, revoke the registration of a charitable organization for any reason described in subsection 168(1) or where the organization

- (a) carries on a business that is not a related business of that charity;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the organization's disbursement quota for that year; or
- (c) makes a disbursement by way of a gift, other than a gift made
 - (i) in the course of charitable activities carried on by it, or
 - (ii) to a donee that is a qualified donee at the time of the gift.

149.1(3) Revocation of registration of public foundation

The Minister may, in the manner described in section 168, revoke the registration of a public foundation for any reason described in subsection 168(1) or where the foundation

- (a) carries on a business that is not a related business of that charity;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;
- (b.1) makes a disbursement by way of a gift, other than a gift made
 - (i) in the course of charitable activities carried on by it, or
 - (ii) to a donee that is a qualified donee at the time of the gift;
- (c) since June 1, 1950, acquired control of any corporation;
- (d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities; or
- (e) at any time within the 24 month period preceding the day on which notice is given to the foundation by the Minister pursuant to subsection 168(1) and at a time when the foundation was a private foundation, took any action or failed to expend amounts such that the Minister was entitled, pursuant to subsection 149.1(4), to revoke its registration as a private foundation.

149.1(4) Revocation of registration of private foundation

The Minister may, in the manner described in section 168, revoke the registration of a private foundation for any reason described in subsection 168(1) or where the foundation

- (a) carries on any business;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;
- (b.1) makes a disbursement by way of a gift, other than a gift made
 - (i) in the course of charitable activities carried on by it, or
 - (ii) to a donee that is a qualified donee at the time of the gift;
- (c) has, in respect of a class of shares of the capital stock of a corporation, a divestment obligation percentage at the end of any taxation year;
- (d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities.

149.1(4.1) Revocation of registration of registered charity

The Minister may, in the manner described in section 168, revoke the registration

- (a) of a registered charity, if it has entered into a transaction (including a gift to another registered charity) and it may reasonably be considered that a purpose of the transaction was to avoid or unduly delay the expenditure of amounts on charitable activities;
- (b) of a registered charity, if it may reasonably be considered that a purpose of entering into a transaction (including the acceptance of a gift) with another registered charity to which paragraph (a) applies was to assist the other registered charity in avoiding or unduly delaying the expenditure of amounts on charitable activities;
- (c) of a registered charity, if a false statement, within the meaning assigned by subsection 163.2(1), was made in circumstances amounting to culpable conduct, within the meaning assigned by that subsection, in the furnishing of information for the purpose of obtaining registration of the charity;
- (d) of a registered charity, if it has in a taxation year received a gift of property (other than a designated gift) from another registered charity with which it does not deal at arm's length and it has expended, before the end of the next taxation year, in addition to its disbursement quota for each of those taxation years, an amount that is less than the fair market value of the property, on charitable activities carried on by it or by way of gifts made to qualified donees with which it deals at arm's length; and

(e) of a registered charity, if an ineligible individual is a director, trustee, officer or like official of the charity, or controls or manages the charity, directly or indirectly, in any manner whatever.

Section 168:

Revocation of Registration of Certain Organizations and Associations

168(1) Notice of intention to revoke registration

The Minister may, by registered mail, give notice to a person described in any of paragraphs (a) to (c) of the definition "qualified donee" in subsection 149.1(1) that the Minister proposes to revoke its registration if the person

- (a) applies to the Minister in writing for revocation of its registration;
- (b) ceases to comply with the requirements of this Act for its registration;
- (c) in the case of a registered charity or registered Canadian amateur athletic association, fails to file an information return as and when required under this Act or a regulation;
- (d) issues a receipt for a gift otherwise than in accordance with this Act and the regulations or that contains false information;
- (e) fails to comply with or contravenes any of sections 230 to 231.5; or
- (f) in the case of a registered Canadian amateur athletic association, accepts a gift the granting of which was expressly or implicitly conditional on the association making a gift to another person, club, society or association.

168(2) Revocation of Registration

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

- (a) if the charity or association has applied to the Minister in writing for the revocation of its registration, the Minister shall, forthwith after the mailing of the notice, publish a copy of the notice in the Canada Gazette, and
- (b) in any other case, the Minister may, after the expiration of 30 days from the day of mailing of the notice, or after the expiration of such extended period from the day of mailing of the notice as the Federal Court of Appeal or a judge of that Court, on application made at any time before the determination of any appeal pursuant to subsection 172(3) from the giving of the notice, may fix or allow, publish a copy of the notice in the Canada Gazette,

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

168(4) Objection to proposal or designation

A person may, on or before the day that is 90 days after the day on which the notice was mailed, serve on the Minister a written notice of objection in the manner authorized by the Minister, setting out the reasons for the objection and all the relevant facts, and the provisions of subsections 165(1), (1.1) and (3) to (7) and sections 166, 166.1 and 166.2 apply, with any modifications that the circumstances require, as if the notice were a notice of assessment made under section 152, if

- (a) in the case of a person that is or was registered as a registered charity or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(2) to (4.1), (6.3), (22) and (23);
- (b) in the case of a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.2) and (22); or
- (c) in the case of a person described in any of subparagraphs (a)(i) to (v) of the definition "qualified donee" in subsection 149.1(1), that is or was registered by the Minister as a qualified donee or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.3) and (22).

172(3) Appeal from refusal to register, revocation of registration, etc.

Where the Minister

- (a) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.2) and (22) and 168(1) by the Minister, to a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for registration as a registered Canadian amateur athletic association, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,
 - (a.1) confirms a proposal, decision or designation in respect of which a notice was issued by the Minister to a person that is or was registered as a registered charity, or is an applicant for registration as a registered charity, under any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) and 168(1), or does not confirm or vacate that proposal, decision or designation within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal, decision or designation,
 - (a.2) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.3), (22) and 168(1) by the Minister, to a person that is a person described in any of subparagraphs (a)(i) to (v) of the definition "qualified donee" in subsection 149.1(1) that is or was registered by the Minister as a qualified donee or is an applicant for such registration, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,
- (b) refuses to accept for registration for the purposes of this Act any retirement savings plan,

- (c) refuses to accept for registration for the purposes of this Act any profit sharing plan or revokes the registration of such a plan,
- (d) [Repealed, 2011, c. 24, s. 54]
- (e) refuses to accept for registration for the purposes of this Act an education savings plan,
- (e.1) sends notice under subsection 146.1(12.1) to a promoter that the Minister proposes to revoke the registration of an education savings plan,
- (f) refuses to register for the purposes of this Act any pension plan or gives notice under subsection 147.1(11) to the administrator of a registered pension plan that the Minister proposes to revoke its registration,
- (f.1) refuses to accept an amendment to a registered pension plan,
- (g) refuses to accept for registration for the purposes of this Act any retirement income fund,
- (h) refuses to accept for registration for the purposes of this Act any pooled pension plan or gives notice under subsection 147.5(24) to the administrator of a pooled registered pension plan that the Minister proposes to revoke its registration, or
- (i) refuses to accept an amendment to a pooled registered pension plan,

the person described in paragraph (a), (a.1) or (a.2), the applicant in a case described in paragraph (b), (e) or (g), a trustee under the plan or an employer of employees who are beneficiaries under the plan, in a case described in paragraph (c), the promoter in a case described in paragraph (e.1), the administrator of the plan or an employer who participates in the plan, in a case described in paragraph (f) or (f.1), or the administrator of the plan in a case described in paragraph (h) or (i), may appeal from the Minister's decision, or from the giving of the notice by the Minister, to the Federal Court of Appeal.

180(1) Appeals to Federal Court of Appeal

An appeal to the Federal Court of Appeal pursuant to subsection 172(3) may be instituted by filing a notice of appeal in the Court within 30 days from

- (a) the day on which the Minister notifies a person under subsection 165(3) of the Minister's action in respect of a notice of objection filed under subsection 168(4),
- (b) [Repealed, 2011, c. 24, s. 55]
- (c) the mailing of notice to the administrator of the registered pension plan under subsection 147.1(11),
- (c.1) the sending of a notice to a promoter of a registered education savings plan under subsection 146.1(12.1),
- (c.2) the mailing of notice to the administrator of the pooled registered pension plan under subsection 147.5(24), or

(d) the time the decision of the Minister to refuse the application for acceptance of the amendment to the registered pension plan or pooled registered pension plan was mailed, or otherwise communicated in writing, by the Minister to any person,

as the case may be, or within such further time as the Court of Appeal or a judge thereof may, either before or after the expiration of those 30 days, fix or allow.

Section 188: Revocation tax

188(1) Deemed year-end on notice of revocation

If on a particular day the Minister issues a notice of intention to revoke the registration of a taxpayer as a registered charity under any of subsections 149.1(2) to (4.1) and 168(1) or it is determined, under subsection 7(1) of the *Charities Registration (Security Information) Act*, that a certificate served in respect of the charity under subsection 5(1) of that Act is reasonable on the basis of information and evidence available,

- (a) the taxation year of the charity that would otherwise have included that day is deemed to end at the end of that day;
- (b) a new taxation year of the charity is deemed to begin immediately after that day; and
- (c) for the purpose of determining the charity's fiscal period after that day, the charity is deemed not to have established a fiscal period before that day.

188(1.1) Revocation tax

A charity referred to in subsection (1) is liable to a tax, for its taxation year that is deemed to have ended, equal to the amount determined by the formula

$$A - B$$

where

A

is the total of all amounts, each of which is

- (a) the fair market value of a property of the charity at the end of that taxation year,
- (b) the amount of an appropriation (within the meaning assigned by subsection (2)) in respect of a property transferred to another person in the 120-day period that ended at the end of that taxation year, or
- (c) the income of the charity for its winding-up period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 as if that period were a taxation year; and

B

is the total of all amounts (other than the amount of an expenditure in respect of which a deduction has been made in computing income for the winding-up period under paragraph (c) of the description of A), each of which is

- (a) a debt of the charity that is outstanding at the end of that taxation year,
- (b) an expenditure made by the charity during the winding-up period on charitable activities carried on by it, or
- (c) an amount in respect of a property transferred by the charity during the winding-up period and not later than the latter of one year from the end of the taxation year and the day, if any, referred to in paragraph (1.2)(c), to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

188(1.2) Winding-up period

In this Part, the winding-up period of a charity is the period that begins immediately after the day on which the Minister issues a notice of intention to revoke the registration of a taxpayer as a registered charity under any of subsections 149.1(2) to (4.1) and 168(1) (or, if earlier, immediately after the day on which it is determined, under subsection 7(1) of the *Charities Registration (Security Information) Act*, that a certificate served in respect of the charity under subsection 5(1) of that Act is reasonable on the basis of information and evidence available), and that ends on the day that is the latest of

- (a) the day, if any, on which the charity files a return under subsection 189(6.1) for the taxation year deemed by subsection (1) to have ended, but not later than the day on which the charity is required to file that return,
- (b) the day on which the Minister last issues a notice of assessment of tax payable under subsection (1.1) for that taxation year by the charity, and
- (c) if the charity has filed a notice of objection or appeal in respect of that assessment, the day on which the Minister may take a collection action under section 225.1 in respect of that tax payable.

188(1.3) Eligible donee

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

- (a) of which more than 50% of the members of the board of directors or trustees of the registered charity deal at arm's length with each member of the board of directors or trustees of the particular charity;
- (b) that is not the subject of a suspension under subsection 188.2(1);
- (c) that has no unpaid liabilities under this Act or under the *Excise Tax Act*;

- (d) that has filed all information returns required by subsection 149.1(14); and
- (e) that is not the subject of a certificate under subsection 5(1) of the *Charities Registration (Security Information) Act* or, if it is the subject of such a certificate, the certificate has been determined under subsection 7(1) of that Act not to be reasonable.

188(2) Shared liability — revocation tax

A person who, after the time that is 120 days before the end of the taxation year of a charity that is deemed by subsection (1) to have ended, receives property from the charity, is jointly and severally, or solidarily, liable with the charity for the tax payable under subsection (1.1) by the charity for that taxation year for an amount not exceeding the total of all appropriations, each of which is the amount by which the fair market value of such a property at the time it was so received by the person exceeds the consideration given by the person in respect of the property.

188(2.1) Non-application of revocation tax

Subsections (1) and (1.1) do not apply to a charity in respect of a notice of intention to revoke given under any of subsections 149.1(2) to (4.1) and 168(1) if the Minister abandons the intention and so notifies the charity or if

- (a) within the one-year period that begins immediately after the taxation year of the charity otherwise deemed by subsection (1) to have ended, the Minister has registered the charity as a charitable organization, private foundation or public foundation; and
- (b) the charity has, before the time that the Minister has so registered the charity,
 - (i) paid all amounts, each of which is an amount for which the charity is liable under this Act (other than subsection (1.1)) or the *Excise Tax Act* in respect of taxes, penalties and interest, and
 - (ii) filed all information returns required by or under this Act to be filed on or before that time.

188(3) Transfer of property tax

Where, as a result of a transaction or series of transactions, property owned by a registered charity that is a charitable foundation and having a net value greater than 50% of the net asset amount of the charitable foundation immediately before the transaction or series of transactions, as the case may be, is transferred before the end of a taxation year, directly or indirectly, to one or more charitable organizations and it may reasonably be considered that the main purpose of the transfer is to effect a reduction in the disbursement quota of the foundation, the foundation shall pay a tax under this Part for the year equal to the amount by which 25% of the net value of that property determined as of the day of its transfer exceeds the total of all amounts each of which is its tax payable under this subsection for a preceding taxation year in respect of the transaction or series of transactions.

188(3.1) Non-application of subsection (3)

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

188(4) Transfer of property tax

If property has been transferred to a charitable organization in circumstances described in subsection (3) and it may reasonably be considered that the organization acted in concert with a charitable foundation for the purpose of reducing the disbursement quota of the foundation, the organization is jointly and severally, or solidarily, liable with the foundation for the tax imposed on the foundation by that subsection in an amount not exceeding the net value of the property.

188(5) Definitions

In this section,

“net asset amount”

« *montant de l'actif net* »

“net asset amount” of a charitable foundation at any time means the amount determined by the formula

$$A - B$$

where

A

is the fair market value at that time of all the property owned by the foundation at that time, and

B

is the total of all amounts each of which is the amount of a debt owing by or any other obligation of the foundation at that time;

“net value”

« *valeur nette* »

“net value” of property owned by a charitable foundation, as of the day of its transfer, means the amount determined by the formula

$$A - B$$

where

A

is the fair market value of the property on that day, and

B

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

189(6) Taxpayer to file return and pay tax

Every taxpayer who is liable to pay tax under this Part (except a charity that is liable to pay tax under section 188(1)) for a taxation year shall, on or before the day on or before which the taxpayer is, or would be if tax were payable by the taxpayer under Part I for the year, required to file a return of income or an information return under Part I for the year,

- (a) file with the Minister a return for the year in prescribed form and containing prescribed information, without notice or demand therefor;
- (b) estimate in the return the amount of tax payable by the taxpayer under this Part for the year; and
- (c) pay to the Receiver General the amount of tax payable by the taxpayer under this Part for the year.

189(6.1) Revoked charity to file returns

Every taxpayer who is liable to pay tax under subsection 188(1.1) for a taxation year shall, on or before the day that is one year from the end of the taxation year, and without notice or demand,

- (a) file with the Minister
 - (i) a return for the taxation year, in prescribed form and containing prescribed information, and
 - (ii) both an information return and a public information return for the taxation year, each in the form prescribed for the purpose of subsection 149.1(14); and
- (b) estimate in the return referred to in subparagraph (a)(i) the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year; and
- (c) pay to the Receiver General the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year.

189 (6.2) Reduction of revocation tax liability

If the Minister has, during the one-year period beginning immediately after the end of a taxation year of a person, assessed the person in respect of the person's liability for tax under subsection 188(1.1) for that taxation year, has not after that period reassessed the tax liability of the person, and that liability exceeds \$1,000, that liability is, at any particular time, reduced by the total of

(a) the amount, if any, by which

(i) the total of all amounts, each of which is an expenditure made by the charity, on charitable activities carried on by it, before the particular time and during the period (referred to in this subsection as the “post-assessment period”) that begins immediately after a notice of the latest such assessment was sent and ends at the end of the one-year period

exceeds

(ii) the income of the charity for the post-assessment period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 if that period were a taxation year, and

(b) all amounts, each of which is an amount, in respect of a property transferred by the charity before the particular time and during the post-assessment period to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

189(6.3) Reduction of liability for penalties

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

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

(b) the part of the amount in respect of the transfer that has resulted in a reduction of an amount otherwise payable under subsection 188(1.1).

189 (7) Minister may assess

Without limiting the authority of the Minister to revoke the registration of a registered charity or registered Canadian amateur athletic association, the Minister may also at any time assess a taxpayer in respect of any amount that a taxpayer is liable to pay under this Part.