



REGISTERED MAIL

Canadian Education Forum
1250 – 1500 West Georgia Street, Box 62
Vancouver BC V6G 2Z6

MAR 16 2016

BN: 891072092RR0001

Attention: Mr. Donald Simpson, President

File #: 1097393

**Subject: Notice of Intention to Revoke
Canadian Education Forum**

Dear Mr. Simpson:

We are writing further to our letter dated August 21, 2014 (copy enclosed), in which you were invited to submit representations as to why the registration of Canadian Education Forum (the Organization) should not be revoked in accordance with subsection 168(1) of the *Income Tax Act* (the Act).

We have now reviewed and considered the Organization's written response dated October 29, 2014 (copy enclosed). However, notwithstanding the Organization's reply, our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity have not been alleviated. Our position is fully described in Appendix "A".

With respect to the Organization's concern that it has not been given procedural and fairness protection to which it is entitled under paragraph 2(e) of the Bill of Rights¹, we respectfully disagree with this submission. The Organization has been provided procedural and fairness protection throughout the course of this audit and should it believe the Canada Revenue Agency (CRA) has not interpreted the facts or applied the law correctly, it can object in writing to the Appeals Branch as outlined below.

Conclusion

The audit by the CRA has revealed that the Organization is not complying with the requirements set out in the Act. In particular, it was found that the Organization failed to devote resources to charitable activities carried on by the Organization itself by failing to

¹ We assume the Organization referred to the *Canadian Bill of Rights*, SC 1960 c 44 in its representations.

maintain direction and control over resources, and by gifting to non-qualified donees; provided undue benefits; failed to maintain adequate books and records; and failed to file an information return as required by the Act. 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 necessary for charitable registration and should be revoked in the manner described in subsection 168(1) of the Act.

Consequently, for each of the reasons mentioned in our letter dated August 21, 2014, we wish to advise you that, pursuant to subsections 168(1) and 149.1(2) of the Act, we propose to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(c), 168(1)(e), and subsection 149.1(2), of the Income Tax Act, that I propose to revoke the registration of the organization listed below and that the revocation of registration is effective on the date of publication of this notice.

Business number	Name
891072092RR0001	Canadian Education Forum Vancouver B.C.

Should you wish 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, which includes 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

A copy of the revocation notice, described above, will be published in the *Canada Gazette* after the expiration of **90 days** from the date this letter was mailed. The Organization's registration will be revoked on the date of publication, unless the Canada Revenue Agency receives an objection to this notice of intention to revoke within this timeframe.

A copy of the relevant provisions of the Act concerning revocation of registration, including appeals from a notice of intent to revoke registration can be found in Appendix "C", 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 prescribed 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 "C". Form T2046 and the related Guide RC4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, are available on our Web site at www.cra-arc.gc.ca/charities;
- 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 wish to 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,



Cathy Hawara
Director General
Charities Directorate

Attachments:

- CRA letter dated August 21, 2014;
- Representation letter dated October 29, 2014;
- Appendix "A", Comments on Representations;
- Appendix "B", Summary of T3010 Returns Filed, and
- Appendix "C", Relevant provisions of the Act.

c.c.:

Blake Bromley, [REDACTED]
[REDACTED]

ITR APPENDIX A

The audit conducted by the Canada Revenue Agency (CRA) identified that Canadian Education Forum (the Organization):

- Failed to devote resources to charitable activities by its lack of direction and control over its resources and by making gifts to non-qualified donees;
- Provided undue benefits;
- Failed to maintain adequate books and records; and
- Failed to file an information return as required by the Act.

We have reviewed the Organization's submissions dated October 29, 2014, and we maintain our position that the non-compliance issues identified during the audit represents a serious breach of the requirements of the *Income Tax Act* and that, as a result of this non-compliance the Organization's registration should be revoked. While the Organization may have ceased the speaking engagement events prior to the commencement of our audit, the activities were nonetheless identified as activities of the Organization throughout the period we examined and thus were evaluated as to whether or not they were in furtherance of the Organization's charitable purposes.

1. Failure to devote resources to charitable activities

Charitable purposes

The Organization purports to carry on activities in furtherance of the purpose (c) [formally purpose (b)]:

"to receive gifts, bequests, trusts, funds and property and beneficially, or as a trustee agent, to hold, invest, develop, manage, administer and distribute funds and property for the purposes of the Corporation, for and to such other organizations as are "qualified donees" under the provisions of the Income Tax Act and for such other purposes and activities as are authorized for registered charities under the provisions of the Income Tax Act," and...

A registered charity's purposes must identify what it is established to accomplish. A purpose that is broad and vague is not charitable. In our view, we do not take the wording of purpose (c) to mean that it is open ended to allow the Organization to carry on any and every possible purpose which may be charitable at law.

We agree with the general statement that it is a charitable purpose to advance education. As stated in our previous letter, "it appears the speaking engagements could advance education; however, we are not convinced the speaking engagements were the activities of the Organization but rather, were the activities of a for-profit entity".

We agree with the Organization's general statement that "it is a charitable purpose to educate the public"; however, our audit did not reveal that the Organization was engaged in this activity nor did it provide sufficient evidence to demonstrate that the speaking engagements were educational. As outlined in our previous letter, [REDACTED] promoted and conducted six speaking engagements and according to its website, the speaking events were sponsored and funded wholly or in part by [REDACTED] and others such as [REDACTED] and [REDACTED]. There is no mention of the Organization in any of the websites, posters, invoices, etc. promoting the events to indicate to the public that these were events organized by or at the direction of the Organization, yet all expenditures incurred by [REDACTED] to host the speaking events were paid or reimbursed by it. In our opinion, if a for-profit entity carried on activities to educate the public on charitable issues, it would not make the activities "charitable" in furtherance of a charitable purpose, and it would not make the for-profit entity a "charity".

In the Organization's case, the documentation provided shows that the activities were those of [REDACTED], Mr. Bromley [REDACTED]. The Organization has not provided any representations to convince us otherwise.

Lack of direction and control

The Organization represents that it did not fail to devote resources to charitable activities carried on by the Organization itself; however, the Organization has not alleviated CRA's concerns which were described in our letter.

The Organization has requested clarification on CRA's statement that "*The Income Tax Act does not allow a registered charity to carry out its purposes by handing over its money or other resources to another organization that is not a qualified donee.*"

As described in our letter, a registered charity may only use its resources (funds, personnel and/or property) in two ways, under its continued supervision, direction and control, and by gifting to "qualified donees" as defined in the Act. A registered charity could carry out its own activities through employees, volunteers, and intermediaries such as agents. A registered charity may not hand over its money or other resources to non-qualified donees, for them to use the resources as they choose. This has been reiterated by the courts on numerous occasions.

The underlying principles enunciated by the Federal Court of Appeal in *Canadian Committee for the Tel Aviv Foundation v Canada*¹ are applicable to most intermediary arrangements. In *Lepletot v MNR*², the courts stated 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

¹ 2002 FCA 72, [2002] 2 CTC 93.

² 2006 FCA 128 at para 5, [2006] 3 CTC 252.

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.³

We agree that a registered charity may carry out its own activities through its directors, as long as it maintains direction and control over its resources. We agree that Mr. Bromley is a director of the Organization; however, that does not relieve the Organization of the responsibility of having to maintain and direct its own activities. The fact that an individual is a director of a charity does not mean that all activities undertaken by that person or related parties are automatically the activities of the charity particularly when it is difficult to establish where the charity activities begin and those of Mr. Bromley's for profit entities.

We disagree with the statement that our letter implies Mr. Bromley was directing the activity of the Organization. We concluded there was lack of direction and control of the Organization's activities because, although Mr. Bromley's staff handled the arrangements with regard to booking hotels, public meetings and dinners, they did not do so on behalf of the Organization. Similarly, although Mr. Bromley may have been personally involved in almost every aspect of the speaking engagements, the documentation provided does not show that he did so on behalf of the Organization. As outlined in our letter, the speaking engagements were those of [REDACTED] as is clearly demonstrated by the documentation provided, a sample of which is shown below, which were indicative of all the documentation:

- [REDACTED] : September 28 – October 3, 2010

[REDACTED] itinerary shows that the activities undertaken were those of [REDACTED] and/or other entities, and not those of the Organization. This is supported by the documentation provided or available publicly.

- [REDACTED] ' lunch at the [REDACTED] (09/29/2010)
- [REDACTED] Dinner at [REDACTED] (09/29/2010)
- Breakfast event - sponsored by [REDACTED]; [REDACTED] the Province of British Columbia; [REDACTED] (09/30/2010)
- [REDACTED] Luncheon at the [REDACTED] (09/30/2010)
- [REDACTED] Dinner at the [REDACTED] (09/30/2010)
- [REDACTED] website, [REDACTED] / - [REDACTED] on September 3, 2010

³ Canadian Magen David Adom for Israel v MNR, 2002 FCA 323 at para 66, [2002] FCJ no 1260.

- UBC's website, <http://www.allard.ubc.ca/news-events/> - identifies [REDACTED] visit as a UBC Law event with the support of [REDACTED] and in partnership with the [REDACTED].
- [REDACTED] - [REDACTED] and [REDACTED] - identifies the event as a [REDACTED] event.
- [REDACTED] website [REDACTED], identifies the event sponsor as [REDACTED].

- [REDACTED] - December 7, 2010 and [REDACTED] – December 14, 2010
 - [REDACTED] website, [REDACTED] / - identified as a [REDACTED] events with [REDACTED] as the Organizer.
 - On [REDACTED] website, [REDACTED] / - [REDACTED] - the events are identified as part of the [REDACTED] Series. There is no mention of the Organization's name.
- [REDACTED] - February 12 – 16, 2011
 - [REDACTED] itinerary shows that the activities undertaken were those of [REDACTED] and/or other entities, and not those of the Organization. This is further supported by the documentation provided or available publicly.
 - [REDACTED] - [REDACTED] – February 15, 2011 identifies the event as [REDACTED] event organized by [REDACTED]
 - [REDACTED] website, [REDACTED] - [REDACTED] event.
 - Ticket sales advertising showed the events were [REDACTED] events: [REDACTED] Public Lecture & Discussion; [REDACTED] Luncheon (event cancelled); [REDACTED] dinner at Imperial Chinese Seafood Restaurant.
- [REDACTED] : September 23, 2011
 - [REDACTED] website, [REDACTED] on September 15, 2011, identifies the event as a [REDACTED] event with host Blake Bromley, [REDACTED].
 - [REDACTED] invitation - Invitation to event shows that the event is presented by [REDACTED] and sponsored by Vancity and Chimp Foundation, with RSVP to [REDACTED].
 - Chimp Foundation promotional materials at the dinner – Chimp banner; one page on Chimp/Vancity promotion; [REDACTED] printed documents; and Chimp printed documents. There was no mention of the Organization and no promotional materials of it were provided.

Conclusion:

Given the considerable amount of documentation showing the activities to be that of [REDACTED] and others, and, with no documentation showing the Organization's name, we cannot conclude that any of the activities were undertaken on behalf of it. We cannot rely solely on Mr. Bromley's verbal and written statements that the activities are those of the Organization.

The Organization's representations erroneously concluded that our letter stated or implied that a charitable activity ceases to be charitable if it does not promote the identity and brand of the charity. We asked that the Organization provide supporting documentation, an explanation of why the expenses were paid by or reimbursed by it, and how it considered the expenses to be for its own charitable programs as reported on Line 5000 of Form T3010, *Registered Charity Information Return*, because CRA found no direct link to the Organization's involvement in the events.

In the response, the Organization stated that it did not find it necessary or desirable to advertise or publicize its role in the provision of these public venue programs. We find it telling that the speaking events and the related expenditures did not show the Organization's name, yet identified other entities. As stated previously, there was no mention of the Organization or its involvement in any of the speaking events. We agree that there "seems to be a fundamental misunderstanding of the importance of carrying on a charitable activity as opposed to promoting a brand", on the Organization's part. The events are advertised as [REDACTED] speaking events. Although there is no requirement that a registered charity promote its identity and brand, a registered charity that uses its resources to advertise for for-profit entities would be providing an unacceptable benefit to those entities.

Our position remains that the activities undertaken were those of [REDACTED], a group of for-profit entities that provides services to the charitable sector. The fact that Mr. Bromley is a director of the Organization does not entitle him to transfer the expenses of [REDACTED] to the Organization.

The Organization gifted its resources to [REDACTED], either directly or through others such as [REDACTED] by providing reimbursements for [REDACTED] expenses incurred for [REDACTED] speaking events. It also would not have been acceptable to compensate Mr. Bromley or any other entity for his services in arranging for speakers because they were not the activities of the Organization. We re-iterate that the Organization also provided unacceptable private benefits.

Gifting to non-qualified donees

In our letter, we advised the Organization that all transactions did not further the Organization's charitable purposes, with the exception of a gift to a qualified donee of \$25,000 to the Chimp Foundation in the 2011 fiscal period.

We maintain our position that the Organization failed to devote resources to charitable activities by its lack of direction and control over its resources and by making gifts to non-qualified donees.

As outlined above, we do not believe the Organization incurred the above-noted expenditures in furtherance of its own charitable programming but rather made its resources available to non-qualified donees to further their own for-profit programs. Our audit revealed that the Organization made significant gifts to persons that were not qualified donees, as well as engaging in transactions that resulted in significant losses of its financial resources without benefitting itself or furthering its charitable purposes. It is therefore our position that the Organization failed to devote its resources exclusively to charitable activities carried on by it or by gifting to qualified donees as was required under subsection 149.1(1) of the Act. Therefore, there are sufficient grounds to revoke the charitable registration of the Organization under paragraph 168(1)(b) of the Act.

2. Providing an undue benefit

The Organization's representations state that benefits conferred upon Mr. Blake Bromley or [REDACTED] are acceptable private benefits because they arose directly through the pursuit of the charity's purposes or are incidental and ancillary to the achievement of those purposes. The representations did not provide any information to support this claim. The Organization failed to show that the expenditures were related to the delivery of its charitable programs, that it directed and controlled the speaking engagements or that [REDACTED] carried out this activity on the Organization's behalf.

We reiterate our position that the private benefits conferred did not arise through the pursuit of the Organization's purposes; nor were they incidental or ancillary to the achievement of those purposes. As described in detail in our letter, the private benefits were unacceptable because they were for [REDACTED] for-profit activities. [REDACTED] received funds from the Organization to pay for expenditures incurred by [REDACTED] for its own speaking engagement activities.

The private benefits could also not be considered as incidental and ancillary to the achievement of the Organization's purpose because it did not carry on any of its own activities in furtherance of a charitable purpose, with the exception of a \$25,000 gift to a qualified donee.

The Organization has not alleviated our concerns that the Organization provided unacceptable private benefits, which were undue. Due to the seriousness of the non-compliance, penalties were not considered as an appropriate option.

The Organization has permitted the use of its charitable resources for the private gain of a member and therefore has failed to demonstrate that it meets the test for continued registration under subsection 149.1(1) as a charitable organization that "no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof". For this reason, there are

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

In our prior letter, we raised concerns that the Organization's books and records were inadequate for the purposes of the Act. The Organization failed to provide any additional representations to address the concerns detailed in our letter.

In its representations, it states that our letter "cites subsection 230(4) as the statutory basis for a charity's obligation to retain books and records of account for prescribed audit periods". Our letter does not refer to a "prescribed audit period".

The representations also state that "CRA takes the position that there is no statutory limit to the periods which can be audited". Our letter makes no reference to whether there is a statutory limit to the periods which can be audited.

As described in our letter, subsection 230(2) of the Act stipulates the requirements for books and records and subsection 230(4) identifies the limitation period. The prescribed periods for certain books and records of account in subsection 230(4) are found in Income Tax Regulation 5800(1).

As outlined in our letter, a charity must keep adequate books and records, and make these available at the time of the audit, to enable the CRA to make a determination as to whether a charity has met the requirements for its continued status as a registered charity. The courts agreed with the CRA that the books and records must be made available at the time of the audit⁴, and that it is not sufficient to produce these records subsequent to the time of audit.

We agree with the Organization's statement that the "original invoices were rendered to the entity that actually incurred the expenses". The Organization provided copies of Amex/CIBC Visa credit card statements in the name of [REDACTED] and invoices and receipts in the name of the [REDACTED]. The Organization has not provided any documentation to show that those expenses were incurred on behalf of the Organization in furtherance of its charitable activities.

The Organization submits that "it is not reasonable to expect that hotels and travel agents will extend credit to the Organization when it did not have a credit card" and that Blake Bromley or his staff used their credit cards to pay for the Organization's expenses, and that the Organization subsequently made reimbursements.

We find that this explanation does not address our concerns. There were several instances as outlined below, where, irrespective of whose credit card was used to pay the expense, the invoice was made out to [REDACTED] or [REDACTED]. In no instance was

⁴ Supra, footnote 3; *The Lord's Evangelical Church of Deliverance and Prayer of Toronto v Canada*, (2004) FCA 397.

the original invoice issued in the Organization's name. Rather, it is reasonable to conclude that the expenses belonged to the entity's name shown on the invoice [REDACTED] or [REDACTED] and were then allocated to the Organization to pay after the fact. The credit card statements and internal requisition forms simply show that decisions were made to have the Organization pay for the expenses; not that the expenses were incurred on its behalf.

As stated in our letter, the Organization failed to show that the [REDACTED] acted as an intermediary on its behalf. In our view, it is reasonable to expect that a charity claiming to carry on charitable activities would have some documentation in their name. While the credit card statements, invoices and receipts do establish that costs had been incurred, they do not support that they were incurred in furtherance of the Organization's charitable activities.

<u>Date</u>	<u>Event</u>	<u>Provider</u>	<u>Amount</u>	<u>Invoiced to:</u>	<u>expense account</u>
09/30/2010			\$ 7,665		#5520
09/14/2010			\$ 4,428		#5300
09/29/2010			² \$ 2,910		
09/25/2010			\$ 1,489		#5300
12/07/2010			\$ 2,770		#5300
12/14/2010			\$ 3,630		#5300
12/16/2011			\$ 8,000		#5520
12/14/2011			\$ 7,859		#5520
12/23/2011			\$ 5,040		
01/20/2011			\$ 3,580		#5300
09/23/2011			\$ 4,761		#1357

1. There were three private functions on September 30, 2010 totalling \$12,809 on [REDACTED] statement, two of which were allocated to the Organization, with no documentation to support that any of these functions were incurred on behalf of the Organization

2. [REDACTED] journal voucher form shows transaction description as "catering 9/29/2010 [REDACTED] Dinner event

3. [REDACTED] luncheon - [REDACTED] Invoice issued to [REDACTED]

Catering & Corporate Event Agreement between [REDACTED] and [REDACTED]

4. [REDACTED] catering document issued to account name: [REDACTED] contact name:

[REDACTED]; Booking name: [REDACTED]

5. Invoiced to [REDACTED]. - paid by [REDACTED].

Recorded as due from Canadian Education Forum.

Speaking event revenue

The speaking event revenue also supports our conclusion that the activities were those of [REDACTED]. The [REDACTED] events⁵ were \$56 including HST. Tickets were sold directly by [REDACTED] or through EventBrite, a third party service provider. Payment could be made by cheques made payable to [REDACTED], through [REDACTED], or by cash and cheques accepted at the door.

The Organization received and reported only \$3,843.15⁶ in total event revenue for the 2011 fiscal year and \$0 for 2012. This amount does not agree with the expected ticket revenue based on the number of events held and the number of attendees per event. For the [REDACTED] event, we note that [REDACTED] also received 10 tickets at no cost and Mr. [REDACTED] ticket, identified as "Blake's gift", was also at no cost.

The Organization was not a registrant for HST purposes. The HST charged on the ticket sales was not recorded in its general ledger; included on any HST filings, or remitted to CRA by the Organization.

The gross revenue from the events was not deposited into the Organization's bank account and no reconciliation of total ticket revenue per event was provided. [REDACTED] staff arranged to have ticket revenue collected by [REDACTED] deposited into [REDACTED] bank account, even though the Organization had its own bank account. The funds were then transferred to the Organization after the fact. We have no assurance that all the ticket revenue was transferred.

The handling of the event revenue further supports our position that the speaking events were [REDACTED] events.

Winnipeg travel expenses

The Organization represents that the [REDACTED] flight and hotel expenditures were incurred to attend a meeting with [REDACTED] who spoke at a legal conference run by a charity at the hotel. The symposium, 'Law Philanthropy and Social Enterprise' was held on September 21, 2011. No documentation was provided to show it was necessary to incur the costs for the meeting, especially considering that [REDACTED] would be travelling to Vancouver on September 23, 2011.

No details were provided of the time of the meeting, the discussion of the meeting, or why the trip to [REDACTED] was necessary. As a charity lawyer, it would be reasonable that Mr. Bromley would attend the legal conference yet without proof that the trip was

⁵ Lunch event held on September 30, 2010 ([REDACTED]) - 72 attendees; Lunch event held on December 7, 2010 ([REDACTED]) - 35 attendees; Lunch event held on December 14, 2010 ([REDACTED]) - 44 attendees; Dinner event held on February 16, 2011 ([REDACTED]) - number of attendees was not provided.

⁶ \$2,173.65 ([REDACTED] cheque of \$2,117.65 plus \$56 cash) was deposited on January 17, 2011 from the December 2010 events ([REDACTED] & [REDACTED] \$120 cash was deposited February 23, 2011; \$1549.50 ([REDACTED] cheque) was deposited on April 14, 2011.

necessary and reasonably incurred to carry out the Organization's activities, we conclude that the trip was taken for personal or business reasons.

The Organization further represents that if the activity (speaking event) was charitable in Winnipeg, it should be charitable in Vancouver. We make no assessment on whether the symposium is a charitable activity because it is not relevant to the audit of the Organization. The Organization's representations did not alleviate our concerns regarding the Winnipeg expenses and failed to show that they were incurred on behalf of the Organization.

Per our previous letter, a registered charity carrying on its own charitable activity, whether in Canada or outside Canada, whether through the use of employees, or volunteers, or through intermediaries, must demonstrate through documentary evidence that it directs and controls the activity. The Organization has failed to provide books and records which support that it is carrying on its own charitable activity. Therefore, our position remains that the Organization has failed to maintain adequate books and records as required under subsection 230(2) of the Act and this is grounds for revocation of its registered status under paragraph 168(1)(e) of the Act.

4. Failure to file an information return as required by the Act

Per our previous letter, we outlined the Organization's history of late filing its annual information returns; a contravention of subsection 149.1(14) of the Act and that it failed to exercise due care in ensuring the accuracy of the returns filed for the fiscal periods of July 1, 2010 to June 30, 2012.

We disagree with the Organization's position that CRA is taking the audit back to 1999, as we have not reviewed any of the activities or books and records for those periods.

Late filing of T3010 returns

We have re-reviewed the Organization's filing history and note that while two of its information returns were filed with a local Tax Services Offices rather than with the Charities Directorate, our findings remain that the Organization has a history of late filing its information returns. Of the ten late filed returns, the returns were on average, 79 days late. Refer to Appendix B for details.

Failure to file the information returns within six months of the end of the applicable fiscal years is grounds for revoking a registered charity. The Organization's repeated failure to file its returns as required demonstrates its non-compliance with the Act.

Accuracy of T3010 returns

We disagree that the amounts paid to a director, or persons not at arm's length from the Organization, were reimbursements for expenses incurred on behalf of the Organization. As described above, it is our position that the expenditures were not

incurred for activities carried on by the Organization and that it should have reported "Yes" on Line 3200 of the T3010 as it paid amounts to a director.

Our position remains that the Organization did not comply with subsection 149.1(14) of the Act. Under paragraph 168(1)(c) of the Act, the Minister may, by registered mail, give notice to the registered charity that she proposes to revoke its registration if it fails to file an information return as and when required by the Act. It is CRA's position that the Organization has failed to file its information returns as required by the Act and that there appears to be sufficient grounds to revoke the registration of the Organization under paragraph 168(1)(c) of the Act.

ITR APPENDIX B

Canadian Education Forum – BN #891072092RR0001

Summary of T3010 Charity Information Returns Filed by the Organization

	Fiscal Period:	Due Date:	Received:
1	06/30/1997	12/31/1997	03/01/1999
2	06/30/1998	12/31/1998	04/28/1999
3	06/30/1999	12/31/1999	10/05/1999
4	06/30/2000	12/31/2000	11/23/2000
5	06/30/2001	12/31/2001	12/31/2001
6	06/30/2002	12/31/2002	01/03/2003
7	06/30/2003	12/31/2003	03/10/2004
8	06/30/2004	12/31/2004	12/31/2004
9	06/30/2005	12/31/2005	12/20/2005
10	06/30/2006	12/31/2006	04/03/2007
11	06/30/2007	12/31/2007	01/14/2008
12	06/30/2008	12/31/2008	12/29/2008
13	06/30/2009	12/31/2009	12/21/2009
14	06/30/2010	12/31/2010	01/17/2011
15	06/30/2011	12/31/2011	01/18/2012
16	06/30/2012	12/31/2012	01/07/2013
17	06/30/2013	12/31/2013	01/28/2014

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.



REGISTERED MAIL

Canadian Education Forum
1250 – 1500 West Georgia Street, Box 62
Vancouver BC V6G 2Z6

Attention: Donald Simpson, President

BN: 891072092 RR0001
File #: 1097393

August 21, 2014

Subject: Audit of Canadian Education Forum

Dear Mr. Simpson:

This letter is further to the audit of the books and records of the Canadian Education Forum (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from July 1, 2010 to June 30, 2012.

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

AREAS OF NON-COMPLIANCE:		
Issue	Reference	
1. Failure to Devote Resources to Charitable Activities Carried on by the Organization itself a) Lack of direction and control over resources b) Gifting to a non-qualified donee	149.1(1), 149.1(2) 168(1)(b)	
2. Providing an undue benefit	149.1(1), 149.1(2) 168(1)(b), 188.1(4)	
3. Failure to Maintain Adequate Books and Records	230(2), 168(1)(e)	
4. Failure to File an Information Return as Required by the Act	149.1(14), 168(1)(c)	

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.

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

Identified Areas of Non-Compliance

1) Failure to Devote Resources to Charitable Activities Carried on by the Organization itself

In order for an organization to be recognized as a charity, it must be constituted exclusively for charitable purposes, and devote its resources to charitable activities in furtherance thereof.¹ In the Supreme Court decision of *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.* [1999] 1 S.C.R. 10, Lacobucci J. speaking for the majority, summarized the requirements for charitable registration at paragraph 159, as follows:

"In conclusion, on the basis of the Canadian jurisprudence, the requirements for registration under s. 248(1) come down to two:

- (1) the purposes of the organization must be charitable, and must define the scope of the activities engaged in by the organization; and*
- (2) all of the organization's resources must be devoted to these activities."*

The term "charitable" is not defined in the Act; therefore it is necessary to rely on the jurisprudence in the common law. The courts have recognized four general categories of charitable purposes: (1) the relief of poverty; (2) the advancement of religion; (3) the advancement of education; and (4) other purposes beneficial to the community as a whole (or a sufficient section thereof) in a way that the law regards as charitable. This last category identifies an additional group of purposes that have been held charitable at law rather than qualifying any and all purposes that provide a public benefit as charitable.

With regard to the devotion of resources, in accordance with the provisions of the Act, a registered charity may only properly use its resources (funds, personnel and/or property) in two ways, both inside and outside Canada – for 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. The *Income Tax Act* does not allow a registered charity to carry out its purposes by handing over its money or other resources to another organization that is not a qualified donee.

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

¹ *Vancouver Society of Immigrant & Visible Minority Women v. Minister of National Revenue*, [1999] 1 S.C.R. 10, at page 110 (paragraph 152, 154, 156)

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.²

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,³ 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.

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 take into account all relevant information.

The Organization was registered as a charitable organization effective July 11, 1996 with the following purposes:

- (a) to fund, facilitate, promote and carry out activities and programs as well as fund and supply equipment and facilities which will promote the advancement of education by providing students with intercultural, language and communication skills through classroom training, tutorial assistance, community interaction and access to advanced educational technology such as computers, video materials and the internet;
- (b) to receive gifts, bequests, trusts, funds and property and beneficially, or as a trustee agent, to hold, invest, develop, manage, administer and distribute funds and property for the purposes of the Corporation, for and to such other organizations as are "qualified donees" under the provisions of the *Income Tax Act* and for such other purposes and activities as are authorized for registered charities under the provisions of the *Income Tax Act*, and
- (c) to conduct any and all activities and exercise any and all such powers as are necessary for the achievement of the foregoing and in furtherance of the objects of the Corporation.

² 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*.

³ 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.

The By-Law amendments were duly sanctioned by the members on September 23, 1999 and received Ministerial approval as of September 27, 1999. At the same time, a Supplementary Letters Patent was issued by the Minister of Industry to vary the objects of the Organization as provided by By-Law No. 1. It appears that the Consolidated By-Laws were filed with the Minister in 1999 and a copy sent to the Charities Directorate; however, it does not appear that the By-Law No. 1 amendment to the objects filed with the Minister at the same time was sent to the Charities Directorate for approval.

The original three objects as listed above were not changed in 1999 but Section III, paragraph (a) of the Letters Patent was revised by inserting the following as object (b) immediately following object (a) and renumbering the subsequent objects accordingly:

(b) to fund, promote, develop, operate and manage the buildings, equipment and facilities required to enable the provision of post-secondary educational programs and services normally offered by academic, colleges and universities including research facilities, classrooms, meeting rooms, administrative offices and residential facilities.

CRA became aware of the change to the objects during a review of the Minute Book on April 3, 2013.

At the time of registration in 1996, the Organization stated its activities would be as follows:

"It will work primarily with students for whom English is a second language and whose ability to participate in schooling and community opportunities is impeded by their reduced ability to communicate easily and accurately in the English language. The Applicant believes that learning English requires more than learning simple vocabulary and grammar. It believes that a comprehensive understanding of the English language requires experiencing and utilizing language in a Canadian cultural and community context.

The Applicant will provide class room instruction in the English language and want to supplement this with tutorial sessions working one on one with individuals who have need of a tailored educational program. Efforts will also be made to cause students to learn and practice their English in community and family settings so that they will learn the nuances and different connotations of words and be able to understand and speak the vernacular of the English language as well as text book grammar. To the extent that the Applicant achieves the funding to acquire computer and audio/visual equipment and materials, they will use whatever high tech resources are available for education including access to the Internet. This will both improve the means of instruction and expose students to usage of the English language in a global context as well as the local community. Further, in the 21st Century, students will need written English skills to communicate and learn on the Internet."

From our audit, it appears the Organization has migrated from its original intention of educating students in English to purportedly organizing and facilitating a number of speaking engagements held in the Vancouver area. The evidence on the file demonstrates a preponderance of effort and resources devoted to reimbursing a for-profit entity for six speaking events. The events were hosted by [REDACTED], a for-profit organization owned and operated by Mr. Blake Bromley; one of the directors and the sole member of the Organization during the audit period. Between 2010 and 2011, the Organization reimbursed [REDACTED] \$128,499 (78% of total expenses incurred in these years) for the six speaking engagements. It appears the speaking engagements could advance education; however, we are not convinced the speaking engagements were the activities of the Organization but rather, were the activities of a for-profit entity as discussed below.

Furthermore, the Organization stated in its letter dated March 14, 2013, the following information on its future projects and business plans in progress:

"Canadian Education Forum is working in three provincial jurisdictions to identify and engage innovative educators in schools, exposing them to charity as a resource to be integrated into their curricula. The output of the initial work would be used to build criteria for a National Award for Innovation in Education, as well as building a national network of innovative educators to share in best practices and nurture collaboration."⁴

Additionally, [REDACTED], Executive Director of the Organization, responded to our queries on April 13, 2013, that a strategic partnership with Chimp Foundation⁵ has been formed and the intent is to develop relationships with schools to show how philanthropy can help support innovative educational programs through Chimp Foundation. We were provided a copy of an e-mail advising that the Organization is trying to frame potential relationships with some schools; however, no further evidence was provided to confirm the relationship proposed or pending with Chimp Foundation or how it would further the stated objects of the Organization.

Although the Organization was registered for the above purposes, the CRA audit was unable to identify how the Organization carried out any charitable activities that directly furthered its stated purposes with the exception being the gift of \$25,000 to Chimp Foundation in 2011.

⁴ The three provincial jurisdictions are Alberta, British Columbia and Ontario as per an e-mail to [REDACTED], Organization's representative, from [REDACTED], Executive Director. Sample documentation was provided as to the type of information provided to schools to frame partnerships with yet no details were provided on which schools were contacted or when.

⁵ Per Chimp Foundation's website -<https://chimp.net/> - "The Foundation exists only to give money away, and is responsible for ensuring your dollars reach the recipient you choose."

a) Lack of direction and control over resources

We refer to the comment of the Federal Court of Appeal in *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*⁶:

"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 charity 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..."

As re-iterated by the Federal Court of Appeal in *Bayit Lepletot v. Minister of National Revenue*⁷, it is not enough for an organization to fund an agent that carries on certain activities. The Act requires that the agent actually conduct those activities on the charity's behalf. Where the agent has full authority to expend the principal's funds without any appropriate ongoing regulation/approval by the principal, there is no assurance that the agent is, at all times, acting on behalf of the principal. In such a case, it is not clear that the principal is exercising ongoing and substantive direction and control. Activities carried out in this manner are not in compliance with the requirements of the Act.

In order to give meaning and effect to the Act, a charity must continue to meet all of its obligations whether the activities are undertaken directly, through agency agreements or through any other arrangements. By whichever manner a charity chooses to meet its obligations, it must provide documentation or other tangible support to substantiate that it meets the requirements of the Act with respect to the direction and control of its resources.

Accordingly, it is our opinion that if the organization is potentially conducting its own charitable activities through its projects or its collaborations. To this end, the organization is required to establish that it maintains continued direction and control over the substantive "charitable" project or collaboration activities that are ostensibly being carried out on its behalf. In this regard, the existence of an arrangement with an intermediary, written or otherwise, is not enough to prove that a charity meets the own activities test. The organization must be able to show that the terms of any arrangement establish a real, ongoing, active relationship with the intermediary,⁸ and are actually implemented.

As it pertains to our audit, we agree that all of the reimbursements are related to the six speaking events as outlined on the [REDACTED] website under the heading of [REDACTED] speaking events). [REDACTED] website includes a section called

⁶ *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*, 2002 FCA 72 (FCA) at paragraphs 40 and 30 respectively.

⁷ *Bayit Lepletot v. Minister of National Revenue*, 2006 FCA 128

⁸ See, for example, *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*, 2002 FCA 72 (Canadian Committee for the Tel Aviv Foundation) at para. 30.

the [REDACTED] (the Blog). The Blog outlines upcoming speaking events under the [REDACTED] Public Lecture and Forum sponsored by [REDACTED]. According to the website, the speaking events are sponsored and funded wholly or in part by [REDACTED] and others such as [REDACTED] and [REDACTED]. Although there is no mention of the Organization in any of the websites, posters, invoices, etc., the expenditures incurred by [REDACTED] to host the speaking events were paid by or reimbursed to [REDACTED] by the Organization and, in our opinion, inaccurately reported as charitable expenditures of the Organization.

The event expenditures incurred by [REDACTED] but paid for and/or reimbursed by the Organization are:

[REDACTED] Event September 28 – October 3, 2010	\$ 72,685
[REDACTED] Event December 7, 2010	\$ 3,361
[REDACTED] Event December 14, 2010	\$ 5,008
[REDACTED] Event February 12 – 16, 2011	\$ 37,286
[REDACTED] Event September 23, 2011	\$ 10,159
Event Expenditures	<u>\$128,499</u>

The expense categories for the six speaking events are:

Honorarium & Taxes Withheld	\$ 58,250
Office Expenses & Books	\$ 2,289
Hotel	\$ 44,571
Travel (flights and other transportation)	\$ 12,994
Meals and entertainment	\$ 564
Education and training	\$ 4,716
Professional fees	\$ 1,068
GST/HST	\$ 4,047
Total Expenditures Incurred by [REDACTED]	<u>\$128,499</u>

We respectfully disagree that the reimbursements related to expenses incurred by or on behalf of the Organization were to deliver its own charitable programs for the following reasons:

- The Organization did not provide a detailed description of the speaking events it undertook to deliver by itself or via the use of third parties retained by it. The Organization failed to document or provide information on the exact nature, scope and complexity of the speaking engagements to be undertaken. We were not provided with information or enacted agreements that specified exactly what the activity involved, how it furthered the stated charitable objects of the Organization, and the public benefit the speaking engagements would provide.
- The Organization did not provide how the activities would be carried out by [REDACTED] on the Organization's behalf – setting parameters and describing

the deliverables, milestones, and performance benchmarks that are to be measured and reported.

- The Organization did not detail how it supervised and monitored the activity or how [REDACTED] carried on the activity on its behalf, including the mechanisms that enabled it to give instructions about, have input into, and modify the nature or scope of, the activity on an on-going basis.
- The Organization did not outline clear or specific requirements relating to delegation of authority, or to reporting back to them about the conduct and progress of the activity. In fact, no regular activity reports or meetings with [REDACTED] were held on a scheduled basis to discuss details of the [REDACTED] speaking events.
- The Organization was not involved in arranging and booking the speakers nor was it involved in determining the topics or setting the budgets for the [REDACTED] speaking events.
- The Organization did not exercise "full governing, legal and fiduciary control" over the [REDACTED] speaking events with authority to set policies and procedures for the project.
- The Organization's only specified role in the [REDACTED] speaking events was to reimburse and/or pay the costs incurred by [REDACTED] in this regard.

Moreover, the audit findings did not demonstrate that the Organization has input into, guides or even participates in on-going decisions relating to the [REDACTED] speaking events. Generally, the only information provided during the course of the audit was after-the-fact information about topics covered by the speakers and the costs incurred as a result. In all [REDACTED] speaking event documentation reviewed, there were no mechanisms specified for on-going input or instructions by the Organization, nor evidence that the Organization participates in on-going decisions relating to the [REDACTED] speaking events in any way. No evidence of any type of reporting to the Organization was provided in this regard.

Simply facilitating the program of another does not constitute direction and control – whether or not those programs may "advance" an organization's goals or purposes. Where a registered charity undertakes an activity through an intermediary, it must be able to:

- substantiate that it has arranged for the conduct of that specific activity on its behalf, based on the fact that it will further the charity's charitable purposes, and after being satisfied that the intermediary is capable of conducting the activity on the charity's behalf; and

- demonstrate that it maintains direction and control over, and is fully accountable for, that activity - supervising/directing, and making significant decisions in regard to, its conduct on an ongoing basis.

During the audit review, it became apparent the Organization reimbursed other organizations and individuals for services rendered and goods acquired purportedly on its behalf in the pursuit of organizing and facilitating these speaking engagements. We queried the Organization on April 12, 2013, as we were unable to find any reference to the Organization's involvement in the events and asked the Organization to provide supporting documentation (posters, brochures, mailings, credit card statements, invoices, etc.), and an explanation of why expenses were paid by or reimbursed by the Organization and how it considered the expenses to be for its own charitable programs as per Line 5000 of Form T3010, *Registered Charity Information Return*. In the response dated April 30, 2013, the Organization advised:

"The [Organization] produced these events and the expenditures were all direct costs related to carrying out these events. The events were not fund-raising initiatives and the intent was not to solicit funds from the public. Accordingly, the [Organization] did not find it necessary or desirable to advertise or publicize its role in the provision of these public venue programs. It is a charitable program of the [Organization] by virtue of content and delivery of the events. The program is called [REDACTED] and covers a wide array of topics. Any identification of the [Organization] itself was unnecessary and had the potential to undermine the objective of these events which was to facilitate inquiry-based learning on a specific topic based on the investigation of questions, scenarios and problems of interest to the attendees. [REDACTED] assistance in identifying and encouraging individuals from a broad spectrum of the charitable sector to participate in generating interest in the program within the sector and ensuring the groups were diverse, knowledgeable, qualified and engaged. The [Organization] believed that the program would attract more attendees and have more credibility if [REDACTED] hosted the events rather than the [Organization]. The premise of inquiry based learning is that such learning develops best in group situations with a facilitator acting to draw on the combined experience and knowledge base of the participants and encourage interaction with the learning outcome of increased understanding of a complex topic."

We find it concerning that identifying the Organization was considered unnecessary and had the potential to undermine the objective of these events. Yet, the Organization was considered to have produced these events such that it could be expected to pay the costs of the speaking events incurred by [REDACTED]. If the [REDACTED] speaking events are not identified as activities of the Organization, paying or reimbursing the expenses will not further its own charitable purposes.

Accordingly, in our view, the actual relationship between the Organization and [REDACTED] [REDACTED], the for-profit collaborator, is one in which the former does not exercise direction and control over a collaborator and/or any activity conducted by the collaborator. Rather

than conducting its own “charitable” activities, the Organization facilitates a non-qualified donee collaborator to conduct the collaborator’s own activities. The Organization does this by acting as a conduit to deliver funds to a non-qualified donee.

In these circumstances, it is our view that the Organization has failed to establish compliance with the legal requirements relating to the conduct of activities. Under the Act, when a registered charity fails to maintain effective direction and control over resources provided to a non-qualified donee, the result is the same as gifting to a non-qualified donee.

b) Gifting to a non-qualified donee

As stated above, in order for an Organization to be recognized as a charity, it must be constituted and operated exclusively for charitable purposes, and it must devote all of its resources to charitable activities carried on by the Organization itself.

Focusing on “devotion of resources”, a registered charity may only use its resources (funds, personnel and/or property) in two ways, both inside and outside Canada – for 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.

In addition, directors of a not-for-profit corporation are fiduciaries and generally subject to the same common law fiduciary obligations as directors of a business corporation. A fiduciary is a person having legal duty to act primarily for another person’s benefit and is a person who (a) owes another person the duties of good faith, trust, confidence, and candor; and (b) must exercise a high standard of care in managing another’s property. As a general matter, fiduciary duties are imposed by the law to protect those who are vulnerable from those who have power over them. Being a fiduciary means the directors will be held to high standards of good faith, fair dealing and loyalty regarding the organization. The duties of the directors of a charity include decision making, investing charitable property, performing corporate governance and the active management and protection of charitable assets. The fiduciary duties of the directors go beyond meeting the charitable objects of the charity, and the interests of the charity should be put ahead of the interest of the directors. The definition of a charitable organization under subsection 149.1(1) of the Act also implies a charity’s assets are to be managed so as to obtain the best return within the bounds of prudent investment principles.

We note with concern that the directors of the Organization have demonstrated a lack of due diligence in safeguarding its assets and ensuring that its resources are used exclusively for charitable purposes. It appears that the Organization’s directors used the Organization to engage in transactions that did not further its own charitable purposes but rather conferred undue benefits on other organizations and individuals that were not qualified donees. More importantly, these transactions resulted in significant erosions of the Organization’s financial resources with no tangible benefit to the Organization and have put its charitable status at risk.

Although outside the audit period, a review of the 2013 information return filed notes further erosion to the Organization's resources as it incurred over \$47,000 in travel expenses and over \$170,000 in professional and consulting fees; zero amounts were reported as being incurred for charitable programs. Given our concerns noted above, it appears the Organization has continued to pay for or reimburse expenses unrelated to its own charitable programs and to the benefit of non-qualified donees.

Conclusion:

As outlined above, we do not believe the Organization incurred the above-noted expenditures in furtherance of its own charitable programming but rather made its resources available to non-qualified donees to further their own for-profit programs. Our audit revealed that the Organization made significant gifts to persons that were not qualified donees, as well as engaging in transactions that resulted in significant losses of its financial resources without benefitting itself or furthering its charitable purposes. It is therefore our position that the Organization failed to devote its resources exclusively to charitable activities carried on by it or by gifting to qualified donees as is required under 149.1(1) of the Act. Therefore, it appears that there are sufficient grounds to revoke the charitable registration of the Organization under paragraph 168(1)(b) of the Act.

2) Providing an Undue Benefit

This Organization is registered as a charitable organization. Subsection 149.1(1) of the Act includes a definition of "charitable organization" which stipulates that no part of a charity's income is payable or otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settler thereof. In circumstances where an organization does provide such benefits to its members, it may be considered an undue benefit.

At common law, and by statute, a registered charity cannot be established to confer a private benefit on non-charitable beneficiaries or non-qualified donees. Private benefits that occur during the normal operations of a charity - when a charity pursues activities that further its charitable purpose, such as salaries, fees for services and office expenses, are acceptable provided they:

- arise directly through the pursuit of the charity's purposes or are incidental and ancillary to the achievement of those purposes;
- are unavoidable and necessary to the achievement of the charity's purposes; and
- are reasonable or not disproportionate compared to the public benefit achieved in all circumstances.

If the activities that a registered charity conducts confer a private benefit that does not meet these criteria, it will be considered to be undue. A charity that delivers an undue private benefit is not using all of its resources for charitable purposes, and may be liable to a penalty under the Act, or have its registered status revoked.

As per above, our audit revealed a significant number of expenses being paid for or reimbursed by the Organization for six speaking events we do not feel were the Organization's own charitable programs. In our Query #1, we requested supporting documentation including contracts, invoices etc. to confirm that the amounts paid/reimbursed to [REDACTED], Blake Bromley, [REDACTED] and UBC were actual costs of the Organization including a written explanation of how the expenditures relate to its charitable programs.

On April 30, 2013, the Organization advised the cheque issued to [REDACTED] was for event planning and onsite management lecture and dinner and the expenditure is a direct cost of providing education programs to individuals interested in learning more about the charitable sector and developing a better understanding of matters that are important to the charitable sector through a venue of open learning, enlightened discussion and collaborative community interaction. The amounts paid to [REDACTED] Blake Bromley, [REDACTED] and [REDACTED] were a reimbursement of expenses related to the delivery of charitable programs. The payment to UBC was in payment of an invoice for an event at UBC's Sage Bistro.

We respectfully disagree that a reimbursement of expenses incurred by [REDACTED] were related to the delivery of charitable programs by the Organization. CRA has reviewed in detail all documentation provided to the Organization by the [REDACTED] requesting reimbursement of funds for amounts related to the [REDACTED] speaking events. All of the travel documentation (airline tickets, hotel bills, meals, transportation), event bookings (agreements for venue rentals and banquets), and documentation covering miscellaneous expenses and credit card statements indicate the majority of the charges have been agreed to personally by Blake Bromley or [REDACTED] and/or corporately by [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. CRA did not find any mention of the Organization or its involvement whatsoever in the events staged through [REDACTED] speaker series other than handwritten notes by the [REDACTED] staff on credit card statements and internal requisitions requesting reimbursement of the expenditures from the Organization. In fact, a banquet bill dated February 14, 2011, from [REDACTED] totaling \$7,858.86 listed the event name as [REDACTED] and [REDACTED] dinner with [REDACTED]. It was also evident that the intent in part of at least one of the events held at the Vancouver Club on September 23, 2011, was to familiarize the audience with a Chimp Foundation promotion presented by [REDACTED], [REDACTED]

Conclusion

Accordingly, we do conclude that the resources incurred by the Organization were not incurred in the course of the charitable activities carried on by it. It appears, from the nature and type of reimbursements, the amounts were incurred to further the activities of the for-profit group and their [REDACTED] series of events.

As a result, it appears the Organization has permitted the use of its charitable resources for the private gain of a member and therefore has failed to demonstrate that it meets the test for continued registration under 149.1(1) as a charitable organization that "no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof". For this reason, it appears that there are 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

Subsection 230(2) of the Act requires that every registered Charity maintain adequate books and records, and books of account, at an address in Canada recorded with the Minister. In addition to retaining copies of donation receipts, as explicitly required by subsection 230(2), subsection 230(4) provides that:

"every person required by this section to keep 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 period as prescribed; and
- (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 date of the last taxation year to which the records and books relate."

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

- 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 thereto⁹; and
- 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 a charity's registration¹⁰.

Our audit found the Organization did not maintain adequate books and records. In particular, the Organization failed to:

- provide any meeting minutes to indicate the directors discussed and agreed to work with [REDACTED], an intermediary, to carry out activities on its behalf;

⁹ Supra, footnote 3; The Lord's Evangelical Church of Deliverance and Prayer of Toronto v. Canada, (2004) FCA 397

¹⁰ College Rabbinique of Montreal Oir Hachaim D'Tash v. Canada (Minister of Customs and Revenue Agency, (2004) FCA 101; ITA section 168(1)

- maintain documentation supporting that it retained direction and control over the funds it transferred to non-arm's length persons such as Mr. Blake Bromley, [REDACTED], [REDACTED] and [REDACTED]. The majority of the books and records provided to CRA during the audit with respect to the [REDACTED] speaking events were actual books and records of [REDACTED] et al. We were also provided with invoices for other expenses that do not appear related to the speaking events, such as travel to Winnipeg when all events were held in the Vancouver area. For example:
 - Blake Bromley and [REDACTED] corresponded with, and made the arrangements for, the speakers with regard to the [REDACTED] speaking events and sent out the invitations to attendees on behalf of the speakers.
 - Although there was no mention of the Organization in any of the documentation reviewed, the expenses incurred for the [REDACTED] speaking events were reimbursed and/or paid by the Organization. For example:
 - Copies of Amex/CIBC Visa statements in the name of [REDACTED] [REDACTED] were provided in lieu of actual invoices in the name of the Organization. Statements provided were redacted to blacken out all other transactions except for the ones that [REDACTED] felt applied to the event expenses incurred by them on the Organization's behalf.
 - [REDACTED], Winnipeg invoice dated September 20, 2011, confirmed Mr. Blake Bromley was the hotel guest. The expense was charged to the Organization.
 - [REDACTED] invoice dated September 22, 2011, was booked by Mr. Blake Bromley on behalf of one of the speakers, [REDACTED]. The expense was charged to the Organization.
 - [REDACTED] electronic invoice dated August 11, 2011, was prepared for Blake Bromley, [REDACTED] [REDACTED] for travel to Winnipeg. The expense was charged to the Organization.
 - [REDACTED] event invoice dated February 16, 2011, listed the convener as Blake Bromley [REDACTED]. The event was cancelled for lack of interest and a cancellation fee of \$686.00 was charged to the Organization.
 - [REDACTED] invoice dated February 23, 2011 was addressed to the attention of [REDACTED] for an event planning and onsite management lecture and dinner. The expense was charged to the Organization.

➤ [REDACTED] dated February 14, 2011 was a Regent College and [REDACTED] dinner with one of the speakers. The expense was charged to the Organization.

- provide satisfactory documentation and information to verify it delivered and developed academic programs of its own on topics of interest to professionals, academics, administrators, volunteers and others involved in Canada's charitable sector as described in Section C2 of Form T3010, *Registered Charity Information Returns*; and
- provide CRA with copies of all amendments to its governing documents for review and filing (By-Law No. 1 amendment to the objects filed with the Minister on September 27, 1999).

Conclusion

Under paragraph 168(1)(e) of the Act, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because it fails to comply with or contravenes section 230 of the Act dealing with books and records. Based on our above findings, it is CRA's view the Organization failed to maintain adequate books and records as required under subsection 230(2) of the Act. For this reason alone there may be grounds to revoke the registered status of the Organization.

4) Failure to File an Information Return as Required by the Act

Pursuant to subsection 149.1(14) of the Act, every registered charity must, within six months from the end of the charity's fiscal year end, file form T3010, *Registered Charity Information Return* with the applicable schedules.

It is the responsibility of the charity to ensure that the information that is provided in its return, schedules and statements, is factual and complete in every respect. A charity is not meeting its requirements to file an information return if it fails to exercise due care with respect to ensuring the accuracy thereof.

Since registration in 1999, seventy one percent (12 of the 17 years) of the Registered Charity Information Returns (T3010s) filed were filed with the CRA more than six months from the end of the charity's fiscal year end. On average, the returns were filed 68 days after the due date. The CRA employs numerous methods of alerting a charity when its returns are coming due and when they are late as filing the information return is a requirement for maintaining registered charity status.

The Organization improperly completed T3010 returns for the July 1, 2010 to June 30, 2012 fiscal periods, as there were the following errors and omissions:

FPE 30/06/2011 and 30/06/2012:

- Question C8, "Did the charity compensate any of its directors/trustees or like officials or persons not at arm's length from the charity for services provided during the fiscal period (other than reimbursement for out-of-pocket expenses)?" was incorrectly marked "No". As per above, it is our opinion the Organization reimbursed directors/trustees, like officials and persons not at arm's length from the charity for services provided in relation to the speaking events.
- Line 5000, "Total expenditures on charitable programs" contained the amounts paid to non-qualified donees, not expenditures on the Organization's own activities.

Subsection 188.1(6) of the Act provides that a charity could be liable for a \$500 penalty if it fails to file a return for a taxation year as and when required by subsection 149.1(14) of the Act. Further, Budget 2012 introduced new measures to ensure that charities are accurately reporting all the activities in which they engage. The CRA was granted the authority to suspend the tax-receipting privileges of a charity that provides inaccurate or incomplete information in its annual information return until the charity provides the required information under subsection 188.2(2.1). We do not feel these sanctions are appropriate based on the other areas of non-compliance identified in our audit.

Conclusion

Under paragraph 168(1)(c) of the Act, the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it fails to file an information return as and when required by the Act. It is CRA's position that the Organization has failed to file its information returns as required by the Act. As such, there appears to be sufficient grounds to revoke the registration of the Organization under paragraph 168(1)(c) of the Act.

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
- 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 appoint a third party to represent you in this matter, please send us a written authorization naming the individual and explicitly authorizing that individual to discuss your file with us.

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

Sincerely,

[REDACTED]
Jeanne Effler, CPA, CGA
Audit Division
VITSO
Telephone: [REDACTED]
Facsimile: (250) 363-3000

c.c.: Blake Bromley, Sole Member

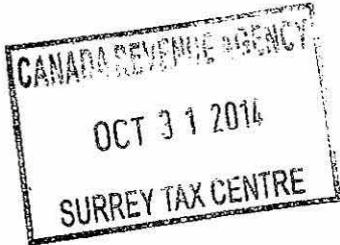
Vancouver Island Tax Services
1415 Vancouver Street
Victoria BC

Mailing Address:
Vancouver Island Tax Services
c/o 9755 King George Blvd.
Surrey, BC V3T 5E1

Services fiscaux de l' Île de Vancouver
1415, rue Vancouver
Victoria, C-B

l'adresse postale :
Services fiscaux de l' Île de Vancouver,
A/S 9755 Aut. King George
Surrey, C-B V3T 5E1

Canada



October 29, 2014

Ms. Jeanne Effler
Audit Division
Vancouver Island Tax Services
c/o 9755 King George Blvd
Surrey, BC V3T 5E1

Dear Ms. Effler:

Re: Canadian Education Forum AFL
CRA Reference File #1097393

We write in response to your Administrative Fairness Letter dated August 21, 2014, which we will refer to as CEF-AFL.

Failure to Devote Resources to Charitable Activities Carried on by the Organization Itself

On page 2 the CEF-AFL underlines the words "by handing over its money or other resources to another organization that is not a qualified donee" but does not identify the organization to which it handled over its money. Please clarify CRA's statement so it is possible to meaningfully respond to this allegation.

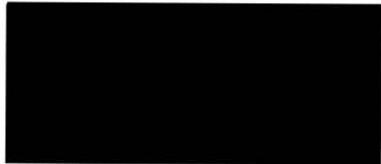
The CEF-AFL goes on to state "a charity's own charitable activities may be carried out by its directors" and on page 5 you identify Blake Bromley as one of its directors during the audit period. Consequently, it is confusing that much of the AFL is critical of Blake Bromley directing the activities of the Organization. The AFL also refers to agency relationships but the Organization has never maintained that it had entered into agency agreements. Please explain the legal position of CRA so that the Organization can, in the words of the Federal Court of Appeal in the *Tel Aviv Foundation* case¹ be 'fully informed of the case to be met and was given a full opportunity to respond'.

Purposes

As stated on page 5 of the CEF-AFL, the Organization was registered with purposes which include "and for such other purposes and activities as are authorized for registered charities under the provisions of the Income Tax Act". The Organization believes that it is a charitable purpose to educate the public on charitable issues. This is not a controversial or aggressive interpretation of the ITA or the law of charity and is supported by guidance on CRA's own website. It is not reasonable for CRA to take the position that it is not an appropriate charitable activity for the Organization to bring over [REDACTED]

[REDACTED] to speak on the intersection of human rights and charity law at the University of Alberta Law School, UBC, a [REDACTED]

Similarly, [REDACTED] s. He spoke at a number of [REDACTED] functions on [REDACTED] legal view of social enterprises carried on by charities. This is an issue of significance to many Canadian charities. Another expert brought to Vancouver by the Organization was [REDACTED] a [REDACTED]



[REDACTED] This event was promoted in conjunction with [REDACTED] a serious academic institution affiliated with [REDACTED].

Lack of Direction and Control

The CEF-AFL states that Blake Bromley was a director of the Organization and that he personally handled all the communications with all the speakers. Consequently, the Organization is not clear as a matter of law what further direction and control CRA requires of a charity. Neither Blake Bromley nor any other entity was compensated for his services in this regard.

It is true that Blake Bromley did not personally carry out all the arrangements with regard to booking hotels, public meetings and dinners but had the assistance of his staff. Please clarify CRA's position as to why this results in a "lack of direction and control". If the Organization is to be "fully informed of the case to be met and was given a full opportunity to respond" it is important that CRA detail what level of direction and control is required in a situation when a director is personally involved in almost every aspect of the Organization's activities focused on by the auditor.

In order to be "fully informed of the case to be met" it is important for CRA explain its position with regard to advertising charitable activities. It seems, from reading the CEF-AFL, that a charitable activity ceases to be charitable if it does not promote the identity and brand of the charity. This seems a fundamental misunderstanding of the importance of carrying on a charitable activity as opposed to promoting a brand. The Organization had no interest in promoting its brand. Its interest was in attracting the best speakers as well as the best audiences for these speakers. Blake Bromley was known to all the speakers. It was unrealistic to expect the Organization as an identified entity to get its emails returned if it approached a [REDACTED]

[REDACTED] It also knew that [REDACTED] could attract a much more significant audience because CEF had no visible brand – and was not seeking to develop one. Its interest was in increasing the conversation about charity in Vancouver and making the conversation better informed.

Gifting to a non-qualified donee

On page 10 of the CEF-AFL, it states "that the Organization's directors used the Organization to engage in transactions that did not further its own charitable purposes". Please advise which of the Organization's transactions did not further its charitable purposes.

Providing an Undue Benefit

Page 11 of the CEF-AFL states that private benefits are acceptable provided they "arise directly through the pursuit of the charity's purposes or are incidental and ancillary to the achievement of those purposes". Benefits conferred upon Blake Bromley or [REDACTED] fall squarely within this exception.

It does not seem reasonable for the CEF-AFL to take the position that the reimbursement of expenses by [REDACTED] were not related to the delivery of charitable programs by the Organization. Please advise if, as part of its full opportunity to respond, it is possible for the Organization to meet with the auditor's superior to discuss the basis upon which CRA came to this position.

Failure to Maintain Adequate Books and Records

CEF-AFL cites subsection 230(4) as the statutory basis for a charity's obligation to retain records and books of account for prescribed audit periods. CRA takes the position that there is no statutory limit to the periods which can be audited. Would you please advise whether as a matter of law it is CRA's position that a charity must retain its books and records for its entire existence in order to comply with section 230.

In order to be fully informed of the case to be met with regard to compliance with section 230, please define what CRA means by "at the time of the audit" with regard to production of documents. CEF-AFL cited

[REDACTED]

jurisprudence which referred to this timing issue and used the wording "subsequent thereto". Again, provide the Organization with CRA's policy as to what constitutes production of records subsequent to the time of the audit.

It is surprising that CRA takes the position that in this situation the records were not satisfactory because the original invoices were rendered to the entity that actually incurred the expenses. It is not reasonable to expect that hotels and travel agents will extend credit to the Organization when it did not have a credit card. Given that the records are what they are, and are complete, it will be necessary to seek the guidance of the Federal Court of Appeal on this issue should the Minister proceed to revocation.

The expenditures in travelling to Winnipeg and staying at the [REDACTED] were related to meeting with [REDACTED] [REDACTED] who spoke on the same topics at a legal conference run by a charity at that hotel. It would seem fair that CRA should be auditing that charity since [REDACTED] was speaking on the same topic as he did in Vancouver. How is it possible that the same activity that was charitable in Winnipeg could not be charitable in Vancouver?

Failure to File an Information Return

It is clear from this section of the CEF-AFL that CRA is taking the audit back to 1999. However, it is mathematically impossible for the Organization to have filed 17 T3010's since 1999. CEF would have been responsible for filing 13 T3010 returns for years ending June 30, 2000 to June 30, 2013 (the 2014 return is not yet due). Consequently, the number mathematical calculations upon which CRA bases its allegations cannot be relied upon. The Organization has not retained all its records back until 1999. Please provide the Organization with a copy of all its filings showing the relevant dates since 1999 so that it can prepare a response.

The wording of the CEF-AFL indicates that in doing its calculations of the timeliness of filings, CRA only included the years in which the Organization was late in coming to its determination of the average number of days the Organization was late in filing. Please advise whether this is the correct reading of the CEF-AFL. Fairness would require that average include years in which the Organization filed early.

The Organization fears that the CEF-AFL demonstrates a bias against the Organization. The audit period covers only two fiscal years. In one year the Organization's filing was 13 days late. In the other year it filed 13 days early. If CRA is going to devote spending taxpayers' money in counting and averaging the number of days a registered charity is late in filing its T3010, fairness demands counting early filings as well as late. It is beyond comprehension that CRA believes that the intent of Parliament was to give Charities Directorate the ability to revoke registration based upon subsections 149.1(14) and 168(1)(c) on facts such as this.

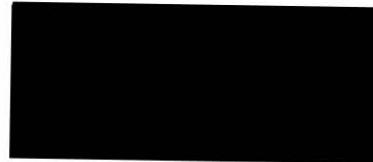
It is also completely unreasonable for CRA to arbitrarily state that a director has been compensated when in the same sentence it defines compensation as excluding reimbursement for out-of-pocket expenses. The CEF-AFL does not list or allege a single compensation that was not a reimbursement.

Conclusion

The auditor was informed that the Organization had ceased conducting the [REDACTED] events before the audit began. Consequently, any errors were discontinued at the initiative of the Organization before the audit was initiated. Omitting this fact is a material example of CRA's prejudicial attitude in conducting this audit.

The Organization repeats its request for all the documents demanded in this letter so that it can be "fully informed of the case to be met and was given a full opportunity to respond". It also requires that CRA set out its position on the various issues of law and administrative policy as demanded in this letter.

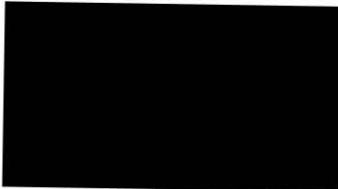
The CEF-AFL raises serious questions as to whether CRA has accorded the Organization the procedural and fairness protections to which it is entitled under subsection 2(e) of the Bill of Rights. The Organization requests a



meeting with a person to whom the auditor reports for an opportunity to discuss in person the issues raised in the CEF-AFL.

The Organization is anxious to proceed with this matter and to have it resolved. Our client will not be in a position to provide full submissions on the CEF-AFL unless and until we have received responses to the requests contained in this letter. Accordingly, we request a response to this letter within 30 days. We look forward to hearing from you.

Yours truly,



cc: Ms. C. Hawafa, Director General, Charities Directorate, Canada Revenue Agency