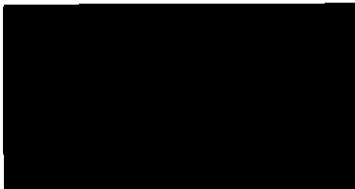




March 4, 2019

**REGISTERED MAIL**



BN: 891283145RR0001

File #: 0908558

Dear [REDACTED]

**Subject: Notice of intention to revoke  
Gates of Mercy**

We are writing with respect to our letter dated March 7, 2018 (copy enclosed), in which Gates of Mercy (the Organization) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from September 1, 2010 to August 31, 2013, and explain why the registration of the Organization should not be revoked in accordance with subsection 168(1) of the Income Tax Act.

This most recent audit was conducted following an audit of the Organization for the period from September 1, 2008 to August 31, 2010, which resulted in the Organization's representative signing a compliance agreement (copy enclosed), in which it committed to resolving the non-compliance identified in the agreement.

The non-compliance identified in the agreement included our findings that the Organization failed to retain direction and control over the use of its funds, and over the activities conducted with those funds to establish that it was carrying out its own charitable activities in accordance with the provisions of the Act; failed to maintain adequate books and records; issued receipts not in accordance with the Act or its Regulations; and failed to meet its requirements under the Act to file an information return in prescribed form.

On May 9, 2018, the Organization provided a response to our letter of March 7, 2018, stating the decision that "the Organization will not be submitting a reply."

**Conclusion**

The most recent audit by the CRA found that the Organization has continued to fail to comply with the requirements set out in the Act. In particular, it was found that the Organization failed to devote resources to charitable activities due to lack of direction and control over the use of its resources; failed to maintain adequate books and records; issued receipts not in accordance with the Act or its Regulations; and failed to meet its

requirements under the Act to file an information return in prescribed form. The current audit also found that the Organization failed to be constituted exclusively for charitable purposes and conducted non-charitable activities. For all of these reasons, and for each reason alone, it is the position of the CRA that the Organization no longer meets the requirements for charitable registration and should be revoked in the manner described in subsection 168(1) of the Act.

For each of the reasons mentioned in our letter dated March 7, 2018, 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)(d), 168(1)(e), and subsection 149.1(2), and paragraph 149.1(2)(c), of the Income Tax Act, that I propose to revoke the registration of the charity listed below and that by virtue of paragraph 168(2)(b) thereof, the revocation of registration is effective on the date of publication of this notice in the Canada Gazette.

<b>Business number</b>	<b>Name</b>
891283145RR0001	Gates of Mercy Toronto ON

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

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

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

Please note that the Organization must obtain a stay to suspend the revocation process, even though it may have filed a notice of objection.

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

### **Consequences of revocation**

As of the effective date of revocation:

- a) the Organization will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the Act, respectively;
- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the notice of intention to revoke. This revocation tax is calculated on Form T2046, Tax Return Where Registration of a Charity is Revoked (the Return). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the notice of intention to revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix A. Form T2046 and the related Guide RC4424, Completing the Tax Return Where Registration of a Charity is Revoked, are available on our website at [canada.ca/charities-giving](http://canada.ca/charities-giving);
- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the Excise Tax Act. As a result, the Organization may be subject to obligations and entitlements under the Excise Tax Act that apply to organizations other than charities. If you have any questions about your Goods and Services Tax/Harmonized Sales Tax (GST/HST) obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

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

Yours sincerely,

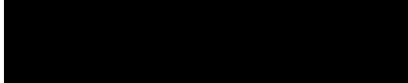


Tony Manconi  
Director General  
Charities Directorate

Enclosures:

- Signed copy of compliance agreement dated April 9, 2012
- CRA letter dated March 7, 2018
- Organization's letter received May 9, 2018
- Appendix A, Relevant provisions of the Act

c.c.: Shmuel Reidel  
Board of Directors  
Gates of Mercy





Gates of Mercy

Attention:

BN: 891283145RR0001

File #:0908558

March 7, 2018

**Subject: Audit of Gates of Mercy**

Dear [REDACTED]

This letter is further to the audit of the books and records of Gates of Mercy (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from September 1, 2010 to August 31, 2013.

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

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

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

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

### **General legal principles**

In order to maintain charitable registration under the Act, Canadian law requires that an organization demonstrate that it is constituted exclusively for charitable purposes (or purposes), and that it devotes its resources to charitable activities carried on by the organization itself in furtherance thereof.<sup>1</sup> To be exclusively charitable, a purpose must fall within one or more of the following four categories (also known as "heads") of charity<sup>2</sup> and deliver a public benefit:

- relief of poverty (first category)
- advancement of education (second category)
- advancement of religion (third category) or
- certain other purposes beneficial to the community in a way the law regards as charitable (fourth category).

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

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

The public benefit requirement involves a two-part test:

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

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

- for its *own charitable activities* – undertaken by the charity itself under its continued supervision, direction and control; and

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

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

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

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

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

- for gifting to “qualified donees” as defined in the Act.<sup>8</sup>

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

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,<sup>10</sup> and are actually implemented. A charity must record all steps taken to exercise direction and control as part of its books and records, to allow the CRA to verify that the charity’s funds have been spent on its own activities. While the nature and extent of the required direction and control may vary based on the particular activity and circumstances, the absence of appropriate direction and control indicates that an organization is resourcing a non-qualified donee in contravention of the Act.

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

#### **Chronology of the audit**

During the initial stages of the audit, the Organization made its books and records and its directors available to CRA auditors. We then requested a second opportunity to meet with the directors and review additional books and records that might be available. The Organization requested that we clarify our focus for this second review. In response, we issued a letter dated November 4, 2016. A meeting was scheduled for November 28, 2016.

On November 21, 2016, we received a fax from a newly retained legal representative of the Organization with an attached Business Consent form and a request that we call to

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<sup>8</sup> A “qualified donee” means a donee described in any of paragraphs 110.1(1)(a) and (b) and the definitions “total charitable gifts” and “total Crown gifts” in subsection 118.1. As per subsection 149.1(6)(b), a charitable organization shall be considered to be devoting its resources to charitable activities carried on by it to the extent that, in any taxation year, it disburses not more than 50% of its income for that year to qualified donees.

<sup>9</sup> 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*.

<sup>10</sup> 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.

discuss our proposed meeting. We discussed our preference for access to the books and records of the Organization at its place of operation, and for an interview with the directors of the Organization and any other parties who wished to participate. The legal representative requested that all further communication be in the form of letters and advised that the legal firm would now be the sole point of contact for the audit. The legal representative also confirmed that our scheduled meeting would not take place and that the Organization would be willing to have its books and records mailed to us for review.

In response, we issued a letter dated December 7, 2016, wherein we requested the books and records of the Organization, and identified specific items that should be provided if available. The Organization's legal representative provided a response dated January 12, 2017. The response was four pages in length and included an attached schedule listing a number of agents used by the Organization with brief descriptions of each agent and the charitable purpose of the Organization under which the activities of each agent fit. The response also included two boxes of copies of the Organization's records related to its disbursements. It is our understanding that these two boxes contain all records related to disbursements made by the Organization through various intermediaries. The Organization advised that it was working to provide emails as requested in our December 7, 2016 letter, but did not provide any timeframe for when these emails would be made available. On June 16, 2017, two boxes of printed emails were received. The contents of the emails were reviewed, however none of the emails included sufficient details for us to determine whether the Organization was maintaining adequate direction and control over its resources and over the conduct of its activities.

#### **Repeated non-compliance**

The Organization was the subject of a previous audit for the period from September 1, 2008 to August 31, 2010. The following areas of non-compliance were identified during the course of that audit:

1. Failure to Maintain Control of Funds Sent to Organizations/Individuals Outside Canada for Charitable Activities in Accordance with the Requirements of this Act
2. Failure to Maintain Adequate Books and Records
3. Issuing Receipts Not in Accordance with the Act or its Regulations
4. Errors/Omissions on T3010 Information Return

The CRA provided the Organization with an opportunity to resolve the above identified issues through the implementation of a compliance agreement. The agreement was signed by Mr. Shmuel Reidel, a director of the Organization on April 9, 2012. Mr. Reidel remains an active member of the board of directors. The compliance agreement listed a number of corrective measures to be undertaken. The Organization agreed to comply with the corrective measures no later than August 31, 2012, with the exception of the corrective measures regarding the maintenance of records relating to foreign activities carried out by intermediaries on its behalf. Documentation relating to those activities was to be maintained effective immediately - April 9, 2012.

The current audit was conducted as a follow up to the previous audit. Our current audit revealed the Organization failed to implement the corrective measures as agreed in the compliance agreement and revealed new areas of non-compliance.

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

### Identified areas of non-compliance

#### **1. Failure to be Constituted for Exclusively Charitable Purposes**

##### **a) Non-Charitable/Broad Purposes**

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

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

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

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

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

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

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

The purposes of the Organization are as follows:

1. To provide relief of poverty by assisting persons living below the minimum poverty levels based on the size of their families and their special needs, if any.
2. To operate and maintain public food banks and public living quarters for poverty stricken persons.
3. To establish, provide and operate non-profit residential accommodations and incidental facilities thereto for persons of low income, senior citizens and the disabled.
4. To provide and maintain a scholarship fund for needy and above average scholars to enable them to continue their studies at a recognized educational institution.

In our opinion, the Organization's first stated purpose lacks the degree of certainty and clarity required to restrict the Organization to exclusively charitable activities. The purpose defines the purpose category and the eligible beneficiary group but does not outline any means for relieving poverty. A purpose must define the means of providing charitable benefit in order to define the scope of activities that can be engaged in by the Organization.

We did not identify any activities being carried out in furtherance of purpose 3.

b) Unstated purpose

Our review of available documentation has led us to conclude that the Organization's purported activities show that the Organization is carrying out activities in furtherance of purposes other than those in its governing documents.

The following are a few examples of those purported activities:

In its response to our letter dated April 20, 2016, the Organization submitted a letter which states the mandate of the Organization as "To provide assistance to institutions addressing emotional and mental health issues as well as Jewish outreach across the globe." This activity does not appear to further any of the Organization's stated purposes.

Support for Educational Institutions

The Organization has only one purpose under the advancement of education category which restricts the scope of its activities to the issuance of scholarships. The Organization supported a number of Jewish educational institutions, primarily through the payment of salaries/stipends to teachers/tutors/Rabbis and other staff (see table below). Any support granted to educational institutions in a form other than

scholarships, is not in furtherance of the Organization's stated purposes, and is therefore a devotion of resources to non-charitable activities.

Agent Name	Amount	Description
	\$ 11,784	Staffing/tutor costs
	39,586	Staffing/tutor costs
	235,065	Direct costs for classes, seminars, social events and trips to Israel
	59,393	Staffing/tutor costs
	11,760	Staffing/tutor costs
	40,271	Staffing/tutor costs and professional fees
	103,261	Staffing/tutor costs
	73,964	Direct costs for mental health services, counselling, assessments, training of parents
	50,943	Staffing/tutor costs
	42,338	Staffing/tutor costs
<b>Total</b>	<b>\$ 668,365</b>	

████████ – The budget submitted by ██████████ included four line items and a total cost of \$582,824. From this amount, \$120,000 was designated for "Activities and

████████. Disbursements appeared to be primarily related to travel costs. The largest invoice was \$51,341 (USD) for flights to Israel.

#### Support for the Disabled

We reviewed a sample of the documentation for the agents that carry out activities for individuals with disabilities on behalf of the Organization. A listing of agents along with the amount transferred to each agent during the most recent year under audit are as follows:

Agent Name	Amount	Description
<b>Total</b>	<b>\$ 87,323</b>	

It is our view that these activities are neither related to nor further the Organization's third stated purpose and, as such, cannot be regarded as charitable.

Other

The following is a listing of other agents carrying out activities that do not appear to further the stated purposes of the Organization:

Agent Name	Amount	Description
<b>Total</b>	<b>\$ 707,502</b>	

[REDACTED] – The Organization has acknowledged in Schedule A to its letter dated January 12, 2017, that the activities it carried out through this agent are outside the scope of its purposes.

[REDACTED] – The Organization has indicated in Schedule A to its letter dated January 12, 2017, that the activities it carries out through this agent relate to [REDACTED]

[REDACTED]

Supporting documentation for actual disbursements made by the agent on behalf of the Organization are limited to proof of payment for staff salaries and/or consultants.

<sup>13</sup> Based on documentation provided, [REDACTED]

<sup>14</sup> Based on documentation provided, [REDACTED]

[REDACTED] - The Organization has acknowledged in Schedule A to its letter dated January 12, 2017, that the activities it carried out through this agent are outside the scope of its purposes. We have additional concerns with the activities of [REDACTED] (see section 2 b) below).

[REDACTED] - The Organization has indicated in Schedule A to its letter dated January 12, 2017, that the activities it carries out through this agent relate to its [REDACTED]

[REDACTED] There is no documentation to support the assertion that these funds were used to support the issuance of scholarships.

Finally, based on its Registered Charity Information Returns (T3010), the Organization gifts funds to qualified donees. This activity is not in furtherance of the Organization's stated purposes.

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

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

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

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

We refer to the comments of the Federal Court of Appeal in *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*<sup>15</sup>:

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

<sup>15</sup> *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*, 2002 FCA 72 (FCA) at paragraphs 40 and 30 respectively

And

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

As re-iterated by the Court in *Lepletot v MNR*<sup>16</sup>, an organization may carry on charitable activities through an agent if the activities are conducted on behalf of the organization. However, it is not enough for an organization to fund an intermediary that carries on certain activities. The Act requires that the intermediary actually conduct those activities on the organization's behalf. Likewise, the Court in *Canadian Magen David Adom for Israel* mentions the importance of monitoring the activities when it stated that:

[A] charity that chooses to carry out its activities in a foreign country through an agent or otherwise must be in a position to establish that any acts that purport to be those of the charity are effectively authorized, controlled and monitored by the charity.<sup>17</sup>

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

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

As outlined above, the Organization agreed to implement the corrective measures described in the compliance agreement. The first corrective measure is as follows:

Corrective measure per compliance agreement

When the Organization uses an agency agreement as a method of delivering its charitable activities, the following records should also be maintained to support these agreements:

- Minutes of meetings, as well as copies of emails, and other correspondence between the Organization and the agent.
- Any other materials that reflect the Organization's ongoing participation and that show how the Organization's funds are used.

<sup>16</sup> *Lepletot v MNR*, 2006 FCA 128 at para 5, [2006] 3 CTC 252.

<sup>17</sup> *Canadian Magen David Adom for Israel v MNR*, 2002 FCA 323 at para 66, [2002] FCJ no 1260.

Audit Findings

- The minutes of meetings, as well as copies of emails were not maintained. During a conversation with [REDACTED] a representative of the Organization, on April 20, 2016, [REDACTED] confirmed the Organization did not maintain any formal board of directors' meeting minutes. Two of the directors were inactive leaving Mr. Reidel as the only active director. Rather than keep formal minutes, the Organization has copies of notes made by Mr. Reidel. In our letter dated December 7, 2016, we requested that the Organization provide all of these notes. In a letter received from the legal representative for the Organization, it stated "Rabbi Reidel's notes are in the files that you have received." We have not identified examples of such notes during our review of the records provided by the Organization. Files for each agent contained only a letter from the Organization confirming the desire to enter into an agency agreement, and some explanatory notes that Mr. Reidel drafted as part of our audit. These explanatory notes were dated in late March and early April 2015.

We also requested copies of all emails sent and received by the Organization including all emails sent and received by directors, officers and any general email addresses associated with the Organization.

As outlined above, the Organization provided two boxes of printed emails. The contents of the emails were reviewed, however none of the emails included sufficient details for us to determine whether the Organization maintained adequate direction and control over its resources and over the conduct of its activities.

Corrective measure per compliance agreement

When carrying out activities through an intermediary, the following steps are to be followed (A-F):

A) Create a written agreement with the intermediary, and implement its terms. It is not only imperative that an agreement be written but it is also imperative that the agreement be followed and that all supporting information agreed to in the agreement be collected and kept on file.

B) Communicate a clear, complete, and detailed description of the activity to the intermediary.

C) Monitor and supervise the activity.

D) Provide clear, complete, and detailed instructions to the intermediary on an ongoing basis.

E) For agency relationships, segregate funds, as well as maintain separate books and records.

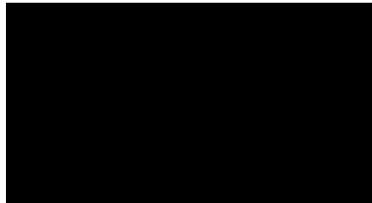
F) Make periodic transfers of resources, based on demonstrated performance.

**Audit Findings**

The audit findings disclosed that the Organization did not implement steps A through F

***Agency Agreement***

The Organization has forwarded funds to 35 agents per its List of Agents Outside Canada summary listing during the 2013 fiscal year, the most recent year under audit. The list of agents used by the Organization during previous years is significantly larger. The Organization entered into agency agreements with the majority of the agents. We completed a detailed review of a sample of agency agreements and associated supporting documentation. Below is a summary of the results from five of the sample agency agreements reviewed:



- The agency agreement requires a detailed listing of activities (see provision 1), but we found no instances where a detailed list of activities was provided. Letters from various agents do contain some basic details regarding the types of activities carried out by each agent, but these letters lacked adequate detail. Further, there were limited descriptions as to the location of the proposed activities, and no timeframes or deadlines for completion of activities.
- We are not aware of any direct monitoring or supervising of agents by employees/volunteers of the Organization. Of the five agents we reviewed, we identified correspondence beyond the initial application for funds for only one, and this correspondence was limited to an update on the names of tutors employed by the agent. There were no instances of communication from the Organization to any of these agents after the letter was sent to confirm the agent application was successful.
- The agreement requires ongoing written instructions on the part of the Organization (see provision 7), but we found no instances where such instructions were provided.

The following are some specific examples where the Organization did not meet the ongoing direction, monitoring and communication requirements:

The Organization agreed to forward \$60,000 to [REDACTED] in 2013 but has reported forwarding \$100,000 without any correspondence showing why this change was made or how these additional funds were to be used.

The Organization entered into an agency agreement with [REDACTED] based on an application for funds that included the purchase of a piece of medical equipment for \$31,000 among other items. Source documentation in the file shows that a significantly different piece of medical equipment was purchased using these funds without any communication between the agent and the Organization regarding this change in plans.

- Provision 3 of the agreement requires funds of the Organization be segregated from any other funds that the agent receives. Absent supporting documentation from the agents, we were unable to verify if this requirement was met.
- The Organization does generally make periodic transfers of funds; however, the documentation contained in the agent files failed to substantiate that these periodic transfers were based on demonstrated performance.

The current audit also disclosed:

- The agreement requires the agent to maintain complete books and records and provide the Organization on a regular basis or upon request complete reports, including a detailed breakdown of expenditures, (see provision 6). We identified some limited budgets included with applications made by agents, but even when provided these lacked detail and often were not specific to the request for funds.

For example, the application received from [REDACTED] included a proposed budget with an estimated cost for activities of anywhere between \$70,000 and \$150,000. The actual amount transferred to the agent was \$85,148 which was not referenced in correspondence and it is unclear how the Organization and agent determined that this amount was sufficient.

- Financial and narrative reports were generally not provided. The records of the Organization did include some supporting documentation to support expenditures made by the Organization through its intermediaries, but this documentation was not adequate. In our detailed review of the supporting documents for the above-noted five agents, we found that 4 of the 5 had not provided source documents to support all disbursements. The proportion of disbursements that were supported ranged from 37 percent to 125 percent of total disbursements made through each agent. For the one agent [REDACTED] who had provided support for more than the amount transferred by the Organization we identified other concerns including:
  - Most of the supporting documents were bank statements showing payments, not actual source documents

- Some of the disbursements were dated prior to the signing of the agency agreement
- The documentation was in Hebrew, making verification more difficult

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

#### *Scholarships/Stipends/Awards*

Scholarships, bursaries and prizes are often awarded to assist in the education of qualified students. As the advancement of education is a charitable purpose according to common law, an entity established to award scholarships, bursaries or prizes may be eligible for registration as a charity under the Act. There are however, certain criteria that have to be met in order for an entity to qualify as charitable under this purpose.

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

#### *Assessment of Applicants*

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

#### *Corrective measure per compliance agreement*

- The current application is not sufficient in that the correlation between the application and the scholarship/stipend criteria cannot be made. The criteria for obtaining a scholarship/stipend is based on financial need, however, the application is lacking in identifying the financial situation of the applicants. A basic income statement will need to be completed by the applicant and in cases where proof of income has been provided; the proof of income will be attached to the application.

- The Organization will review the applications to ensure the form is complete and will approve the beneficiaries of the scholarships/stipends, once all criteria have been met. A list of all approved recipients, along with the reason for the application, and the amount to be awarded, will also form part of the books and records of the principal. Once the payments are actually made, the agent will provide the principal organization with a tuition receipt for each recipient.

*Audit Findings*

Based on documentation provided, the Organization has shifted away from the issuance of scholarships/stipends. From the five agency agreements that we reviewed, only one [REDACTED] involved the issuance of scholarships/stipends to students. No scholarship/stipend application forms and no documented criteria for selection of students were maintained in the [REDACTED] folder. In general, the Organization has elected to cover costs of educational facilities directly, mostly in the form of payments to staff/contractors, rather than supporting the students through the issuance of scholarships/stipends etc.

*Gifting to Qualified Donees as defined in the Act*

While most disbursements listed on the 2013 fiscal year List of Agents Outside Canada summary listing appear to be supported by agency agreements, we were unable to identify agency agreements or any other documentation for a number of disbursements. These disbursements include:

Agent Name	Amount
[REDACTED]	\$ 4,500
[REDACTED]	7,421
[REDACTED]	4,000
[REDACTED]	250
[REDACTED]	1,981
[REDACTED]	198
[REDACTED]	196
[REDACTED]	3,072
<b>Total</b>	<b>\$ 21,618</b>

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

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

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

*Board Meeting Minutes*

As described above, no board meeting minutes were maintained.

*Inadequate Source Documentation*

Where a charitable organization is carrying out activities through intermediaries, it is still required to maintain source documentation to support each disbursement made by the intermediary as if the disbursement were made by the Organization directly.

During our detailed review of [REDACTED] [REDACTED], we noted that source documentation was not available for all disbursements.

The amount of source documentation available for each agent ranged from 37 percent to 68 percent of total disbursements for the 2013 fiscal year, with the exception of the documentation to support disbursements made by [REDACTED] which were for 124 percent of the amount forwarded to this agent during the year. Among the documentation for [REDACTED] were invoices from prior to the signing of the agency agreement, and many amounts were supported by what appeared to be bank statements rather than actual source documents.

*Human Resources*

The Organization has only one active director who is also a paid employee. Given the volume of activities, it is difficult to accept that any real supervision could be exercised on a regular and on-going basis by the Organization through one individual. In fact, it appears that once the Organization approves an application, its involvement in, and authority over, the actual conduct of any substantive activity is limited to providing funds to its agents.

*Assessment of Agents*

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

In its response to our letter dated April 20, 2016, the Organization states "Each cause is researched to determine which are the most successful in providing help in the community in their area of expertise. The institutions chosen send Gates of Mercy a

letter of request detailing their activities and endeavors as well as their budget and deficit requirements."

In our letter dated December 7, 2016, we requested the following:

- a) A detailed set of criteria used to assess what activities the Organization will consider supporting; and
- b) Applications made by each intermediary assessed against criteria set by the Organization...

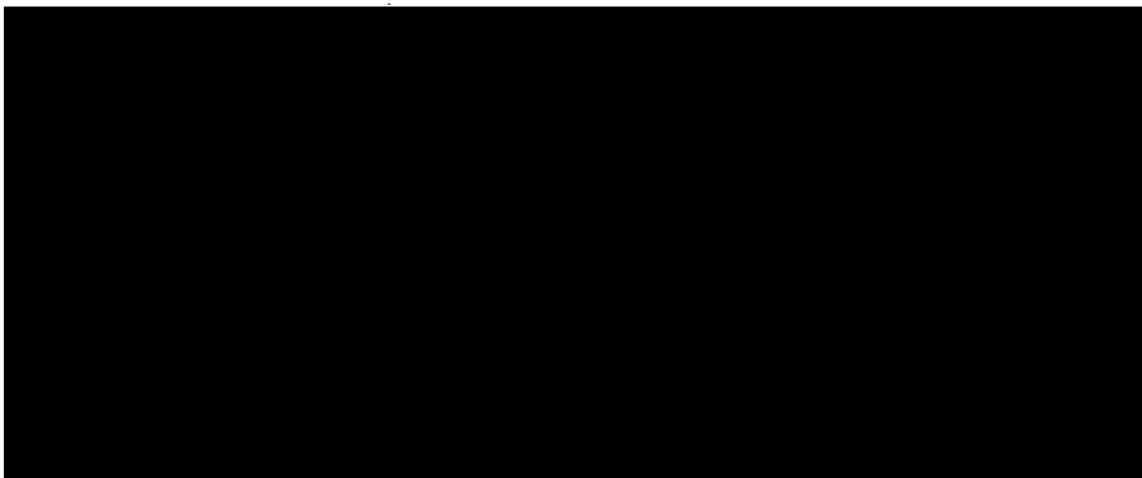
The Organization did not directly address this request in its response dated January 12, 2017, or in its response we received on June 16, 2017.

We have seen no documentation to substantiate that the intermediary has the capacity (for example, personnel, experience, or equipment) to carry out the Organization's activity and that the intermediary will use the Organization's resources as directed by the Organization. Given that the Organization has not devoted all of its resources to its own charitable activities or to gifting to qualified donees, it has failed to meet the definitional requirements of paragraphs 149.1(1) and 149.1(2) of the Act. For this reason, it is our position that there are grounds for the Minister to revoke the charitable status of the Organization under paragraph 168(1)(b) of the Act.

b) Non-Charitable Activities

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

Audit Findings



The courts have not recognized activities undertaken for the purpose of creating law or changing an existing law as charitable. It is our position that activities of this nature would be categorized as political.

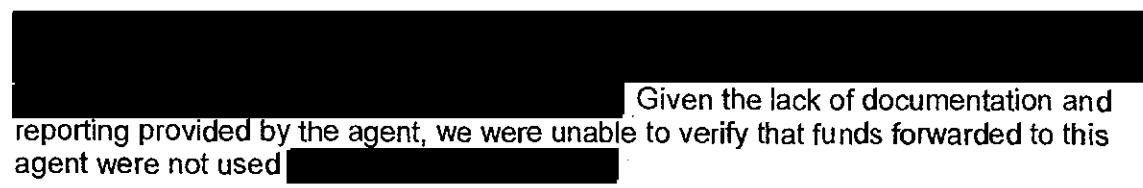
As such, we cannot conclude that the [REDACTED] is in furtherance of the Organization's stated purposes and that the resources devoted to [REDACTED] were for charitable activities carried on by the Organization itself.

#### **Support for Armed Forces of another Country**

The courts have stated that some activities may not be charitable when carried on in a different country. For example, increasing the effectiveness and efficiency of Canada's armed forces is charitable, but supporting the armed forces of another country is not.

#### **Mechinot**

"A Mechina (plural Mechinot) is an Israeli educational program that prepares high school graduates for serving in the Israeli Army or study at an institution of higher learning in Israel."<sup>21</sup>



[REDACTED] Given the lack of documentation and reporting provided by the agent, we were unable to verify that funds forwarded to this agent were not used [REDACTED]



Given the lack of documentation and reporting provided by the agent, we were unable to verify that funds forwarded to this agent were strictly used for the soup kitchen.

### **Summary**

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

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

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

### **3. Failure to Maintain Adequate Books and Records**

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

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

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

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

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

- i. it is the responsibility of the registered charity to prove that its charitable status should not be revoked;<sup>22</sup>
- ii. a registered charity must maintain, and make available to the CRA at the time of an audit, meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required documentation and records subsequent thereto;<sup>23</sup> and
- iii. the failure to maintain proper books, records, and records of account in accordance with the requirements of the Act is itself sufficient reason to revoke an organization's charitable status in the case of material or repeated non-compliance.<sup>24</sup>

Corrective measure per compliance agreement

The Organization must maintain complete and accurate books and records at its address in Canada and in accordance with the guidelines outlined in IC 78-10R5 which can be found at [www.cra-arc.gc.ca](http://www.cra-arc.gc.ca), along with all CRA's publications.

Audit Findings

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

- a) Where an intermediary disburses funds for any expense, those expenses are expenses of the Organization and the Organization must be able to support them with source documentation. As previously noted, the Organization failed to maintain adequate source documentation.
- b) The agency agreements we reviewed are inadequate to establish that any activities that purport to be those of the Organization are effectively authorized, controlled and monitored by the Organization. Documentation to show that the Organization has established a set of criteria to assess potential agents was not identified, nor was documentation to show that the Organization assessed potential beneficiaries against a set of defined criteria.
- c) Board meeting minutes were not maintained.
- d) Narrative reports were not provided, and only very limited financial reports were provided by the Organization's agents.
- e) Of the five agents we reviewed in detail, we identified correspondence beyond the initial application for funds for only one, and this correspondence was limited to an update on the names of tutors employed by the agent. There were no instances of communication from the Organization to any of these agents after

<sup>22</sup> See Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at paras 26-27, [2002] 2 CTC 93.

<sup>23</sup> Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at para 39, [2002] 2 CTC 93. Furthermore, failing to comply with the requirements of section 230 of the Act by refusing to make documents available can lead to a fine and imprisonment, in addition to the penalty otherwise provided. See subsection 238(1) of the Act.

<sup>24</sup> See Prescient Foundation v MNR, 2013 FCA 120 at para 51, [2013] FCJ no 512.

the letter was sent to confirm that the agent application was successful despite significant changes made to the programs conducted by these agents subsequent to the confirmation letters.

#### Documents in a Foreign Language

Many of the source documents to support disbursements made by agents are in a foreign language. While the Act does not explicitly require records to be kept in one of the two official languages of Canada (English or French), charities are strongly advised to do so. Records in other languages cannot be interpreted by the CRA and therefore are not effective in meeting the requirements of the Act at paragraph 230(2), which states that information must be kept "in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under this Act."

#### Multiple Set of Books and Records

The Organization had been maintaining three parallel sets of books and records, one for each of the three directors of the Organization. As a result of our previous audit, the Organization has been working toward consolidating its activities within one set of records maintained [REDACTED].

During the 2013 year, the latest year for which we had a copy of the detailed G/L for the Organization, there were still a number of accounts where the [REDACTED] G/L did not contain the consolidated figures as recorded in the financial statements and T3010s of the Organization.

For example, there were a number of loans within the consolidated financial statements that were not recorded in the detailed [REDACTED] G/L. We are particularly concerned with one variance between the [REDACTED] G/L and the financial statements. The [REDACTED] G/L reports Loans Receivable at August 31, 2013, of \$141,945. These loans were not reported on the financial statements of the Organization. Per a letter from the Organization dated July 14, 2016, funds were loaned and repaid, but the repayments were misallocated to donation revenue [REDACTED]. It is our understanding that the Organization maintains the day-to-day [REDACTED] file and issues ODRs, but that the reallocating of revenue from donation to repayment of loans would have been completed at year-end by the Organization's accountant. The Organization has not addressed our concern that individuals who were repaying loans may have been issued ODRs at the time that they made their loan repayments, and not had these ODRs cancelled when the accountant reallocated these donations.

Under paragraph 188.2(2)(a), an Organization may receive a notice of suspension of delivering ODRs if it contravenes subsection 230(2), which is related to books and records.

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

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

#### **4. Issuing Receipts not in Accordance with the Act**

While the Organization has addressed some of the internal control deficiencies with respect to its official donation receipts identified in the compliance agreement, there are continued concerns with the receipting practices of the Organization. Specifically,

a) Inappropriately issuing donation receipts on behalf of Non-Qualified Donees – directed donations

A registered charity cannot issue an official donation receipt if a donor has directed the charity to give the donated funds to a non-qualified donee or to specified persons or entities. Such a donation is not a gift to the charity, but to the specified recipient. In effect, the Organization is an instrument to allow for receipts to be issued for donations made to non-qualified donees, or to persons or entities that are not at arm's length to the donor which deliver an unacceptable private benefit, and is in contravention of the Act.<sup>25</sup>

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

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

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

Based on the documents we reviewed, it is our finding that the Organization solicits and receives directed donations for non-qualified donees. For example,

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<sup>25</sup> See IT 110R3 "Gifts and Official Donation Receipts" <http://www.cra-arc.gc.ca/E/pub/tp/it110r3/README.html> at paras.15 (f) and (g).

*Sale of Raffle Tickets*

From our review of cancelled cheques, we noted a number of \$100 donations with memos [REDACTED]

[REDACTED] From these memos, it appears that the Organization has been sharing its charitable registration number with a non-QD, issuing ODRs on its behalf for a raffle conducted by the non-QD.

*Tuition Payments*

We reviewed a cheque for \$2,500 deposited by the Organization on April 11, 2013. The [REDACTED]

a) Issuing receipts on behalf of non-qualified donees

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

The audit has revealed that the Organization does not demonstrate direction and control over its purported activities, and in our opinion the Organization is effectively lending its charitable registration number and corresponding tax-receipting privileges to non-qualified donees.

We conducted internet searches and identified two instances where non-QDs advised their Canadian donors to donate to the Organization and note that the donation is for the non-QD, in order to receive a tax-deductible donation receipt.

The following are specific examples of the arrangement described above:

[REDACTED]

[REDACTED]

We did not identify any resources transferred to this agent during the audit period, but the fact that the above information is still being advertised on the [REDACTED] website is a concern.

b) Required elements and practices where issuing ODRs

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

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

- i. The place or locality where the receipt was issued
- ii. The full address of the donor (see ODR number 14392)

Control of ODRs

- i. Not all serially numbered ODRs are accounted for. The summary listing does not include receipts numbered 17071, 17166-17169, or 17292.
- ii. For computer generated receipts, the system should be able to print out a listing of ODRs issued, including the donor's name and address, the date of the donation, the date of the receipt if that date differs from the date of the donation, the serial number of the receipt, the type of gift and the donation amount. The summary listing we received does not include the donor's address or the date of issuance of each ODR.

c) Issuing ODRs to other registered charities

ODRs should not be issued to other registered charities to acknowledge gifts nor should other registered charities insist on receiving ODRs.<sup>29</sup> ODRs that bear a charity's registration number and other information required by the Act are for tax deduction or credit purposes only.

We identified a number of instances where the Organization issued ODRs to other registered charities including ODR number 16905 issued to the Allan and Susan Seidenfeld Charitable Foundation, and number 17065 issued to the Jack and Doris Bistricer Charitable Foundation.

An organization that issues official donation receipts that are incomplete or incorrect could be liable for a penalty of 5% of the eligible amount stated on the receipts under subsection 188.1(7) of the Act. This penalty increases to 10% for a repeat infraction within five years under subsection 188.1(8). We do not believe that this sanction is an appropriate alternative, given the serious nature of the non-compliance identified in our audit.

Under paragraph 168(1)(d) 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 issues a receipt otherwise than in accordance with the Act and its Regulations. For each of the reasons itemized above, it is our position that the Organization has issued receipts otherwise than in accordance with the Act and the Regulations. For this reason alone, there may be grounds for revocation of the Organization's charitable status.

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

Subsection 149.1(14) of the Act states that:

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

It is the responsibility of a charity to ensure that the information provided in its Form T3010, schedules and statements, is factual and complete in every respect. A charity is not meeting its requirements to file an information return in prescribed form if it fails to exercise due care with respect to ensuring the accuracy thereof. The Federal Court of Appeal has confirmed that major inaccuracies in a completed Form T3010 are a sufficient basis for revocation.<sup>30</sup>

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<sup>29</sup> See section 3500 of the Regulations.

<sup>30</sup> *Opportunities for the Disabled Foundation v MNR*, 2016 FCA 94 at paras 48-51.

Corrective Measure per compliance agreement

The Organization will ensure that all the T3010's are filed accurately and factually on an ongoing basis.

Audit Findings

Unless otherwise specified these findings relate to all years under audit.

*Schedule 6*

- a) The Organization has reported the majority of its disbursements on Line 4920. Line 4920 is intended to include expenses that do not fit into any of the expense lines (Lines 4800 and 4910). Where an organization funds activities through an agent, it should be receiving sufficiently detailed financial reports to allow it to allocate the expenses among other expense lines. For example, if the agent spends funds from the Organization on travel or vehicle expense, these disbursements should be reported on Line 4810 – Travel and vehicle expenses. Reporting all disbursements to agents on Line 4920 is inadequate and indicates that the Organization was not maintaining adequate direction and control of the activities carried out through its agents.
- b) The Organization has not completed Lines 5900 or 5910 listing assets not used in charitable activities.

*Directors Worksheet*

The Organization has not listed any start or end dates (if applicable) for its directors with the exception of a start date for Shmuel Reidel.

Under subsection 188.2(2.1) of the Act, an organization may receive a notice of suspension of delivering official donation receipts for failing to meet the requirements under subsection 149.1(14) of the Act. It is our position the Organization has not complied with the Act by failing to file an accurate Form T3010. For this reason, there may be grounds to suspend the Organization's authority to issue official donation receipts under subsection 188.2(2.1) of the Act.

Similarly, under subsection 168(1)(c) of the Act, the registration of a charity may be revoked if it fails to file a Form T3010 when required under the Act. It is our position the Organization has not complied with the Act by failing to file an accurate Form T3010. For this reason, there may be grounds to revoke the registered status 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 have any questions or require further information or clarification, please do not hesitate to contact me at the numbers indicated below. My team leader, Maria Grieco, may also be reached at (519) 584-3974.

Yours sincerely,

Luke Bantzi  
Charities Audit  
Kitchener TSO

Telephone: 226-989-3061  
Facsimile: 519-585-2803  
Address: 166 Frederick Street  
Kitchener ON N2H 0A9

c.c.: Shmuel Reidel

VIA FACSIMILE: 519-585-2803

May 8, 2018

*Charities Audit*  
*Kitchener Tax Services Office*  
*166 Fredrick Street*  
*Kitchener Ontario, N2H 0A9*

**Attention: Luke Jantzi**

Dear Mr. Jantzi:

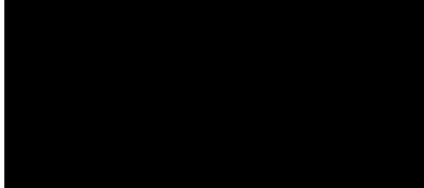
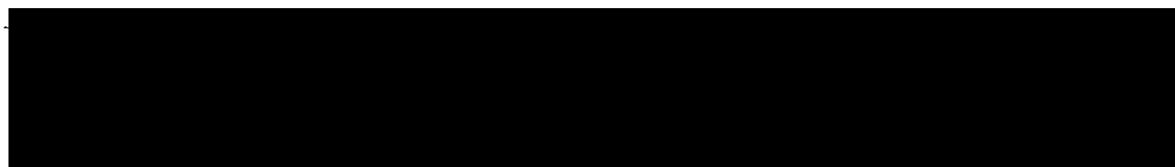
**Re: Gates of Mercy (the “Charity”) or (the “Organization”)**  
**Business No. 891283145RR0001**  
**Our File**

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This letter is in response to your letter of March 7, 2018, we appreciate the extension of your deadline given to us to respond.

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

Yours truly,

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## Compliance Agreement

Between:

**GATES OF MERCY (the Organization)**  
BN # 891283145 RR0001

And

**Canada Revenue Agency (the CRA)**

During an audit of the Organization's books and records conducted by the CRA on November 21-24, 2011, the following areas of non-compliance with the provisions of the *Income Tax Act* (the Act) and/or its *Regulations* were identified:

### Identified Areas of Non-Compliance

1. Failure to Maintain Control of Funds Sent to Organizations/Individuals Outside Canada for Charitable Activities in Accordance with the Requirements of this Act.
2. Failure to Maintain Adequate Books and Records.
3. Issuing Receipts Not in Accordance with the Act or its Regulations.
4. Errors/Omissions on T3010 Information Return

### 1. Failure to Maintain Control of Funds Sent to Organizations/Individuals Outside Canada on Charitable Activities in Accordance with the Requirements of this Act.

#### Legislation:

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

- It can make gifts to other organizations that are on the list of qualified donees set out in the Act. Qualified donees include Canadian registered charities, certain universities outside Canada, the United Nations and its agencies and a few foreign charities.
- It can carry on its own activities. In contrast to the relatively passive transfer of money or other resources involved in making gifts to qualified donees, carrying on one's own Activities implies that the Canadian charity is an Active and controlling participant in a program or project that directly achieves a charitable purpose.

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. Since the Act requires a charity to show that it effectively directs and actually controls its own Activities, the agency agreement that a charity puts in place and the manner in which the charity implements that agreement must allow the charity to discharge its statutory obligations.

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

It is the CRA's view that this type of reporting mechanism is necessary for the charity to clearly demonstrate that it maintains an adequate level of control and accountability over the use of its funds. These reports would have to be kept with the charity's other records and books of account at the address recorded with the CRA.

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

As per 149.1(2) (b) of the Act, registered charities are required to devote their resources to activities in furtherance of the purposes for which they were registered. The Act requires a charity to devote all its resources to charitable activities carried on by the charity itself. As confirmed by the courts, this means a charity must control all activities carried out on its behalf, and not act as a passive funding body for any other organization that is not a qualified donee.

Audit Findings:

The organization has provided funds to organizations/individuals outside of Canada, mainly Israel and the United States, as funding for scholarships/stipends and the relief of poverty.

The payments made outside Canada as per filed Schedule 2 for fiscal periods ending 2009/08/31, and 2010/08/31 were as follows:

<u>Country Code Where Activity Carried On</u>	<u>2009/08/31</u>	<u>2010/08/31</u>
US (United States)	\$ 3,359,462	\$ 5,413,358
IL (Israel)	4,061,244	7,839,214
GB (United Kingdom)	22,272	7,525
AR (Argentina)	0.00	120,033
UY (Uruguay)	0.00	53,690
FR (France)	0.00	1,045
<b>Total</b>	<b>\$ 7,442,978</b>	<b>\$ 13,434,865</b>

Records provided by the Organization during the review indicate that funds originating from charity controlled bank accounts were sent out of the country. The records reviewed included agency agreements, copies of wire transfers along with applications for funding of scholarships and/or stipends.

The Organization records are deficient in the following ways:

- 1) There are no original supporting documents from the agent organization indicating that funds were received. This lack of documentation is contrary to the information required by signed agency agreements kept on file which outline the documentation necessary for continued support or assistance in the administration of the charitable activities of the principal.
- 2) There are no original supporting documents from the agent organization indicating where the funds were spent. In particular there are no original supporting documents on file indicating that the funds provided for scholarships were used for this purpose. This lack of documentation is contrary to the information required by signed agency agreements kept on file which outline the documentation necessary for continued support or assistance in the administration of the charitable activities of the principal.
- 3) There are no supporting documents in each agent file indicating that the Charitable Organization (Gates of Mercy) had maintained direction and control over the disbursements by insisting that an accounting of the funds be provided in monthly/quarterly reports and is therefore contrary to the information required by signed agency agreements kept on file which outline the documentation necessary for continued support or assistance in the administration of the charitable activities of the principal.

## 2. Failure to Maintain Adequate Books and Records

### Legislation:

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 records and books of account shall retain:

- (a) the records and books of account referred to in this section in respect of which a period is prescribed, together with every account and voucher necessary to verify the information contained therein, for such 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 end of the last taxation year to which the records and books of account relate."

### Audit Findings:

The audit revealed that the organization failed to maintain proper books and records of account. The review determined that there were no records kept of meetings with board members or with agents out of the country or minute books which could substantiate that the Organization directed or controlled activities out of the country. The organization failed to maintain the necessary documentation to ensure that the beneficiaries of scholarship/stipend funds actually attended an educational institution and that the funds were used for their intended purpose.

In addition the books and records for the Organization are not at the location on file with the Canada Revenue Agency.

Furthermore, as previously mentioned it was determined that the records relating to activities out of the country were deficient in the following ways:

- 1) There were no original supporting documents from the agent organization indicating that funds were received.
- 2) There were no original supporting documents from the agent organization indicating where the funds were spent. In particular there are no original supporting documents on file indicating that the funds provided for scholarships/stipends were used for these purposes.

3) There were no supporting documents in each agent file presented for review during the audit that indicated the Charitable Organization (Gates of Mercy) had maintained direction and control over the disbursements. The principal organization should have directed the agent via correspondence to provide an accounting of the funds given whether by way of a one time report if funds given once or monthly/quarterly for continued support or assistance in the administration of the charitable activities of the principal.

### 3. Issuing Receipts Not in Accordance with the Act or its Regulations

#### Legislation:

The law provides various requirements with respect to the issuing of official donation receipts by registered charities. These requirements are contained in Regulations 3500 and 3501 of the Act and are described in some detail in Interpretation Bulletin IT-110R3 Gifts and Official Donation Receipts.

#### Audit Findings:

When donations are received in \$USD amounts, the official donation receipts are to be receipted using Canadian Currency amounts. The donations receipts should be sequential in numbering and should not begin at the number 1(one) each year, there should not be any gaps in the sequential numbering of the receipts as was found to be the case. The donation receipts should have the address as recorded with the Canada Revenue Agency printed on them as required by Regulations 3500 and 3501 of the Act and described in some detail in Interpretation Bulletin IT-110R3. Receipts issued for Gift in Kind (GIK) were found to be deficient as they did not have the name of the appraiser or the address of the appraiser on them. Lastly, donations are not to be directed by donors to specific organizations as was the case by [REDACTED] directing funds to [REDACTED]

### 4. Charity Information Return (T3010)

#### Legislation:

Pursuant to subsection 149.1(14) of the Act, every registered charity must, within six months from the end of the charity's fiscal period (taxation year), without notice or demand, file a 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 requirement to file an Information Return if it fails to exercise due care with respect to ensuring the accuracy thereof.

Audit Findings:2010

Line 4500 understated by approx. \$90,000 per  
Line 4530 overstated by approx. \$90,000 as p [REDACTED]

2009

Line 4530 (originally reported)	\$0.00
Line 4530 should be	\$335,208
Line 4650 (originally reported)	\$335,208
Line 4650 should be	\$0.00

The organization will correct all T3010 Charity Information Return reporting issues on a go forward basis which has been conveyed and agreed to by [REDACTED] on January 04, 2012 via telephone.

The Organization wishes to rectify all identified areas of non-compliance on a voluntary basis. The CRA is prepared to provide the Organization with an opportunity to do so.

For this purpose, the parties agree that the Organization shall implement the following:

Corrective Measures:

1. When the organization uses an Agency agreement as a method of delivering its charitable activities, the following records should also be maintained to support these agreements:
  - Minutes of meetings, as well as copies of emails, and other correspondence between the organization and the agent.
  - Any other materials that reflect the organization's ongoing participation and that show how the organization's funds are used.

When carrying out activities through an intermediary, the following steps are to be followed (A-F):

- A) Create a written agreement with the intermediary, and implement its terms. It is not only imperative that an agreement be written but it is also imperative that the agreement be followed and that all supporting information agreed to in the agreement be collected and kept on file.

B) Communicate a clear, complete, and detailed description of the activity to the intermediary.

C) Monitor and supervise the activity.

D) Provide clear, complete, and detailed instructions to the intermediary on an ongoing basis.

E) For agency relationships, segregate funds, as well as maintain separate books and records.

F) Make periodic transfers of resources, based on demonstrated performance.

The organization will also maintain ongoing direction and control over its resources and over the conduct of its charitable activities outside Canada in the following manner:

- The agreement will show the organization having demonstrable control over the use of its funds
- The current application is not sufficient in that the correlation between the application and the scholarship/stipend criteria cannot be made. The criteria for obtaining a scholarship/stipend is based on financial need, however, the application is lacking in identifying the financial situation of the applicants. A basic income statement will need to be completed by the applicant and in cases where proof of income has been provided; the proof of income will be attached to the application.
- The organization will review the applications to ensure the form is complete and will approve the beneficiaries of the scholarships/stipends, once all criteria have been met. A list of all approved recipients, along with the reason for the application, and the amount to be awarded, will also form part of the books and records of the principal. Once the payments are actually made, the agent will provide the principal organization with a tuition receipt for each recipient.

2. The organization agrees to maintain the additional books and records listed below:

- meeting minutes, specifically for meetings between the organization and the agent's representative,
- all email correspondence between the organization and the agent;
- meeting minutes for all board meetings,
- a list of scholarship/stipend recipients, and
- information from the school regarding actual tuition costs.

The organization must maintain complete and accurate books and records at its address in Canada and in accordance with the guidelines outlined in IC 78-10R5 which can be found at [www.cra-arc.gc.ca](http://www.cra-arc.gc.ca), along with all CRA's publications.

3. To address the internal control deficiencies with respect to the official donation receipts, the organization has agreed to the following: Rabbi Reidel and Michael Loghrin will ensure that all official donation receipts including those written for Gifts in Kind are prepared in accordance with Regulations 3500 and 3501 of the Act and Interpretation Bulletin IT-110R3 Gifts and Official Donation Receipts. Care will be taken to ensure the official donation receipts are issued correctly and sequentially from year to year so that there are no gaps in the numbering of the receipts. Signature controls will be implemented so that only 1(one) individual is in charge of receipting.
4. The organization will ensure that all the T3010's are filed accurately and factually on an ongoing basis. For all subsequent T3010's, the organization will ensure that the information that is provided in its Return, schedules and statements, is factual and complete in every respect.

**Date of Implementation of all Corrective Measures**

The parties agree to the following implementation schedule for the **Corrective Measures**:

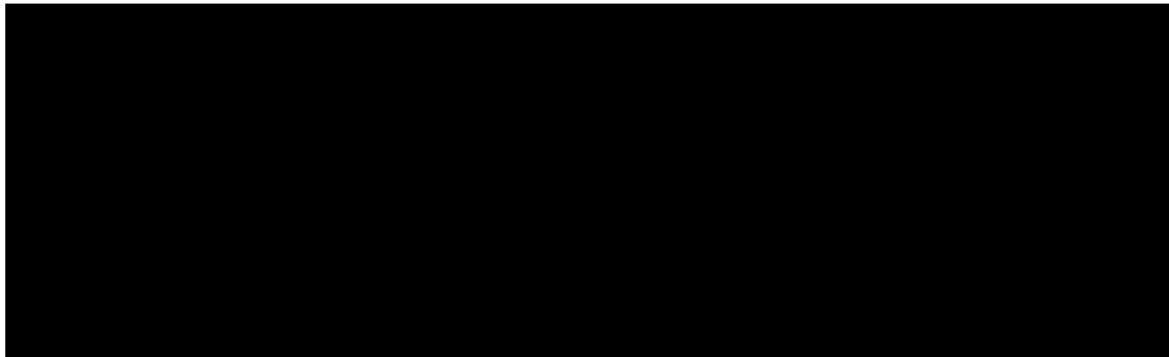
- The Organization shall obtain all supporting documents relating to the funding of Activities outside Canada outlined in this agreement and in the agency agreements from its Agents immediately so as to continue funding.
- The Organization shall maintain all supporting documents which it has outlined in its signed Agency Agreements immediately, and maintain this information for next review conducted by the Canada Revenue Agency.
- All other corrective measures shall be implemented by August 31, 2012.

By signing below, the parties certify that they have read, understood, and agree to the terms of this Compliance Agreement.

The Organization further acknowledges that should it fail to implement all corrective measures in accordance with the terms of this Compliance Agreement, the Minister of National Revenue (the Minister) may apply the penalties and suspensions provided for in sections 188.1 and/or 188.2 of the Act, which include

suspension of the Organization's authority to issue official receipts and suspension of its status as a "qualified donee".

The Minister may, by registered mail, also give notice that the Minister proposes 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.



Signatures of Maccy,

Full name and address of Organization

Date of signing: April 9, 2012

CRA per:

Name and position of signatory  
(please print)

Date of signing: April 19, 2012

## **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.