

JUN 18 2014

REGISTERED MAIL

B'nai Brith Foundation District No. 22
15 Hove Street
North York ON M3H 4Y8

BN:118812106 RR0001

Attention: Dr. Frank Dimant

File #:0235903

**Subject: Notice of Intention to Revoke
B'nai Brith Foundation District No. 22**

Dear Dr. Dimant:

I am writing further to our letter dated November 28, 2013 (copy enclosed), in which you were invited to submit representations as to why the registration of B'nai Brith Foundation District No. 22 (the Organization) should not be revoked in accordance with subsection 168(1) of the *Income Tax Act* (Act).

We have now reviewed and considered your written response dated February 11, 2014. However, notwithstanding your reply, our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity have not been alleviated. Our position is fully described in Appendix "A" attached.

Conclusion

The audit by the Canada Revenue Agency (CRA) has revealed that the Organization is not complying with the requirements set out in the Act. In particular, it was found that the Organization did not devote its resources to charitable activities that it carried on itself, it gifted to non-qualified donees, failed to be constituted for exclusively charitable purposes, did not maintain adequate books and records, and issued donation receipts for directed donations, and on behalf of non-qualified donees. For all of these reasons, and for each reason alone, it is the position of the CRA that the Organization no longer meets the requirements necessary for charitable registration and should be revoked in the manner described in subsection 168(1) of the Act.

Consequently, for each of the reasons mentioned in our letter dated November 28, 2013, I wish to advise you that, pursuant to subsection 168(1) of the Act, I propose to revoke the registration of the Organization. By virtue of subsection 168(2)

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

Business Number	Name
118812106 RR0001	B'nai Brith Foundation District No. 22 North York, ON

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

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

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

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

Consequences of Revocation

As of the effective date of revocation:

- a) the Organization will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the Act, respectively;

- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the Notice of Intention to Revoke. This revocation tax is calculated on prescribed form T-2046, *Tax Return Where Registration of a Charity is Revoked* (the Return). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the Notice of Intention to Revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix "B". Form T-2046 and the related Guide RC-4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, are available on our Web site at www.cra-arc.gc.ca/charities;
- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the *Excise Tax Act*. As a result, the Organization may be subject to obligations and entitlements under the *Excise Tax Act* that apply to organizations other than charities. If you have any questions about your Goods and services tax/harmonized sales tax (GST/HST) obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

Finally, I wish to 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,

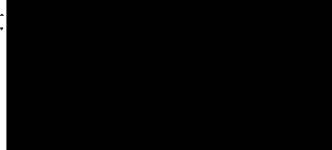


Cathy Hawara
Director General
Charities Directorate

Attachments:

- CRA letter dated November 28, 2013
- Organization's Response dated February 11, 2014
- Appendix "A", CRA's position
- Appendix "B", Relevant provisions of the Act

c.c.:





CANADA REVENUE
AGENCY

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DU CANADA

REGISTERED MAIL

B'nai Brith Foundation District No. 22
15 Hove Street
North York, Ontario M3H 4Y8

BN: 118812106 RR0001
File #: 0235903

Attention: Dr. Frank Dimant

November 28, 2013

Subject: Audit of B'nai Brith Foundation District No. 22

Dear Dr. Dimant:

This letter is further to the audit of the books and records of B'nai Brith Foundation District No. 22 (the Organization) conducted by the Canada Revenue Agency (CRA). Our audit related to the operations of the Organization for the period from January 1, 2010, to December 31, 2011.

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

AREAS OF NON-COMPLIANCE:		
Issue	Reference	
1. Failure to Devote Resources to Charitable Activities Carried on by the Organization itself: a. Gifts to non-qualified donees b. Lack of direction and control over the use of resources / resourcing non-qualified donees c. Conduct of non-charitable activities / devotion of resources to non-charitable activities	149.1(1) and (6.1), 168(1)(b)	
2. Failure to be Constituted for Exclusively Charitable Purposes: a. Broad and vague purposes b. Collateral political purpose c. Delivery of unacceptable non- incidental private benefits	149.1(1) and (6.1), 168(1)(b)	

3.	Failure to Maintain Adequate Books and Records	149.1(2), 168(1)(e), 230
4.	Donation Receipts: a. Inappropriate issuance of donation receipts – Directed donations b. Issuing receipts on behalf of non-qualified donees c. Issuing receipts not in accordance with the Act and/or its Regulations	168(1)(d), Regulation 3501, IT110R3

This letter describes the specific identified areas of non-compliance as they relate to the legislative and common law requirements applicable to registered charities, and provides the Organization with the opportunity to make additional representations or present additional information. As a registered charity, the Organization must comply with all legislative and common law requirements on an ongoing basis, failing which its registered status may be revoked in the manner described in section 168 of the Act. Each separate area of non-compliance outlined in this letter would provide grounds for revocation.

General legal principles

In order to maintain charitable registration under the Act, Canadian law requires that a charitable organization demonstrate it is constituted exclusively for charitable purposes (or objects), and it devotes its resources to charitable activities it carried on itself in furtherance thereof.

A registered charity designated as a public foundation must also be constituted exclusively for charitable purposes, which includes the disbursement of funds to qualified donees (e.g., registered charities), other than a gift intended to support the political activities of its recipient. While a public foundation may carry out some of its own activities, it would generally give more than 50% of its income annually to other qualified donees.¹

To be exclusively charitable, a purpose must fall within one or more of the following four categories (also known as "heads") of charity,² and deliver a public benefit. The four categories of charity are as follows:

¹ See subs. 149.1(1) of the Act. Also see subs. 149.1(6.1), which relates to devoting limited resources 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 some of its 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 the associated activities must not become ends in and of themselves.

² The Act does not define charity or what is charitable, except in subs. 149.1(1), where charitable purposes/objects are defined 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

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

The public benefit requirement involves a two-part test as follows:

- 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 measurable. Benefits that are not tangible or objectively measurable must be shown to be valuable or approved by "the common understanding of enlightened opinion for the time being."³ To be socially useful, a benefit must have public value and a demonstrable impact on the public.⁴ In most cases, the benefit should be a necessary and reasonably direct result of how the purpose will be achieved, and of the activities that will be conducted to further the purpose, and reasonably achievable in the circumstances.⁵ An "assumed prospect or possibility of gain" that is vague, indescribable, or uncertain, or incapable of proof, cannot be said to provide a charitable benefit.⁶
- The second part of the test requires the benefit be directed to the public or a sufficient section of the public. This means a charity cannot:
 - have an eligible beneficiary group that is negligible in size, or restricted based on criteria that are not justified based on the charitable purpose(s); or

categories, also known as the four heads of charity, were outlined by Lord Macnaghten in *Commissioners for Special Purposes of the Income Tax v. Pemsel*, [1891] A.C. 531 (PC) (*Pemsel*). The classification approach was explicitly approved of 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 2.

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

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

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

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

- 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, where it is necessary, reasonable, and not disproportionate to the resulting public benefit.⁷

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. Minister of National Revenue*,⁸ 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?"

A charitable activity is one that directly furthers a charitable purpose⁹ – 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 the organization, it may no longer be in furtherance of a stated purpose. Instead, the activity may further, or even itself form, a separate or collateral purpose.¹⁰ An organization with a collateral non-charitable purpose is ineligible for registration under the Act.

To comply with the requirement that it is constituted and operated exclusively for charitable purposes, and/or that it devote all of its resources to charitable activities carried on by the organization itself,¹¹ a registered charity may only use its resources (funds, personnel, and/or property) in two ways:

⁷ For more information, see Policy Statement CPS-024, *Guidelines for Registering a Charity: Meeting the Public Benefit Test*.

⁸ *Vancouver Society*, *supra* note 2 at para. 194. See also *A.Y.S.A. Amateur Youth Soccer Association v. Canada (Revenue Agency)* [2007] 3 S.C.R. 217 (A.Y.S.A.) at para. 42.

⁹ See *Vancouver Society*, *supra* note 2 per Iacobucci J. at para. 154.

¹⁰ See *Alliance for Life v MNR*, [1999] FCA 658 at para 64, 3 FC 504.

¹¹ *Income Tax Act*, RSC 1985, c 1 (5th sup), art 149.1(1).

- for its own *charitable activities* – undertaken by the charity itself under its continued supervision, direction, and control; and
- for gifting to “qualified donees” as defined in the Act.¹²

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.¹³

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,¹⁴ 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.

Political activities are not charitable activities, regardless of how they are conducted. An organization is not eligible for registration where it engages in:

- partisan political activities, which are defined as activities that include the direct or indirect support of, or opposition to, any political party or candidate for public office, and are prohibited by the Act; or
- non-partisan political activities, except where an organization devotes substantially all of its resources to charitable purposes/activities carried on by it, and the non-partisan political activities are ancillary and incidental to its charitable activities/purposes.¹⁵ A registered charity cannot exceed these parameters and/or be constituted for an unstated collateral non-charitable purpose.

¹² *Income Tax Act*, R.S.C. 1985 (5th supp.) c. 1, para. 110.1(1)(a), subs. 118.1(1) and 149.1(1) and 149.1(6.4), 188.1(5).

¹³ For more information, see Guidance CG-002, *Canadian Registered Charities Carrying Out Activities Outside Canada* and Guidance CG-004, *Using an Intermediary to Carry Out Activities Within Canada*.

¹⁴ 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.

¹⁵ See subsections 149.1(6.1) and (6.2) 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.

Background of the Organization

The Organization was incorporated under the *Canada Corporations Act* on October 29, 1968, and was registered as a public foundation under the Act on January 1, 1967. On December 31, 1983, the Organization's registration as a charity was revoked because it failed to file its annual information return. Upon addressing this issue, the Organization's charitable status was reinstated effective January 1, 1984. The Organization's objects, pursuant to its letters patent dated October 29, 1968, are as follows:

a) *to receive and maintain a fund or funds and to apply the income and capital thereof, from time to time, for charitable, religious and cultural activities and more particularly, but without limiting the generality of the foregoing, to apply the said income and capital for the establishment and realization, through other appropriate organizations, of the following programs;*

- i) *Religious and cultural programs for students at Canadian Universities and for non-university youth;*
- ii) *Cultural program of inter-faith and intergroup community relations;*
- iii) *Programs of activities conducive to the relief of poverty and the advancement of science and art;*

provided, however, that nothing herein contained shall be deemed to empower the Corporation to carry out itself the activities of such programs, the Corporation being only a fund raising body incorporated for the purpose of financing such programs;

b) *in connection with the objects aforesaid, the Corporation, acting through its board of directors, shall have the following powers;*

- i) *to purchase or otherwise acquire for the Corporation any property, rights, privileges, stocks, bonds, debentures or other securities which the Corporation is authorized to acquire at such price or consideration and generally on such terms and conditions as they think fit;*
- ii) *at their discretion to pay for any property, rights, privileges, stocks, bonds, debentures or other securities acquired by the Corporation either wholly or partly in money, stocks, bonds, debentures or other securities owned by the Corporation;*

- iii) *to sell, lease or otherwise dispose of any property, real or personal, assets, interest or effects of the Corporation, for such price or consideration and generally on such terms and conditions as the board of directors may think fit.*

The operations of the Corporation may be carried on throughout Canada and elsewhere.

It is our understanding that at the time of its registration, the Organization's primary activity was making gifts to registered charities in Canada (i.e., qualified donees). In a letter dated July 31, 1969, the CRA cautioned the Organization by stating that based on our understanding that it would not carry on its own activities but would distribute its income to other organizations, in order to meet the requirements of the Act, it could only distribute its income to other recognized charitable organizations. In an October 15, 1969, letter of response, the Organization's solicitors confirmed that the Organization's intention was to only make grants to recognized institutions in Canada. Furthermore, as recently as its 2010-12-31 and 2011-12-31 fiscal period end T3010, *Registered Charity Information Return*, the Organization maintained that it continued to operate in this manner by describing its ongoing programs as follows: "Donation of funds to qualified donees involved with the protection of human rights, care of underprivileged and disabled children, medical research, food banks, youth groups for the development of leadership skills, religious programs and care of the aged."

During our audit interview, Dr. Frank Dimant, Chief Executive Officer (CEO) of the Organization, explained to us that the Organization functions as the fundraising arm for the B'nai Brith Canada group; a group of related organizations including non-profit organizations such as B'nai Brith Canada District No. 22 (BBC), the Institute for International Affairs (IIA), B'nai Brith Congregation Synagogue (Non-profit) Inc., B'nai Brith Hillel of Toronto Inc., the Jewish Tribune Inc., and the League for Human Rights of B'nai Brith, which is a registered charity. Dr. Dimant indicated the Organization distributes funds raised amongst the group, and that its funds are used for various charitable activities carried out by the group. Apart from fundraising and providing funds to BBC and others, the Organization operates a senior's centre.¹⁶

¹⁶ We note, however, this activity does not fall under the Organization's formal purpose, which restricts it as "only a fund raising body incorporated for the purpose of financing such programs."

Identified Areas of Non-Compliance

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

a. Gifts to non-qualified donees

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, and it can carry on its own charitable activities under its own direction and control. 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 charity is an active and controlling participant in a program or project that directly achieves a charitable purpose.

A "qualified donee" means a donee defined in subsection 149.1(1), and described in any of paragraphs 110.1(1)(a) and (b), and the definitions "total charitable gifts" and "total Crown gifts" in subs. 118.1. Qualified donees are as follows:

- a registered charity (including a registered national arts service organization);
- a registered Canadian amateur athletic association;
- a listed housing corporation resident in Canada constituted exclusively to provide low-cost housing for the aged;
- a listed Canadian municipality;
- a listed municipal or public body performing a function of government in Canada;
- a listed university outside Canada that is prescribed to be a university, the student body of which ordinarily includes students from Canada;
- a listed charitable organization outside Canada to which Her Majesty in right of Canada has made a gift;
- Her Majesty in right of Canada or a province; and
- the United Nations and its agencies.

During the audit period, the Organization disbursed funds to the following organizations:

- \$170,000 in 2011 and \$190,000 in 2010 to the League for Human Rights of B'nai Brith, representing 4% and 4% of its total expenditures.
- \$30,000 in 2011 to Canada Christian College, representing 1% of its total expenditures.
- \$4,000 in 2011 and \$3,790 in 2010 to Scouts Canada, representing less than 1% of its total expenditures.

- \$3,000 in 2011 and \$2,600 in 2010 to Pride of Israel Kosher Food Bank, representing less than 1% of its total expenditures.
- \$2,500 in 2011 and \$2,500 in 2010 to Jewish Family & Child Service, representing less than 1% of its total expenditures.
- \$1,500 in 2011 to Toronto General & Western Hospital, representing less than 1% of its total expenditures.
- \$1,000 in 2011 to Community Association for Riding for the Disabled, representing less than 1% of its total expenditures.
- \$440 in 2011 to Faith Temple, representing less than 1% of its total expenditures.
- \$2,000 in 2010 to the Baycrest Centre Foundation, representing less than 1% of its total expenditures.
- \$1,600 in 2010 to Amyotrophic Lateral Sclerosis Society of Ontario, representing less than 1% of its total expenditures.

As all of the above noted organizations are registered charities, disbursements made to these organizations would be considered gifting to qualified donees, and therefore charitable.

During the audit period, the Organization also disbursed funds to the following organizations which are non-qualified donees:

- \$1,373,212 in 2011 and \$1,510,802 in 2010 to B'nai Brith Canada District No. 22 (BBC) (a non-profit organization), representing 32% and 31% its total expenditures.
- \$135,000 in 2011 and \$290,000 in 2010 to the Institute for International Affairs (IIA), representing 3% and 6% of its total expenditures.
- \$170,000 in 2011 and \$190,000 in 2010 to B'nai Brith Congregation Synagogue (Non-profit) Inc. (a non-profit organization), representing 4% and 4% of its total expenditures.
- \$189,678 in 2011 and \$244,363 in 2010 to B'nai Brith Hillel of Toronto Inc. (BBHT) (a revoked charity), representing 4% and 5% of its total expenditures.
- \$30,000 in 2011 and \$15,000 in 2010 to the Jewish Tribune Inc. (a non-profit organization), representing 1% and less than 1% of its total expenditures.
- \$47,500 in 2011 to [REDACTED] for video production support, representing 1% of its total expenditures.
- \$41,752 in 2011 and \$50,780 in 2010 to B'nai Brith Lodges for activity expenses, representing 1% and 1% of its total expenditures.
- \$9,280 in 2011 and \$29,600 in 2010 to B'nai Brith Softball Montreal, representing less than 1% and 1% of its total expenditures.

Overall, the Organization's gifts to non-qualified donees amounted to \$1,996,422 in 2011 and \$2,330,545 in 2010, representing 46% and 47% of its total expenditures for these fiscal periods.

While we recognize that the Organization's gifts to qualified donees represent a charitable activity under the Act, this amounted to \$212,440 in 2011 and \$202,490 in 2010, representing only 5% and 4% of its total expenditures. Of the funds that the Organization disbursed to other organizations during the audit period, 90% in 2011 and 92% in 2010 were gifted to non-qualified donees in contravention of the Act.

b. Lack of direction and control over the use of resources / resourcing non-qualified donees

Although we are of the opinion that the Organization's primary activity is providing funds to non-qualified donees, we nonetheless considered whether the Organization could be undertaking its own activities through non-qualified donees as intermediaries.

During our audit interview, the Organization's CEO, Dr. Dimant, stated the Organization's resources are applied to the various charitable activities carried out within the B'nai Brith Canada group. However, the Organization did not provide, nor did we find any evidence of structured arrangements with the funded non-qualified donees to conduct any specific activities on the Organization's behalf. We further note that we were not provided with clear details about the specific activities towards which the Organization's funds were applied by third parties.

The CRA sent queries to the Organization requesting additional details about its operations on May 17, 2012, September 24, 2012, November 6, 2012, November 26, 2012, December 17, 2012, January 21, 2013, and January 29, 2013, but most of our questions remain unanswered. To date we have received no documented evidence that the Organization maintained continued direction and control over resources provided to third parties so as to make activities undertaken by those third parties the Organization's own under the Act. The Organization does not apparently exercise the degree of direction and control over the use of its funds required to establish that it has carried out its own charitable activities in accordance with the provisions of the Act. Rather, it appears that the Organization primarily acts as a conduit, funding the programs and activities of non-qualified donees.

Though made in reference to an agency relationship, the underlying principles enunciated by the Federal Court of Appeal in *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*¹⁷ are applicable to most intermediary arrangements:

¹⁷ *Canadian Committee for the Tel Aviv Foundation*, supra note 11.

“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.” (para. 30)

And

“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...” (para. 40)

As re-iterated by the Court in *Bayit Lepletot v. Minister of National Revenue*,¹⁸ 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.

Consequently, where a registered charity undertakes an activity through an intermediary, it must be able to substantiate that it has actually arranged for the conduct of that specific activity on its behalf and has not simply made a transfer of funds to a non-qualified donee. It must be able to demonstrate that it maintains direction and control over, and is fully accountable for, the use of its resources. To this end, a charity would be expected to:

- select the activity that it will conduct with or through an intermediary based on the fact that it will further the charity’s charitable purposes, and after being satisfied that the intermediary is capable of conducting the activity on the charity’s behalf; and
- supervise/direct, and make significant decisions in regard to the conduct of, the activity on an ongoing basis.

A registered charity cannot merely contribute to, or act as a financial conduit for, the program of another that is not a qualified donee.

Concerning the Organization, we note the following:

- No structured arrangements appear to be in place surrounding funds transferred from the Organization to non-qualified donees.
- We have not received clear details about the specific programs and activities to which the Organization’s funds were applied by the non-qualified donees

¹⁸ 2006 FCA 128.

within the B'nai Brith Canada group. As a self-described advocacy and service organization, we note that the majority of the work of the B'nai Brith Canada group would not be considered charitable at law, and that it involves a significant amount of political activity.

- We were not provided with clear information about the B'nai Brith Canada group's charitable activities, therefore we cannot ascertain that charitable activities exist.
- BBC's primary responsibility is administering the payroll for the various entities comprising the B'nai Brith Canada group, and it does not directly carry out the group's programs and activities. Based on the BBC's draft financial statements, provided to us during the audit, it appears that BBC holds an administrative function for the B'nai Brith Canada group.
- There is a single website, www.bnaibrith.ca, which represents the B'nai Brith Canada group generally. The term "BBC" is used interchangeably to represent B'nai Brith Canada District No. 22 and the B'nai Brith Canada group as a whole. The Organization appears to share its governing board with the rest of the B'nai Brith Canada group. The meeting minutes provided by the Organization concern the group as a whole and do not isolate decisions taken about the Organization's resources and activities. Having otherwise failed to distinguish its own resources and activities from those of the other entities within the B'nai Brith Canada group, and absent any demonstrated control over the use of its funds, these details indicate to us that there is insufficient separation between the Organization and the non-qualified donees it funds.
- Funds are transferred within the B'nai Brith Canada group through intercompany loan accounts, as well as through direct transfers from the Organization to the other entities. There exists a large intercompany payable, most of which is owed back to the Organization. Despite several attempts to acquire further details about the loan accounts from the Organization, no formal loan agreements or other documentation or information have been provided.

Overall, the Organization has not demonstrated that it is able to account for the use of its funds to carry out charitable activities under its control and supervision where it has transferred funds to non-qualified donees. It is therefore our position that the Organization is resourcing non-qualified donees in contravention of the Act. As stated above, gifts to non-qualified donees during the audit period amounted to \$1,996,422 in 2011 and \$2,330,545 in 2010, representing 46% and 47% of the Organization's total expenditures for these fiscal periods.

c. Conduct of non-charitable activities / devotion of resources to non-charitable activities

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. The stated purpose of the Organization relates to being a fund raising body incorporated for the purpose of financing charitable, religious, and cultural activities, and more particularly:

- Religious and cultural programs for students at Canadian Universities and for non-university youth;
- Cultural program of inter-faith and intergroup community relations; and
- Programs of activities conducive to the relief of poverty and the advancement of science and art.

As previously stated, it is our position that that the Organization's primary activity is providing funds to non-qualified donees. Despite our numerous requests for additional information, the Organization has provided no information indicating that any of the non-qualified donees receiving funding from the Organization carried out activities under its direction and control. Furthermore, we are unable to identify any activities undertaken by the non-qualified donees which might further the Organization's stated purpose if they had been conducted under the Organization's direction and control.¹⁹

Generally, based on the available information, it appears that the B'nai Brith Canada group focuses on advocacy work and the provision of services to its members, including lodges and sports leagues. Organizations established in part for their members, and that provide programs and/or benefits directly for their members, are not generally considered charitable at law because they lack a sufficient public character.²⁰ While advocacy is not necessarily a political activity, it can be, and where a registered charity's advocacy work involves political activity, it is restricted by the Act. Furthermore, under the Act and common law, an organization established for a political purpose cannot be a charity.²¹

Concerning the particular non-qualified donees funded by the Organization, we note the following:

BBC

Based on the BBC's draft financial statements, provided to us by the Organization during our audit, its primary activity appears to be administering payroll for the B'nai Brith Canada group. No substantive charitable activities directly undertaken by BBC are identified in its financial statements.

¹⁹ While we have proceeded with our consideration on the premise that the Organization's stated purpose is charitable, it is, in fact, our view that this purpose is not charitable, being excessively broad and vague for the reasons set out below.

²⁰ For more information, see CRA Policy Statement CPS-024, *Guidelines for Registering a Charity: Meeting the Public Benefit Test*.

²¹ For more information, see CRA Policy Statement CPS-022, *Political Activities*.

The Institute for International Affairs

According to the B'nai Brith Canada website, the Institute for International Affairs (IIA) "monitors the abuse of human rights worldwide, advocating on behalf of Jewish communities in distress, and intervening at both the governmental level and at international fora."²² While the CRA recognizes that upholding human rights can be a charitable purpose,²³ this does not appear within the Organization's purposes. Regardless, the same restrictions concerning political activities apply to a registered charity that upholds human rights as a charitable purpose. Organizations with one or more political purposes and those with political activities that exceed the legal restrictions (including activities that attempt to engage the public in political action or to sway public opinion on social issues), are not eligible for charitable registration.²⁴ Based on the information about IIA appearing on the B'nai Brith Canada website,²⁵ it would appear that IIA has a political purpose, primarily undertakes political activities, and is ineligible for charitable registration.

B'nai Brith Congregation Synagogue (Non-profit) Inc.

It is our understanding that B'nai Brith Congregation Synagogue (Non-profit) Inc. holds the physical property that the B'nai Brith Canada group operates out of (at [REDACTED]). However, the Synagogue does not appear to have any responsibility other than to house the various entities that comprise the B'nai Brith Canada group, and charge rent to these entities. While an organization established to hold title to property on behalf of other registered charities may be registered as an organization established to assist other registered charities, simply to hold title to property is not a charitable purpose on its own. Registration of the title-holding entity would depend on the tenant entities being qualified donees. A title-holding entity may not hold property on behalf of or beneficially owned by non-qualified donees.²⁶ As most of the Synagogue's tenants are non-qualified donees, its property holding is not charitable.

B'nai Brith Hillel of Toronto Inc.

B'nai Brith Hillel of Toronto Inc. (BBHT) was a registered charity. It was revoked in 2003 for failing to file its annual information return. It owns an Alzheimer home property, and appears to be responsible for maintenance and operation of the

²² <http://www.bnaibrith.ca/advocacy/> (accessed 30-09-2013)

²³ For more information, see CRA Guidance, CG-001, *Upholding Human Rights and Charitable Registration*.

²⁴ See *Human Life International in Canada Inc v MNR*, [1998] FCA 365 at para 12, 3 FC 202.

²⁵ <http://www.bnaibrith.ca/the-institute-for-international-affairs/> (accessed 30-09-2013)

²⁶ For more information, see CRA Policy Statement CPS-026, *Guidelines for the Registration of Umbrella Organizations and Title Holding Organizations*.

property. Absent details about how BBHT operates, we are unable to conclude it operates in a manner that could be considered charitable at law.

Jewish Tribune

The Jewish Tribune Inc. is a news service that provides news “from a Jewish perspective.”²⁷ While the production and dissemination of in-depth news and public affairs programs may improve the sum of communicable knowledge about current affairs, the courts have held that such activities are not sufficiently structured for educational purposes.²⁸ The focus of the Jewish Tribune appears to be on disseminating selected items of information and opinion that promote a particular point of view/political orientation, which is not charitable.²⁹

[REDACTED] (for video production support)

The courts have held that an organization established to benefit a named individual or a private group (for example, a professional association) is established for private benevolence and therefore not charitable at law. Absent details about the video itself, we are unable to conclude that this activity could qualify as charitable.³⁰

B'nai Brith Lodges

An organization established for social purposes cannot qualify for registration as a charity (for example, service clubs, fraternal lodges). Social organizations are established to benefit their members and therefore lack the necessary element of altruism required to be charitable at law.³¹

B'nai Brith Softball Montreal

According to its website, B'nai Brith Softball is part of “B'nai Brith Sports,” a B'nai Brith Canada group's community initiative “for Jewish youth and adults. B'nai Brith runs athletic leagues and other programs to bring together Jewish youth and adults on a social and recreational basis, building friendships and a strong sense of community.”³² In this regard, we would advise that the courts have not recognized the promotion of sport as a charitable purpose.³³ An organization

²⁷ <http://www.jewishtribune.ca/about-us> (accessed 21-10-2013)

²⁸ See *News to You Canada v Minister of National Revenue*, 2011 FCA 192

²⁹ See *Positive Action Against Pornography v MNR*, [1988] 2 FC 340 at para 9, 1 CTC 232.

³⁰ See *National Model Railroad Association v. Minister of National Revenue*, [1989] 1 C.T.C. 300.

³¹ For more information, see CRA Policy Statement CPS-016, *Distinction Between Self-Help and Members' Groups*, and CPS-024, *Guidelines for Registering a Charity: Meeting the Public Benefit Test*.

³² <http://www.bnaibrith.ca/about-us/> (accessed 21-10-2013)

³³ See *A.Y.S.A Amateur Youth Soccer Association v. Canada (Revenue Agency)*, 2007 SCC 42 (A.Y.S.A.) at para. 40.

whose purpose is to promote one or more sports for its own sake cannot be registered as a charity. Groups such as minor hockey leagues or amateur soccer clubs, for example, are not eligible for this reason. For an organization with sports activities to be registered as a charity, the sport activities should relate to and support exclusively charitable purpose(s) and be a reasonable way to achieve them. Furthermore, restrictions placed on the community served are always unacceptable when they are unrelated to the nature of the undertaking.³⁴ As we have no evidence that B'nai Brith Sports relates to and supports the Organization's purposes, or that the restriction of benefit to members is related to a charitable purpose, this does not appear to be charitable.³⁵

While it is our opinion that the Organization does not maintain direction and control over the activities conducted by these organizations, in our view, even should the Organization establish that it maintains direction and control over these activities, the activities would not appear to further the Organization's purposes, nor are they charitable at law.

As stated above, under the Act, a registered charity must devote all of its resources to charitable purposes and activities. Concerning the Organization's charitable activities, we accepted the amounts the Organization reported as its charitable expenditures on Line 5000 of the Organization's Form T3010, *Registered Charity Information Return*, for the fiscal years under audit, minus the amounts we identified as representing gifts to [REDACTED], B'nai Brith Lodges, and B'nai Brith Softball Montreal. These charitable expenditures represent the food, drink, and staffing costs for the senior's centre it operates, a portion of its overhead and office costs, travel, and other expenses. Accordingly, the Organization's Line 5000 charitable expenditures were \$828,397 in 2011 and \$792,002 in 2010, representing 19% and 16% of its total expenditures. As previously stated above, we also recognize the Organization's gifts to qualified donees as a charitable activity under the Act, which amounted to \$212,440 in 2011 and \$202,490 in 2010, representing 5% and 4% of the Organization's total expenditures.

Concerning the Organization's non-charitable expenditures, as stated above, the Organization's gifts to non-qualified donees in 2011 and in 2010 represent 46% and 47% of its total expenditures. The Organization reported \$953,014 in 2011 and \$808,258 in 2010 on fundraising expenditures,³⁶ including "Award of Merit" and fundraising dinners, direct mail campaigns, and professional and consulting fees, representing 22% and 16% of its total expenditures. The Organization reported an

³⁴ *IRC v. Baddeley* [1955] AC 572.

³⁵ For more information, see CRA Policy Statement CPS-027, *Sports and Charitable Registration*.

³⁶ Although a charity can use some of its resources for fundraising to support charitable activities that further its charitable purposes, it is the CRA's position that fundraising is not a charitable purpose in itself or a charitable activity that directly furthers a charitable purpose. For more information, see CRA Guidance CG-013, *Fundraising by Registered Charities*.

additional \$305,706 in 2011 and \$792,911 in 2010 on management and administration, representing 7% and 16% of its total expenditures.

Therefore, based on our audit findings, the Organization devoted 76% and 80% of its total expenditures to non-charitable activities.³⁷

Summary

To summarize, it is our opinion that the Organization has failed to devote its resources to charitable activities carried on by the Organization itself due to the following:

- a. Gifts to non-qualified donees
- b. Lack of direction and control over the use of resources / resourcing non-qualified donees
- c. Conduct of non-charitable activities / devotion of resources to non-charitable activities

Accordingly, it is our position that the Organization has failed to meet the requirements of subsections 149.1(1) and 149.1(6.1) of the Act that it devote substantially all its resources to charitable activities carried on by the Organization itself. 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 be Constituted for Exclusively Charitable Purposes

- a. Broad and vague purposes

To be registered as a charity under the Act, the purposes of an organization must be exclusively charitable and define the scope of its activities. An organization's governing document must contain a clear statement of its purpose(s). If a purpose is worded in broad or vague language that could permit non-charitable activities and/or result in the delivery of non-charitable benefits, (where, for example, the words used encompass concepts that go beyond the scope of charity³⁸), it will not meet the exclusive charitable requirements of the Act.³⁹

In our opinion, the Organization's stated purpose is broadly worded. It readily allows for the undertaking of non-charitable activities and the delivery of non-charitable benefits, including by empowering the Organization to transfer its resources to non-

³⁷ See Appendix A for more information.

³⁸ See, for example, *Re Tetley*, [1941] Ch. 308, where the court held that the word *philanthropy* can encompass purposes and activities that go beyond the realm of charity, and *Travel Just v Canada (Revenue Agency)*, 2006 FCA 343, at para 10.

³⁹ See *Vancouver Society*, *supra* note 2 at para. 158 per Iacobucci J.

qualified donees in contravention of the Act. The purpose fails to define the scope of the activities that can be engaged in by the Organization, thus confining it to charitable activities, and ensuring the delivery of a charitable benefit to the public or a sufficient segment thereof. As a result, it is our position that the Organization's stated purpose is not charitable at law.

b. Collateral political purpose

Under the Act and in common law, an organization established for a political purpose cannot be a registered charity. The courts have determined political purposes to be those that seek to:

- further the interests of a particular political party or support a political party or candidate for public office; or
- retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country.

Additionally, it is a political purpose, and therefore not legally charitable, to engage in pressure tactics on governments such as swaying public opinion,⁴⁰ promoting an attitude of mind,⁴¹ creating a climate of opinion,⁴² or exercising moral pressure⁴³ when the aim of those tactics is to obtain a change or prevent a change in the laws and policies of the legislatures and governments.⁴⁴

Although political purposes are never charitable, registered charities can participate in, or conduct, some types of political activities within certain limits, as long as those activities remain ancillary and incidental to the charity's charitable purposes, and do not support or denounce any political party or candidate. Partisan political activities are never permitted.

Based on our review of the available information, it appears that the B'nai Brith Canada group's political activities include partisan political activities, are of such a frequency and quantity that would necessarily involve a significant devotion of resources, and appear to further political purposes. (See Appendix B for specific examples of the B'nai Brith Canada group's political activities.)

As previously stated above there appears to be little separation of the Organization and its resources and activities from the rest of the B'nai Brith Canada

⁴⁰ *Human Life International in Canada Inc. v. M.N.R.*, [1988] 2 F.C. 340.

⁴¹ *Alliance for Life v. M.N.R.*, [1999] 3 F.C. 504.

⁴² *Ibid.*

⁴³ *Action by Christians for the Abolition of Torture (ACAT) v. The Queen & al.*, 2002 FCA 499.

⁴⁴ *Bowman & al. v. Secular Society Ltd*, [1917] A. C. 406; *McGovern & al. v. A.-G. & al.*, [1982] 1 Ch. 321.; *Koeppeler's Will Trusts, Re*[1986] Ch 423.

group. The Organization has not demonstrated that it maintained control over the use of the funds gifted to various non-qualified donees within the group. We have been unable to identify any charitable activities that were conducted on the Organization's behalf.

During our audit, the Organization has indicated that it is the fundraising arm of the B'nai Brith Canada group. Absent evidence to the contrary, it appears to us that the Organization is funding the group's work in a general manner, the focus of which is significantly political. Accordingly, the Organization's funding political activities would not appear to be ancillary and incidental to charitable purposes. It therefore appears to us that the Organization may exist, at least in part, to further the B'nai Brith Canada group's political purposes by financing its political activities.

c. Delivery of unacceptable non-incidental private benefits

As indicated above, to be charitable at law, a purpose must fall within a category of charity and deliver a public benefit. However, it is not enough that a purpose, on its face, falls within one or more of the four categories of charity and delivers a charitable benefit to a properly defined eligible beneficiary group. The public requirement also means a charity may not provide private benefits as it advances and furthers a charitable purpose, except within legally acceptable boundaries. The charity is responsible for establishing that any private benefit that may be delivered is acceptable.

Generally, a private benefit is a benefit or advantage provided to a person or organization that is not a charitable beneficiary, or a benefit provided to a charitable beneficiary that exceeds the boundaries of charity. An acceptable private benefit is one that is incidental to achieving a charitable purpose. A private benefit will usually be incidental where it is necessary, reasonable, and proportionate to the resulting public benefit.

In this context, necessary means legitimately and justifiably resulting from an action that directly contributes towards achieving a charitable purpose, or a required step in, or consequence or by-product of, an action taken only to achieve a charitable purpose.⁴⁵ Reasonable means related to the need and no more necessary to achieve the purpose,⁴⁶ and fair and rational. Proportionate to the resulting public benefit means a private benefit must be secondary and subsidiary to a charitable purpose.⁴⁷ It cannot be a substantial part of a purpose, or form an additional or independent non-charitable end itself. The public benefit cannot be too indirect, remote, or speculative as compared

⁴⁵ See, for example, *Incorporated Council of Law Reporting for England and Wales v. Attorney General*, [1972] Ch 73, [1971] 3 All ER 1029 (C.A) (*Incorporated Council of Law Reporting*); *Royal College of Surgeons of England v. National Provincial Bank*, [1952] AC 631; *Royal College of Nursing v. St. Marylebone Borough Council*, [1959] 1 WLR 1007 (CA); and *I.R.C. v. Oldham Training and Enterprise Council*, *supra* note 6 (*Oldham*).

⁴⁶ See, for example, *Joseph Rowntree Memorial Housing Association Ltd and Others v. Attorney General*, [1983] Ch. 159 (ChD); and *In Re Resch's Will Trusts And Others v. Perpetual Trustee Co. Ltd.*, [1969] 1 AC 514 (PC).

⁴⁷ See, for example, *Incorporated Council of Law Reporting*, *supra* note 64; *Inland Revenue Commissioner v. City of Glasgow Police Athletic Association*, [1953] A.C. 380 (H.L.); and *Oldham*, [1996] B.T.C. 539.

to a more direct private benefit, particularly where the direct benefit is to private persons, entities or businesses.⁴⁸

Based on our review of the Organization's activities, it is our position that the Organization is delivering unacceptable private benefits to groups and individuals by resourcing non-qualified donees.

Summary

In summary, it is our position that the Organization is not constituted for exclusively charitable purposes, based on its:

- a. broad and vague purposes;
- b. collateral political purpose; and/or
- c. delivery of unacceptable non- incidental private benefits.

Accordingly, it is our position that the Organization fails to meet the legal requirement that it be constituted for exclusively charitable purposes, with all its purposes falling within one or more of the four categories of charity and delivering a public benefit without conferring an unacceptable private benefit. For these reasons, and each of these reasons, it appears there may be grounds for revocation of the charitable status of the Organization under subsections 149.1(1) and (6.1) and paragraph 168(1)(b) of the Act.

3. Failure to Maintain Adequate Books and Records

Section 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 section 230(2), section 230(4) provides that:

“every person required by this section to keep books of account, who does so electronically, shall retain in an electronically readable format:

- (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

⁴⁸ See, for example, *Oldham*, *supra* note 6; *Canterbury Development Corporation v. Charities Commission*; *Canterbury Development Corporation Trust v. Charities Commission*; *CEDF Trustee Limited As Trustee of the Canterbury Economic Development Fund v. Charities Commission*, [2010] NZHC 331; *Hadaway v. Hadaway*, [1954] 1 W.L.R. 16 (PC); and *Re Co-operative College of Canada et al. and Saskatchewan Human Rights Commission*, (1975) 64 D.L.R. (3d) 531.

- (b) all other records and books of account referred to in this section together with every account and voucher necessary to verify the information contained therein, until the expiration of six years from the date of the last taxation year to which the records and books relate."

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

- it is the responsibility of the registered charity to prove that its charitable status should not be revoked;⁴⁹
- 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,⁵⁰ and
- the failure to maintain proper books, records, and records of account in accordance with the requirements of the Act is itself sufficient reason to revoke an organization's charitable status.⁵¹

A letter dated May 17, 2012, was issued to the Organization, in which the CRA provided a comprehensive list of books, records, and documentation to have available prior to our audit.

Although the audit commenced on September 4, 2012, not all of the books, records, and documentation requested by the CRA were available. During the course of our audit, only partial books and records were made available to the CRA. Due to the lack of books and records, and our outstanding queries, the CRA issued a subsequent request on September 24, 2012, to [REDACTED], CFO, requesting the information that was not provided during our audit. Further requests were made on November 6, 2012, November 26, 2012, December 17, 2012, January 21, 2013, and January 29, 2013. Most of the queries contained in these requests remain outstanding.

During the audit field work, significant discrepancies between the official donation receipt listing and the general ledger amounts were noted (the variance was approximately \$300,000 in 2010 and \$200,000 in 2011). Due to these large discrepancies, the CRA auditor returned to the Organization's office with the CRA's Electronic Commerce Audit Specialist (ECAS) on October 15, 2012, to obtain the electronic records maintained in the Organization's [REDACTED] donation software. As with the official donation receipt listing, the electronic records obtained on this date did not balance to the general ledger. As such, it cannot be confirmed that the complete data

⁴⁹ Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen, 2002 FCA 72 (FCA)

⁵⁰ Canadian Committee for the Tel Aviv Foundation v. Canada, supra footnote 2; The Lord's Evangelical Church of Deliverance and Prayer of Toronto v. Canada, (2004) FCA 397

⁵¹ College Rabbinique de Montreal Oir Hachaim D'Tash v. Canada (Minister of the Customs and Revenue Agency), (2004) FCA 101; ITA s. 168(1)

file was obtained from the Organization. In addition, while trying to reconcile the data obtained on October 15, 2012, the ECAS auditor noted that the detailed trial balance provided by the Organization at the time of our audit may not be the complete version. For this reason, the CRA auditors returned to the Organization with the ECAS auditor on November 29, 2012, to make a second attempt to obtain the electronic [REDACTED] data, as well as the complete general ledger electronic data file from the Organization's [REDACTED] software.

Our audit revealed the following deficiencies in the Organization's books and records:

- As explained above, the Organization failed to provide sufficient documentation to substantiate that the funds transferred to non-qualified donees are conducted under its ongoing direction and control. The Organization's general ledger includes various loan accounts with its related entities. Our review of these loan accounts identified an additional \$1.1 million in 2011 and \$1.2 million in 2010 in funds being transferred from the Organization to these entities. These amounts are in addition to the amounts previously noted as expenditures on the Organization's financial statements and its T3010 returns. The CRA made numerous attempts to obtain additional information regarding these loans: including the types of transactions being made, and the related loan agreements. To date, this information has not been provided. As a result, the Organization has not demonstrated it has maintained direction and control over these funds. Therefore, we have determined they represent gifts to non-qualified donees. As stated above, it is our position that the Organization has transferred a total of approximately \$1.9 million in 2011 and \$2.3 million in 2010 to non-qualified donees during the audit period, representing 46% and 47% of the Organization's total expenditures.
- The Organization's official donation receipt listings have discrepancies. The actual amount of tax received gifts issued for the audit period could not be verified. Figures reported on line 4500 of the T3010 (total eligible amount of all gifts for which the charity issued tax receipts) do not reconcile with either the CFO's [REDACTED] worksheet (as provided to the CRA), or the Organization's general ledger. For further details, refer to Appendix C.
- The Organization's general ledger noted several discrepancies between the CFO's [REDACTED] worksheet, and the electronic copy obtained from the [REDACTED] accounting software in November 2012. Our audit findings indicate that while the CFO's [REDACTED] worksheet corresponds with the Organization's T3010 return, the Organization's general ledger data remains inconsistent with the figures appearing in the CFO's [REDACTED] worksheet. It appears to us that the discrepancies exist because the final adjusting journal entries were entered into [REDACTED] but were not recorded in the [REDACTED] accounting software.

It is our opinion the Organization has failed to maintain adequate books and records of account as per subsection 230(2) and is therefore in contravention of paragraph 168(1)(e) of the Act.

4. Donation Receipts

- a. Inappropriate issuance of 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 selected by the donor. Such a donation is not a gift to the charity, but to the specified recipient. In effect, the charity becomes 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, in contravention of the Act.⁵²

A donation subject to a general donor direction that it be used in a particular program operated by a charity is acceptable, provided that all decisions regarding use of the donation within a program rest with the charity. The donation must be used for the charity's own charitable activities or for gifting to "qualified donees" as defined in the Act, and no unacceptable private benefit may accrue 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 board of the charity itself assumes actual responsibility for making the final decisions regarding usage; and
- (iii) donors relinquish ownership and custody of the gift.

A charity may only issue receipts for gifts made to it, which it is responsible for using to further its own charitable purposes. Organizations with receipting privileges may not issue receipts for gifts to third parties.

If donors are simply treating the Organization as a conduit to donate to non-qualified donees, or to provide a non- incidental private benefit, the donation is not acceptable, and cannot be receipted.

For example, our audit evidence shows that the Organization conducted fundraising on behalf of B'nai Brith Hillel of Toronto Inc., a related organization that lost its registered charitable status in 2003. B'nai Brith Hillel of Toronto Inc. is constructing a new non-profit Alzheimer's residence at [REDACTED]. The Organization

⁵² See IT-110R3 *Gifts and Official Donation Receipts* paras. 15(f) and (g).

solicited donations through regular fundraising activities, and through an art auction for which proceeds went to the Alzheimer's residence. The Organization collected and received \$487,393 in 2011 and \$338,439 in 2010 on behalf of B'nai Brith Hillel of Toronto Inc., a revoked charity (i.e., a non-qualified donee). It is our position that these donations are directed donations given to a non-qualified donee, in contravention with the Act.

We also note that the Organization conducted fundraising on behalf of [REDACTED] [REDACTED] a non-qualified donee. The Organization collected donations from other registered charities to support [REDACTED] video production in the amount of \$150,000 in 2011. It is our position that these donations are also directed donations given to a non-qualified donee, in contravention with the Act.

In our opinion, the Organization solicits and receives directed donations for non-qualified donees. For the reasons set out above, it is our view that the activities that are the subject of these donor directions are not the Organization's own activities. Therefore, we believe the Organization is allowing receipts to be issued for donations made to non-qualified donees.

b. Issuing receipts on behalf of non-qualified donees

A charity may only issue receipts for gifts made to it, which it is responsible for using to further its own charitable purposes. Organizations with receipting privileges may not issue receipts for gifts to third parties.

Our 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. The following examples, while not an exhaustive list, support our findings:

- The Organization's letter attached to the official donation receipt states "We thank you for your generous contribution to the B'nai Brith Foundation. Your support enables B'nai Brith Canada to carry on a wide range of programs and activities which include our Community Volunteer Services, Affordable Housing, the League for Human Rights, and the Institute for International Affairs."
- The Organization's brochure for the 2010 Award of Merit dinner notes the various B'nai Brith Canada programs the event proceeds will support.
- Various brochures published by BBC, and promoting the B'nai Brith Canada group's programs and activities include appeals for donations to the Organization.

- The Organization collects membership fees and issues official donation receipts on behalf various B'nai Brith lodges. We note the Organization collected lodge membership revenues amounting to approximately \$300,000 in 2011 and \$175,000 in 2010, but did not demonstrate direction and control over the application of these funds.

c. Issuing Receipts not in Accordance with the Act and/or its Regulations

The Act stipulates various requirements pertaining to official donation receipts issued by registered charities. These requirements are contained in Regulations 3500 and 3501 of the Act, and are described in some detail in Interpretation Bulletin IT110R3, *Gifts and Official Donation Receipts*.

Our audit revealed that the official donation receipts issued by the Organization did not comply with the requirements of Regulation 3501 of the Act as follows:

- The Organization's name does not appear as recorded with the CRA. The receipts show "B'nai Brith Foundation" only, not the Organization's official name: "B'nai Brith Foundation District No. 22."
- Gifts in kind donations do not include a brief description of the donated property.
- The Organization does not retain a duplicate copy of the official donation receipt (paper or electronic). Data is maintained in the Organization's [REDACTED] system; however, these receipts cannot be reprinted without a new receipt number being issued to it.
- The system is unable to print out a listing of official donation receipts issued that includes all of the required items (i.e., 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 listing provided includes only names, dates, donation amounts, and receipt numbers.
- Official donation receipts are issued where the donor has directed the Organization to give the funds to a non-qualified donee.
- The Organization issues receipts for fundraising events held to raise funds to support the programs of "B'nai Brith Canada," which consists of a group of related parties, many of which are non-qualified donees.

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.

Summary

In summary, it is our position that the Organization is issuing:

- a. inappropriate donation receipts – directed donations;
- b. receipts on behalf of non-qualified donees; and/or
- c. receipts not in accordance with the Act and/or its Regulations.

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)(d) 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

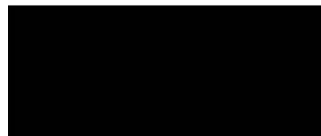
Should you choose to respond, please provide your written representations and any additional information regarding the findings outlined above **within 30 days** from the date of this letter. After considering the representations submitted by the Organization, the Director General of the Charities Directorate 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; or
- giving 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.

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

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

Yours sincerely,



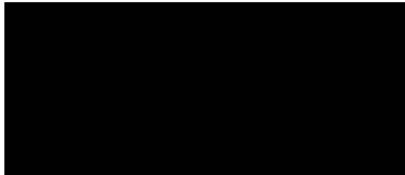
J. Myska, CGA
Audit Division
Kitchener/Waterloo Tax Services Office

Telephone: (519) 896-3651
Facsimile: (519) 585-2803
Address: 166 Frederick St.
Kitchener, ON N2H 0A9

Enclosures:

- Appendix A – Devotion of Resources Summary
- Appendix B – Political Activities
- Appendix C – Reconciliation of Received Donations

C.c.:



Appendix A
 B'nai Brith Foundation District No 22
 Devotion of Resources Summary

2011-12-31						2010-12-31					
	As Filed T3010	As Filed % of Expenses	Audit Adjustments	Adjusted T3010	Adjusted % of Expenses		As Filed T3010	As Filed % of Expenses	Audit Adjustments	Adjusted T3010	Adjusted % of Expenses
Line 4700 Total Revenue	4,330,329		0	4,330,329		Line 4700 Total Revenue	4,636,359			4,636,359	
Line 4950 Total Expenses	3,180,649		902,890	4,083,539		Line 4950 Total Expenses	3,523,551		1,200,165	4,723,716	
Line 5050 Qualified Donees	212,440			212,440		Line 5050 Qualified Donees	202,490			202,490	
Total Expenses	3,393,089		902,890	4,295,979		Total Expenses	3,726,041		1,200,165	4,926,206	
CHARITABLE ACTIVITIES						CHARITABLE ACTIVITIES					
Line 5000 Charitable	926,929	27%	-98,532	828,397	19%	Line 5000 Charitable		0%	792,002	792,002	16%
<u>Line 5050 Qualified Donees</u>						<u>Line 5050 Qualified Donees</u>					
League for Human Rights	170,000	5%		170,000	4%	League for Human Rights	190,000	5%		190,000	4%
Faith Temple	440	0%		440	0%	Amyotrophic Lateral Sclerosis Society of Ont.	1,600	0%		1,600	0%
Pride of Israel Kosher Food Bank	3,000	0%		3,000	0%	Pride of Israel Kosher Food Bank	2,600	0%		2,600	0%
Jewish Family & Child Service	2,500	0%		2,500	0%	Jewish Family & Child Service	2,500	0%		2,500	0%
Scouts Canada	4,000	0%		4,000	0%	Scouts Canada	3,790	0%		3,790	0%
Toronto General & Western Hospital	1,500	0%		1,500	0%	The Baycrest Centre Foundation	2,000	0%		2,000	0%
Comm Ass'n for Riding for the Disabled	1,000	0%		1,000	0%						
Canada Christian College	30,000	1%		30,000	1%						
Line 5050 Qualified Donees	212,440	6%	0	212,440	5%	Line 5050 Qualified Donees	202,490	5%		202,490	4%
TOTAL CHARITABLE ACTIVITIES	1,139,369	34%	-98,532	1,040,837	24%	TOTAL CHARITABLE ACTIVITIES	202,490	5%	792,002	994,492	20%
NON-CHARITABLE ACTIVITIES						NON-CHARITABLE ACTIVITIES					
Line 5010 Mgmt and Admin	305,706	9%		305,706	7%	Line 5010 Mgmt and Admin	734,066	20%	58,845	792,911	16%
Line 5020 Fundraising	953,014	28%	0	953,014	22%	Line 5020 Fundraising	1,739,485	47%	931,227	808,258	16%
<u>Line 5040 Other (Gifts to Non Qualified Donees)</u>						<u>Line 5040 Other (Gifts to Non Qualified Donees)</u>					
B'nai Brith Canada	520,000	15%	853,212	1,373,212	32%	B'nai Brith Canada	570,000	15%	940,802	1,510,802	31%
Institute for International Affairs	135,000	4%	0	135,000	3%	Institute for International Affairs	290,000	8%		290,000	6%
League for Human Rights	170,000	5%	-170,000	0	0%	League for Human Rights		0%			0%
Congregation Synagogue	170,000	5%	0	170,000	4%	Congregation Synagogue	190,000	5%		190,000	4%
B'nai Brith Hillel			189,678	189,678	4%	B'nai Brith Hillel			244,363	244,363	5%
Jewish Tribune			30,000	30,000	1%	Jewish Tribune			15,000	15,000	0%
B'nai Brith Softball Montreal			9,280	9,280	0%	B'nai Brith Softball Montreal			29,600	29,600	1%
B'nai Brith Lodges			41,752	41,752	1%	B'nai Brith Lodges			50,780	50,780	1%
			47,500	47,500	1%						
Line 5040	995,000	29%	1,001,422	1,996,422	46%	Line 5040	1,050,000	28%	1,280,545	2,330,545	47%
TOTAL NON-CHARITABLE ACTIVITIES	2,253,720	66%	1,001,422	3,255,142	76%	TOTAL NON-CHARITABLE ACTIVITIES	3,523,551	95%	408,163	3,931,714	80%
TOTAL EXPENDITURES	3,393,089	100%	902,890	4,295,979	100%	TOTAL EXPENDITURES	3,726,041	100%	1,200,165	4,926,206	100%

Appendix B

Political Activities

Provided a registered charity devotes substantially all its resources to charitable activities, it may engage in non-partisan political activities that are ancillary and incidental to its charitable activities.¹ The CRA usually considers substantially all to mean 90% or more of an organization's resources.

An activity is considered to be political² if it:

- explicitly communicates a call to political action (i.e. encourages the public to contact an elected representative or public official to urge them to retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country);
- explicitly communicates to the public that the law, policy, or decision of any level of government in Canada or a foreign country should be retained (if the retention of the law, policy, or decision is being reconsidered by a government), opposed, or changed;
- explicitly indicates in its materials (whether internal or external) that the intention of the activity is to incite, or organize to put pressure in, an elected representative or public official to retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country; or
- makes a gift to another qualified donee to support political activities.

No registered charity may engage in partisan political activities. That is, a registered charity is prohibited from directly or indirectly supporting or opposing a candidate for public office, an elected representative, or political party. If a registered charity carries out partisan political activities, it can be subject to compliance action, including suspension of its tax-receipting privileges, or revocation of its charitable registration.

Examples of prohibited conduct would normally include:

- making public statements (oral or written) that endorse or denounce a candidate, elected representative, or political party;
- publishing or otherwise disclosing the voting record of selected candidates, elected representatives, or political parties on an issue;

¹ See subsection 149.1(6.1) and (6.2) of the Act.

² See, for example, *Actions By Christians For The Abolition of Torture (ACAT) v. Her Majesty the Queen*, (2003) D.T.C. 4394 (FCA); *Positive Action Against Pornography v. M.N.R.*, [1988] 2 FC 340 (CA), approving *McGovern v. Attorney General*, [1981] 3 All ER 493 (ChD); *Human Life International in Canada Inc. v. M.N.R.*, [1998] 3 F.C. 202 (C.A.); *Alliance For Life v. M.N.R.*, [1999] 3 FC 504 (CA); *N.D.G. Neighbourhood Assn. v. Canada (Revenue, Taxation Department)*, [1988] 2 C.T.C. 14 (FCA); and *Scarborough Community Legal Services v. Canada (Minister of National Revenue - M.N.R.)*, [1985] 1 C.T.C. 98 (FCA), where the Court held participation in a rally to protest against a proposal by the Government to bring changes to the Family Benefits program, and involvement with a committee to improve property standards by-laws, to be political activities.

- distributing literature or voter guides that promote or oppose a candidate, elected representative, or political party explicitly or by implication; or
- explicitly connecting the charity's position on an issue to the position taken on the same issue by a candidate, elected representative, or political party.

The CRA considers advocacy to mean demonstrated support for a cause or particular point of view. Advocacy is not necessarily a political activity, but it sometimes can be. In the B'nai Brith Canada group's case, its advocacy work is a major focus, and involves a significant amount of political activity, including both partisan and non-partisan political activities. While not an exhaustive list, the following examples demonstrate political activities that have been undertaken within the B'nai Brith Canada group.

Political statements issued by B'nai Brith Canada

- On October 15, 2012, the B'nai Brith Canada group issued a statement in which it "applauded NDP MP Dany Morin's private member's motion to begin mapping out a 'national bullying prevention strategy,'" and connected its position to MP Morin's position on this issue, as follows: "We applaud MP Morin for tabling this motion in the House of Commons. We have been calling for a national anti-hate strategy since 1997 when we initiated (a) series of groundbreaking hate on the internet conferences, worked to create resource material on bullying and its cyber variants and offered training to students and educators through Taking Action Against Hate workshops."³
- On November 14, 2012, the B'nai Brith Canada group released a statement expressing its disappointment with the Federal NDP Party, calling for the NDP "to recognize the fallacy of equating rocket barrages from Gaza that target civilians indiscriminately with Israel's right to defend its citizens." In this statement, the B'nai Brith Canada group connected both "the Government and the Liberals" with its position that "there can be no moral equivalency between terrorist groups targeting innocent civilians and Israel taking defensive action to defend itself," and called on the NDP to do the same.⁴
- On December 14, 2012, BBC issued a statement titled "Votes trump principles according to Trudeau staff," criticizing MP Justin Trudeau's decision to speak at the 'Revival of the Islamic Spirit' convention, "calling on the interim Liberal Party leader and human rights critic to intervene with Mr. Trudeau to urge him to reconsider his approach."⁵
- On December 20, 2012, BBC issued a statement titled "Jewish Community Supports Government Action Against Terror," applauding Prime Minister

³ <http://www.bnaibrith.ca/national-bullying-strategy-welcomed/> (accessed 21-10-2013)

⁴ <http://www.bnaibrith.ca/bnai-brith-disappointed-with-ndp-statement/> (accessed 21-10-2013)

⁵ <http://www.bnaibrith.ca/votes-trump-principles-according-to-trudeau-staff/> (accessed 21-10-2013)

Stephen Harper and Minister of Public Safety Vic Toews for “their principled stance in combating terror,” following the government announcement listing the Islamic Revolutionary Guard Corp’s Qods Force (IRCG-QF) as a terror entity under the Criminal Code, and stating “B’nai Brith Canada has long called for the listing of the IRG-QF as a terrorist entity and its addition is an important step in combatting terror.”⁶

Political programs and activities

B’nai Brith Canada District No. 22

As previously noted, B’nai Brith Canada District No. 22 (BBC) received \$1.3 million from the Organization in 2011 and \$1.5 million in 2010, and BBC’s financial statements show that it primarily administers payroll for the B’nai Brith Canada group. During the audit, we were provided with the job descriptions for B’nai Brith Canada group positions earning more than \$50,000, many of which indicate to us that involvement in B’nai Brith Canada’s political activities is a focus of the job. Examples include the following:

- The CEO’s responsibilities include “to interact with all levels of Gov’t;”
- The Director of Communications’ responsibilities include “to liaise with Members of Parliament and their staff on an ongoing basis. To identify key individuals in riding associations and constituency offices. To arrange regular consultation with these individuals, and facilitate such meetings for local and national lay leadership. To identify emerging issues and liaise with the national office in devising and implementing a strategic response...;”
- The Director of Government Relations’ responsibilities include “to participate in strategic planning on both national and regional political issues;”
- The Community & Governmental Relations Coordinator Quebec Region’s responsibilities include to “liaise with politicians and bureaucrats on the provincial and municipal level, as well as federal MP’s residing in Quebec, arranging regular consultation, and facilitating such meetings for local and national lay leadership.” The Community & Governmental Relations Coordinator Manitoba Region’s responsibilities include the same.

B’nai Brith Canada’s Parliament Hill Office

The Parliament Hill Office “liaises regularly with members of parliament, civil servants, ambassadors and opinion-makers residing in the nation’s capital, providing a strong voice on issues of concern to the community.”⁷ While the Organization does not appear to be funding this program directly, based on our understanding of BBC’s financial statements and the job descriptions provided, the Organization is funding its staff’s salaries through BBC.

⁶ <http://www.bnaibrith.ca/jewish-community-supports-government-action-against-terror/> (accessed 21-10-2013)

⁷ <http://www.bnaibrith.ca/advocacy/> (accessed 21-10-2013)

Canada-Israel Public Affairs Committee

Canada-Israel Public Affairs Committee (CIPAC)'s mandate is "to encourage positive Canada-Israel relations through a progressive activist agenda involving all sectors of the community."⁸ While the Organization does not appear to be funding this program directly, based on BBC's financial statements and the job descriptions provided, the Organization is funding its staff's salaries through BBC.

The Institute for International Affairs

The Institute for International Affairs (IIA) received \$135,000 from the Organization in 2010 and \$290,000 in 2011. It "monitors the abuse of human rights worldwide, advocating on behalf of Jewish communities in distress, and intervening at both the governmental level and at international fora."⁹ According to IIA's section of B'nai Brith Canada group Web site,¹⁰ the activities undertaken in association with this program include the following:

- A campaign against the 2009 World Conference Against Racism (Durban II), during which BBC took out an advertisement in the National Post to "salute The Right Honourable Prime Minister Stephen Harper and the Government of Canada for its clear, unequivocal rejection of Durban II,"¹¹ and issued a series of 8 media releases in which it "call(ed) on Prime Minister Stephen Harper to continue his pressure on the UN by preventing another racist and bigoted conference from taking shape;" and "called upon Liberal Opposition leader Stephane Dion to work with the government in a non-partisan manner to ensure that Durban II, a UN conference designed to combat racism, does not once again foment and encourage racism against Israelis and the Jewish people,"¹² stated the "European Union should do the right thing and withdraw from Durban II,"¹³ and "called on NDP leader Jack Layton to put 'principle above politics' and categorically reject Durban II."¹⁴
- A "public service" publication titled "Israel at War: What you need to know," which includes the following statement: "President Mahmoud Abbas, elected leader of the Palestinians, but thrown out of Gaza by Hamas, has a responsibility to step in and take back the leadership role he has abdicated."¹⁵

⁸ <http://www.bnaibritch.ca/advocacy/> (accessed 21-10-2013)

⁹ <http://www.bnaibritch.ca/advocacy/> (accessed 21-10-2013)

¹⁰ <http://www.bnaibritch.ca/the-institute-for-international-affairs/> (accessed 21-10-2013)

¹¹ <http://web.archive.org/web/20101214051901/http://bnaibritch.ca/files/27042009.pdf> (accessed 21-10-2013)

¹² <http://www.jewishtribune.ca/uncategorized/2008/01/08/prevent-durban-ii-from-becoming-another-durban-i-hatefest-canada-urged> (accessed 21-10-2013)

¹³ <http://web.archive.org/web/20120702041352/http://www.bnaibritch.ca/prdisplay.php?id=1471> (accessed 21-10-2013)

¹⁴ <http://web.archive.org/web/20120702045647/http://www.bnaibritch.ca/prdisplay.php?id=1354> (accessed 21-10-2013)

¹⁵ [http://web.archive.org/web/20101214051605/http://bnaibritch.ca/files/20090105\(2\).pdf](http://web.archive.org/web/20101214051605/http://bnaibritch.ca/files/20090105(2).pdf) (accessed 21-10-2013)

- A media release titled “Government has rightly fingered Hamas as the cause of the current conflict,’ says B’nai Brith Canada,” stating: “The international community should follow Canada’s principled stance by placing full blame on Hamas as the instigator and aggressor in this conflict and recognize that Israel has no choice but to exercise its sovereign right to defend its citizens, however painful those steps might be,” and “President Mahmoud Abbas, the elected leader of the Palestinian Authority who was thrown out of Gaza by Hamas, has a responsibility to step in and take back the leadership role he has abdicated. The Palestinians have an opportunity to free themselves of their Hamas overlords and work towards true peace and stability in the region.”¹⁶
- A media release titled “B’nai Brith Canada calls on international community to stand behind democratic Israel as it defends its citizens against Hamas terrorism,” stating: “While the loss of life on all sides is tragic, we urge the international community to recognize that the Gaza Strip - the area ruled by Hamas - is nothing more than a breeding ground for terrorists that seek to destroy the Jewish State. Democratic friends and allies of Israel should rally behind it as it takes the painful but necessary steps to protect its citizens from what are incessant, ongoing terrorist rocket attacks by Hamas and other Palestinian terrorist militias.”¹⁷
- A 2007 indictment prepared by BBC’s Senior Legal Counsel, David Matas, against Iranian president, Mahmoud Ahmadinejad, “for incitement to genocide against the Jewish people,” in which the BBC asked the Government of Canada to “ban and announce it is banning the entry of Mahmoud Ahmadinejad into Canada under any circumstances;” “decide to prosecute Mahmoud Ahmadinejad for incitement to genocide against the Jewish people should he show up in Canada despite the ban on entry;” “request the Security Council to refer to the International Criminal Court under Court Statute article 13(b) the situation of incitement to genocide of the Jewish people by persons in authority in Iran;” and “under Article IX of the Genocide Convention, ask the International Court of Justice to find Iran in violation of Article I of the Genocide Convention for failure to prosecute Mahmoud Ahmadinejad for incitement to genocide against the Jewish people.”¹⁸ On September 24, 2012, BBC “renewed its call” for “the Government of Canada to urge the Security Council to refer to the International Criminal Court (ICC) the ongoing incitement to genocide of the Jewish people by Iran’s leadership” in a media release titled “Ahmadinejad Should be Prosecuted for Incitement to Genocide, not Honoured with UN Platform.”¹⁹

¹⁶ <http://web.archive.org/web/20120702055350/http://www.bnaibrith.ca/prdisplay.php?id=1422> (accessed 21-10-2013)

¹⁷ <http://web.archive.org/web/20120702044909/http://www.bnaibrith.ca/prdisplay.php?id=1420> (accessed 21-10-2013)

¹⁸ <http://web.archive.org/web/20101214093310/http://bnaibrith.ca/pdf/institute/IndictmentIranianPresidentMarch07.pdf> (accessed 21-10-2013)

¹⁹ <http://www.bnaibrith.ca/ahmadinejad-should-be-prosecuted-for-incitement-to-genocide-not-honoured-with-un-platform/> (accessed 21-10-2013)

B'nai Brith Foundation District No. 22

118812106 RR001 (0235903)

01/01/2010 to 12/31/2011

Appendix C - Reconciliation of Received Donations

Reconciliation of received donations to various sources to test integrity of books and record's and Organization's receipting system.

Sources of Information

- (A) [REDACTED] -retrieved in Sept 2012 ([REDACTED] worksheet listing)
- (B) Line 4500 of Return filed
- (C) [REDACTED] -retrieved by ECAS Oct 2012 ([REDACTED] general ledger)
- (D) GL listing -provided by CFO ([REDACTED] W/P#905

	2011	2010
From [REDACTED]	1,977,847.58	1,750,907.69
Line 4500 of Return	<u>2,291,039.00</u>	<u>2,200,434.00</u>
Variance	313,191.42	449,526.31
[REDACTED]	2,925,688.58	1,761,746.14
Line 4500 of Return	<u>2,291,039.00</u>	<u>2,200,434.00</u>
Variance -	634,649.58	438,687.86
GL Rec wp#905	2,291,039.00	2,198,424.00
Line 4500 of Return	<u>2,291,039.00</u>	<u>2,200,434.00</u>
Variance	- -	2,010.00
From [REDACTED]	1,977,847.58	1,750,907.69
[REDACTED]	2,925,688.58	1,761,746.14
Variance	947,841.00	10,838.45
From [REDACTED]	1,977,847.58	1,750,907.69
GL Rec wp#905	<u>2,291,039.00</u>	<u>2,198,424.00</u>
Variance	313,191.42	447,516.31
[REDACTED]	2,925,688.58	1,761,746.14
GL Rec wp#905	<u>2,291,039.00</u>	<u>2,198,424.00</u>
Variance -	634,649.58	436,677.86

<END>

To: Katie Spoelstra & Juliane Myska
Audit Division, Kitchener/Waterloo Tax
Services Office
Fax number: (1-519) 585-2803

Date: 11/02/2014

Regarding: League for Human rights of B'nai Brith & B'nai Brith Foundation
District No.22

Comments:

Please find 18 pages enclosed including this cover.

February 11, 2014

Katie Spoelstra and Julianne Myska
Audit Division
Kitchener / Waterloo Tax Services Office
166 Frederick St.
Kitchener, Ontario
N2H 0A9

Via Fax: (519) 585-2803

Dear Ms. Spoelstra and Ms. Myska:

**Re: League for Human Rights of B'nai Brith ("LHR") B/N 119241776 and
B'nai Brith Foundation District ("BBF") No. 22 B/N: 118812106**

We are writing this letter in response to your letters of November 28, 2013 to Dr. Frank Dimant of the above Organizations.

First, thank you for extending your deadline to respond to the letters. As most of the letters deal with common issues we are responding to them jointly but will deal with different facts as they arise.

Second, while we read with interest your commentary on general legal principles we take no position on it and do not consider it necessary to respond in order to deal with the specific issues in question here.

Annulment Issue

As a preliminary matter we want to take the opportunity to continue the discussion we initiated about the option of annulment for both organizations.

Our initial proposal to you regarding the annulment of the organizations was predicated on your position that both LHR and BBF were incorporated with objects that were impermissibly broad and vague. For reference please see the last sentence of the first full paragraph on page 18 of the BBF letter "...it is our position that the Organization's stated purpose is not charitable at law" and on page 20 of the LHR letter which states of that organization "...it is our position that the Organization's stated purposes are broad and vague and not charitable at law". As Ms. Myska confirmed in our call, neither organization has ever altered the purposes for which they were incorporated and so the ones examined by you are the original purposes for which the organizations were created.

Our initial position maintained that the sanction for an organization incorporated for purposes which are broad and vague is not revocation but rather annulment. As proof of this proposition we refer you to ss.149.1(23) of the Income Tax Act which states that:

"The Minister may, by registered mail, give notice to a person that the registration of the person as a registered charity is annulled and deemed not to have been so registered, if the person was so registered by the Minister in error or the person has, solely as a result of a change in law, ceased to be a charity".

If the Minister's position is that the objects of both BBF and LHR are not charitable at law then both organizations were, presumably, registered in error and the only recourse available to the Minister on this point is annulment and not revocation (there is no analogous provision allowing the Minister to revoke for similar reasons).

In discussing the Minister's response with Ms. Myska she had commented that the Minister's position is (if we understand correctly) that if the Organization carried on strictly charitable activities that would suffice to restrict a reading of the objects from one that was so broad as to allow it to carry on non charitable activities to ones that are charitable. This is effectively an application of the Principle of Benign Construction.

Assuming that we understand this position correctly we do not understand how it is applicable here. First, both letters are entirely devoted to stating that both the BBF and LHR had myriad non charitable activities. We therefore do not understand how the Minister can argue that the Charities' exclusively charitable activities save the objects from being so broad and vague as to allow the Organizations to undertake non charitable activities. There is a contradiction here which, we would submit, is fatal to the logic that the proper sanction is revocation (at least for this reason) rather than annulment.

Second, the Principle of Benign Construction applies only to the concept of objects that are overly broad. The principle comes from English law which has held:

"In construing trust deeds the intention of which is to set up a charitable trust, and in others too, where it can be claimed there is an ambiguity, a benign construction should be given if possible". (IRC v. McMullen [1981] AC 1).

However, you have alleged, in both letters that the objects are also vague to an impermissible extent. Exclusively charitable activities cannot save objects from being read as being as specific enough to avoid a charge of vagueness.

Finally, in our dealings with the Assessment and Determinations division of the Charities Directorate the Principle of Benign Construction is never applied. We would submit that applying it in this instance to justify a sanction of revocation is inconsistent with the general practice of the Charities Directorate and therefore disingenuous. We would refer you to CRA guidance CG-019 in this regard.

Control and Direction Over Transfers

Your audit of the Organizations has revealed that the B'nai Brith family of entities uses a multi-pronged structure to accomplish its global goals. In doing so, it effectively operates parallel structures where those members of the family which are charitable raise funds through BBF (as explained in Dr. Dimant's conversation with you referenced on page 7 of the BBF letter). On the other hand, those members which are not registered charities do not receive outright transfers from charitable entities, but may, if warranted, receive payments for goods or services provided to the charitable organizations.

B'nai Brith Canada ("BBC") acts as the central provider for services for each of the charitable and not for profit entities. For example, neither BBF nor LHR employ significant number of people (with certain exceptions described below). They also have no significant contracts in their own name for photocopiers, office supplies or contractors. Other members of the B'nai Brith family of organizations which are registered charities operate in a similar manner. As you know, we were not involved in the audit of the organizations which you undertook and so we are unaware as to the depth of the documentation which you may have in your file. Nevertheless, your audit of the expenses of both BBF and LHR must have showed a distinct lack of expenditures in obvious areas such as bookkeeping, administrative and managerial staff. (Indeed, as you visited the premises of both organizations you must have expected to see expenditures of rent. Similarly, you examined the books of both groups and met staff acting on their behalf but you likely did not find direct expenditures for them in the Organizations' books).

We would note that your letter illustrates concerns about the methods by which the Organizations exert control and direction. Obviously, if you are missing information about how it exerts control and direction then you could not have evaluated the control and direction actually exerted, and so we take the opportunity now to answer your questions about systems. Should you wish to know the actual steps taken to maintain that control we would be happy to meet with you further and discuss the specifics. Moreover, should the matter progress further we would be prepared to provide affidavits indicating the level of control and direction provided by the leadership to serve as evidence should this matter find itself at the Federal Court of Appeal.

In addition to the administrative functions undertaken by the various members of the B'nai Brith family the charitable activities are similarly distributed. This is alluded to throughout your letters including your comments regarding the promotional materials created by BBF and your concerns about sufficient control over amounts transferred to other members of the B'nai Brith family. Certain of the transfers – notably those to pursue the charitable objects of BBF – were done pursuant to an agency relationship. While there were no written agency agreements, it is our position that none was required. Control and direction over the funds was easily maintained as the staff people implementing the charitable programs act under the direction of, amongst others, BBF and LHR. Moreover, the directors of the B'nai Brith family of corporations overlap so that proper control and direction could be exercised. To be clear, the directors of BBF, LHR, the Institute for International Affairs ("IIA"), B'nai Brith Hillel of Toronto ("BBHT"), and B'nai Brith Congregation Synagogue (Non-profit) Inc ("BBCS") are all the same namely Frank Dimant, [REDACTED].

With respect to your specific findings we make the following comments.

First, as you know, BBF was the fundraising arm of all the charitable organizations in the B'nai Brith family of organizations. As part of its role, it paid for expenses other qualified does. In this case, transfers from BBF and LHR to BBC related, in part, to administrative services provided to these other groups. They also related to the implementation of BBF's charitable objects. Attached please find spreadsheets which attempt to characterize the movement of funds as described above. We would additionally point out that as most of the expenses are simply passed on by BBC to BBF that there is no issue of payments greater than fair market value to a non arm's length entity.

We also take this opportunity to address your comments on pages 13 and 14 of the LHR letter. Namely that LHR paid some amount of salary for BBC's National Director of Advocacy and National Director of Legal Affairs (effectively in house counsel). While most payments are made to BBC as consideration for services provided by it these two individuals are paid by LHR. The value of their services set off against other expenses of LHR incurred and paid for by the other members of the family of organizations. Similarly, just as the employees of BBC work for BBF, LHR and others so too do these employees provide services to other members of the family. To the extent that their work is not in furtherance of LHR's charitable objects it can be attributed to work done for none charity members of the family. This is also intended as an answer to your comments in the last bullet point on page 24 of the LHR letter.

Second, expenses to the Institute for International Affairs represent payments to an agent to accomplish BBF and LHR's (permissible) political aims. IIA's political activities are comprised of both permitted and impermissible activities. The leadership of IIA always assigned only the permitted activities of IIA to the resources contributed by BBF and LHR (through BBF).

Third, the B'nai Brith Congregation Synagogue (Non-profit) Inc ("BBCS") owns the building which houses BBF, LHR and other charitable organizations. It is part of the overall B'nai Brith family of organizations. Payments to the BBCS were in the nature of rents from BBF were on behalf of BBF and other charitable organizations housed in the premises.

Fourth, the B'nai Brith Hillel of Toronto ("BBHT") organization is involved in the construction and operation of a home for Alzheimer's patients. We understand from your letter that you are aware of the services provided by this organization and its previous litigation history. Payments from BBF to BBHT were under the general terms of an agency relationship to ensure that the Alzheimer's program home was successful.

Fifth, as you may be aware, the Jewish Tribune is a community newspaper publication. Payments from BBF to the Tribune were in the nature of fundraising and advertising.

Sixth, [REDACTED] produced a movie which BBF and LHR both felt was an important step in the fight against anti - Semitism. In your letter to LHR you describe the nature of the agreement between BBC and [REDACTED]. With respect, your own description of the arrangements defies your characterization of it as a 'gift' to a non - qualified donee but rather it should be characterized as payment for consideration. This is specifically evidenced by the bullet points at the top of page 10 of your letter to LHR. Payments to contractors for consideration are not only obviously *de rigueur*

for any economic actors in society but is specifically contemplated and approved in the CRA document "Using an Intermediary to Carry out a Charity's Activities within Canada". We would point out that this also answers your question about directed donations for non qualified donees as even if donations are intended for 'transfer' to a non qualified donee there are proper mechanisms by which the transfers can be effected (as was the case here).

Seventh, as you may know B'nai Brith was originally a group of fraternal lodges across the country. Though the structure of the Organization has clearly changed, the lodges are still a major source of fundraising for BBF. Payments to the lodges were essentially fundraising expenses. Again, it is unclear if the underlying documentation relating to these payments is in your possession. If you do require any further evidence on this point please advise.

Eighth, BBF is prepared to concede that payments for B'nai Brith Softball were in error and should not have been made. But that given the rather small amounts they would be an appropriate matter for a compliance agreement.

We would further note that your comments about transfer to qualified donees amounting to only 5% and 4% of BBF's expenditures during those years ignores the payments made on to entities such as BBC and BBCS which provided services to related qualified donees. In sum, your characterization of the transfers from BBF and LHR to BBC as 'gifts' is wholly inaccurate.

Direction and Control Over Resources

As we have remarked above, and ~~you have noted in your letter~~ control over the Organizations is exercised by the same group of directors and the same employees. There is no formal documentation in place evidencing such (with the exception of the corporate director registers), nor is any legally necessary. It is sufficient in law that the joint directors of the Organizations ensure that the funds are spent appropriately. If you have not taken evidence of the directors of the Organizations during your audit we would be prepared to send you copies.

Incidentally, we take no position on your comments of the activities of the various members of the B'nai Brith family of organizations. To our knowledge these organizations were not under audit and their activities could be funded from a variety of sources. If you are concerned about a specific activity of one of those groups then please advise and we will provide you with our position. Moreover, your position that none of the groups would qualify as charitable is, in our opinion, irrelevant as there are no restrictions on who can act as an agent of a registered charity.

Broad and Vague Purposes

The Organizations make no submissions on your position that the organizations were created with Broad and Vague purposes other than those made earlier under the title of annulment.

Collateral Political Purpose

Your comments in this regard seem to suggest that as BBC engages in political activities that these activities necessarily indicate that both BBF and LHR have collateral political purposes by virtue

of the funding arrangements between the groups. Respectfully, there is no evidence to suggest this is the case. Was a separate audit of BBC conducted as well to trace the source of funds for its various activities? That BBF is the fundraising arm of the B'nai Brith group of charities does not necessarily mean that it is the only source of funds for BBC itself.

As BBC is not the subject of this audit we make no representations on the nature of the political activity carried out by that organization as it is irrelevant. Your only evidence on this point is a vague assertion that "Absent evidence to the contrary, it appears to us that the Organization is funding the group's work in a general manner, the focus of which is significantly political". With respect, the burden is not on the Organization to disprove appearances. And moreover, ample evidence exists. Both BBF and LHR are active operating organizations which must pay rent, employees / contractors, and purchase supplies. As explained above, funds paid to BBC are for these inputs.

The above points are underlined by the fact that one can only presume a collateral purpose of any type where the activities of the organization in question seem to indicate such. The evidence you cite in your letter and appendix are activities of BBC and not those of either BBF or LHR.

Private Benefits

As you have not provided any additional information under this heading of your letter we believe it relates to previous positions which we have addressed above.

Books and Records

We understand that the specific comments you have made regarding books and records were addressed by [REDACTED] after your audit. If there was some concern we understand the attached spreadsheets and information in this letter should address your concerns. If we are incorrect please advise.

We do however make the following point. In the LHR letter you note that the T3010 does not reconcile with either the CFO's worksheet or the Organization's GL. However, your own Appendix C indicates that the variance between the T3010 and the CFO's worksheet is immaterial. Appendix C indicates that the other comparison with the T3010 is with something called [REDACTED] (and not the GL accounts). Under the circumstances we fail to understand how your conclusion in the second bullet point on page 24 is supported by Appendix C.

Appendix C of the BBF letter is completely unintelligible and we cannot make any submissions on it.

Donation Receipts

You state that your audit raised evidence that BBF conducted fundraising on behalf of BBHT and that therefore the donations made were directed to a non - qualified donees in contravention of the Act. In this regard we would make the following points.

First, you have not cited the evidence which has led you to form this opinion and so we cannot address the basis of your position. We would appreciate if you could please forward this information to our attention if you continue to maintain this position.

Second, you have not cited which provision of the Act regulates fundraising of this type. With respect, there is none, regulating fundraising is beyond the constitutional jurisdiction of the Federal government and the CRA cannot revoke for a law which does not exist.

Finally, a determination as to whether or not particular donations are directed involves a level of inquiry that is significantly deeper than any advertising an organization may have used to attract the donation in the first place. With respect, we have seen no evidence that donors have specifically directed their donations. And, as we have said, even if they had there is no law which would make the Organization which accepts such donations liable to revocation.

Issuing Receipts on Behalf of Non-Qualified Donees

On page 24 of your letter to BBF you state that:

“Our 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.”

You then cite a number of purported examples.

Respectfully, even assuming your examples were evidence of the proposition they ostensibly support, there is no provision in the Income Tax Act relating specifically to this offence. We note that you have cited none in particular. It is our position that there is no specific law which BBF would have transgressed in this instance and it is our further position that the facts expressed above illustrate that the examples do not support your position. Unless the CRA intends to explicitly indicate which law the organizations have transgressed we consider the matter closed.

Issuance of Receipts

Your letter states that your audit has found 6 ways in which the official donation receipts issued by BBF (4 by LHR) were in contravention of Regulation 3501 of the Income Tax Act. For your ease of reference Regulation 3501 of the Act is attached.

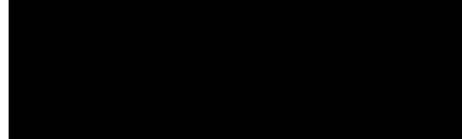
Respectfully, Regulation 3501 only deals with the contents of the receipts. There is no mention thereof, for example, a requirement to retain a duplicate copy in a particular format.

A review of the list you have included in the letters indicates that there are no examples in the LHR letter and only two in the BBF which may contravene Regulation 3501 of the Act. In particular that the receipts should have read “B’nai Brith Foundation District No. 22” rather than just “B’nai Brith Foundation”, and that gift in kind donations don not include a brief description of the donated property.

Assuming your examples are founded in fact we would suggest that the Charities Directorate's "Guidelines for Applying Sanctions" would indicate that this offence is of a type which is more properly dealt with by way of compliance agreement rather than revocation.

Under the circumstances we would propose that a Compliance Agreement is warranted to resolve the findings of your audit, or failing that annulment. We look forward to your response.

Yours truly,

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Encl.

A large black rectangular redaction box covering a signature.

BBF Queries for Claude
Follow Up/Questions Outstanding
Jan. 29/13

2) ***Still Outstanding - awaiting clarification from lawyer/accountant? Please advise when yo***
 Intercompany Accounts - please explain the nature of the transactions running through thes
 Allocations, monthly transactions going through and what they are for, etc.

It appears that some of these loans are written off to the related line 5040 allocation each y
 Is there formal loan agreements in place? Is it intended that these loans will be repaid at so
 Please provide any formal documentation you may have in regards to loans with all non arr

4) ***Response waiting from auditor re: why this is a liability on the T3010 and a reserve on the***
Are these projects like a deferred revenue or restricted funds?

For each line below, please explain what this account/fund is for. Eg. What is Mother & C
What is "Artwork Fund", "Family Health Care", "Private Company Rsv", "██████████
"Chapters Holocaust", "General Endow", "General Endow Growth" - how will these funds
 Please explain what these liabilities are for? If they relate to a specific project what the proj
 Line 4330: Other liabilities

2801-00000-00	Mother & Child Trust Corporate Admin	-2,022.00
2802-00000-00	Artwork Fund Corporate Admin	-8,677,667.31
2803-00000-00	Fam Health Care Fund Corporate Admin	-977.43
2804-00000-00	Private Company Rsv Corporate Admin	-44,443.00
2805-00000-00	██████████ Endowment Corporate Admin	-8,806.40
2806-00000-00	ChaptersHolocaust Fd Corporate Admin	-88,544.47
2809-00000-00	General Endow Fund Corporate Admin	-1,748,715.67
2810-00000-00	Gen Endow Growth Corporate Admin	-10,888.96
		-10,582,065.24

<END>

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financial statements.

Child Trust program?

*be used? Describe the programs.
ject is?*

LHR Queries for Claude
Follow Up /Questions Outstanding
Feb 7 13

- 2) Salary Allocation for LHR:
What is the 95K (amount posted as prepaid in 2009) - who's salary is this - please provide breakdown.
- 4) Please provide details on how general admin allocation for head office is arrived at. (Eg. #7900-501001-01 \$75,000 in 2011 to LHR
This question remains outstanding
- 5) Video Production Information sent Jan/13
 - 1) The statement of expenses provided show expenses 'as at' March 1, 2012 and also 'as at' September 14, 2012.
To clarify, the amount as at September 14, 2012 of \$190,145.99 is a total of all expenses paid by the organization for the |
 - 2) Point 5 of the agreement provided states "The Organization will contribute to the funding of the Project through donations and earmarked specifically for this Project." From this point, it is our understanding that the League collects donations earmarked specifically for this Project and these funds are used by the Organization to contribute to the video project. Is this correct? If so, what G/L account(s) are used?

)

production since it began? Please confirm.

ations as received

I for the video,

ed to record these donations in the books and records of the League?

BBF Queries for Claude
Follow Up/Questions Outstanding
Jan. 29/13

- 2) *Still Outstanding - awaiting clarification from lawyer/accountant? Please advise when you have heard*
Intercompany Accounts - please explain the nature of the transactions running through these accounts.
Allocations, monthly transactions going through and what they are for, etc.
It appears that some of these loans are written off to the related line 5040 allocation each year.
Is there formal loan agreements in place? Is it intended that these loans will be repaid at some point in time?
Please provide any formal documentation you may have in regards to loans with all non arm's length parties.
- 4) *Response waiting from auditor re: why this is a liability on the T3010 and a reserve on the financial statements.*

Are these projects like a deferred revenue or restricted funds?

*For each line below, please explain what this account/fund is for. Eg. What is Mother & Child Trust program?
What is "Artwork Fund", "Family Health Care", "Private Company Rsv", [REDACTED],
"Chapters Holocaust", "General Endow", "General Endow Growth" - how will these funds be used? Describe the programs.
Please explain what these liabilities are for? If they relate to a specific project what the project is?*

Line 4330: Other liabilities

2801-00000-00	Mother & Child Trust Corporate Admin	-2,022.00
2802-00000-00	Artwork Fund Corporate Admin	-8,677,667.31
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2809-00000-00	General Endow Fund Corporate Admin	-1,748,715.67
2810-00000-00	Gen Endow Growth Corporate Admin	-10,888.96
		-10,582,065.24

<END>

• **3501.** (1) Every official receipt issued by a registered organization shall contain a statement that it is an official receipt for income tax purposes and shall show clearly in such a manner that it cannot readily be altered,

- (a) the name and address in Canada of the organization as recorded with the Minister;
 - (b) the registration number assigned by the Minister to the organization;
 - (c) the serial number of the receipt;
 - (d) the place or locality where the receipt was issued;
 - (e) where the gift is a cash gift, the date on which or the year during which the gift was received;
 - (e.1) where the gift is of property other than cash
 - (i) the date on which the gift was received,
 - (ii) a brief description of the property, and
 - (iii) the name and address of the appraiser of the property if an appraisal is done;
 - (f) the date on which the receipt was issued;
 - (g) the name and address of the donor including, in the case of an individual, the individual's first name and initial;
 - (h) the amount that is
 - (i) the amount of a cash gift, or
 - (ii) if the gift is of property other than cash, the amount that is the fair market value of the property at the time that the gift is made;
 - (h.1) a description of the advantage, if any, in respect of the gift and the amount of that advantage;
 - (h.2) the eligible amount of the gift;
 - (i) the signature, as provided in subsection (2) or (3), of a responsible individual who has been authorized by the organization to acknowledge gifts; and
 - (j) the name and Internet website of the Canada Revenue Agency.
- (1.1) Every official receipt issued by another recipient of a gift shall contain a statement that it is an official receipt for income tax purposes and shall show clearly in such a manner that it cannot readily be altered,
- (a) the name and address of the other recipient of the gift;
 - (b) the serial number of the receipt;
 - (c) the place or locality where the receipt was issued;
 - (d) where the gift is a cash gift, the date on which the gift was received;
 - (e) where the gift is of property other than cash
 - (i) the date on which the gift was received,
 - (ii) a brief description of the property, and

- (iii) the name and address of the appraiser of the property if an appraisal is done;
- (f) the date on which the receipt was issued;
- (g) the name and address of the donor including, in the case of an individual, the individual's first name and initial;
- (h) the amount that is
 - (i) the amount of a cash gift, or
 - (ii) if the gift is of property other than cash, the amount that is the fair market value of the property at the time that the gift was made;
- (h.1) a description of the advantage, if any, in respect of the gift and the amount of that advantage;
- (h.2) the eligible amount of the gift;
- (i) the signature, as provided in subsection (2) or (3.1), of a responsible individual who has been authorized by the other recipient of the gift to acknowledge donations; and
- (j) the name and Internet website of the Canada Revenue Agency.
- (2) Except as provided in subsection (3) or (3.1), every official receipt shall be signed personally by an individual referred to in paragraph (1)(i) or (1.1)(i).
- (3) Where all official receipt forms of a registered organization are
 - (a) distinctively imprinted with the name, address in Canada and registration number of the organization,
 - (b) serially numbered by a printing press or numbering machine, and
 - (c) kept at the place referred to in subsection 230(2) of the Act until completed as an official receipt,

the official receipts may bear a facsimile signature.

- (3.1) Where all official receipt forms of another recipient of the gift are
 - (a) distinctively imprinted with the name and address of the other recipient of the gift,
 - (b) serially numbered by a printing press or numbering machine, and
 - (c) if applicable, kept at a place referred to in subsection 230(1) of the Act until completed as an official receipt,

the official receipts may bear a facsimile signature.

- (4) An official receipt issued to replace an official receipt previously issued shall show clearly that it replaces the original receipt and, in addition to its own serial number, shall show the serial number of the receipt originally issued.
- (5) A spoiled official receipt form shall be marked "cancelled" and such form, together with the duplicate thereof, shall be retained by the registered organization or the other recipient of a gift as part of its records.
- (6) Every official receipt form on which any of the following is incorrectly or illegibly entered is deemed to be spoiled:

- o (a) the date on which the gift is received;
- o (b) the amount of the gift, in the case of a cash gift;
- o (c) a description of the advantage, if any, in respect of the gift and the amount of that advantage; and
- o (d) the eligible amount of the gift.

ITR APPENDIX "A"

B'nai Brith Foundation District No. 22

COMMENTS ON REPRESENTATIONS OF FEBRUARY 11, 2014

The audit conducted by the Canada Revenue Agency (CRA) identified that B'nai Brith Foundation District No. 22 (the Organization) is not devoting its resources to charitable activities carried out by the Organization itself. Specifically, the audit concluded that the Organization:

- did not devote its resources to charitable activities that it carried on itself;
- has failed to be constituted for exclusively charitable purposes;
- has failed to maintain adequate books and records; and
- issued donation receipts for directed donations, and on behalf of non-qualified donees.

We have reviewed the Organization's representations dated February 11, 2014, and we maintain our position that the non-compliance issues identified during the audit represent a serious breach of the requirements of the *Income Tax Act* (Act) and that, as a result of this non-compliance, the Organization's registration should be revoked.

These reasons are described in greater detail in this Appendix, which addresses the CRA's responses to the Organization's representations regarding the non-compliance issues identified in the CRA's Administrative Fairness Letter (AFL), sent to the Organization on November 28, 2013. Below please find:

- A summary of the issues raised by the CRA in our AFL dated November 28, 2013;
- A summary of the representations provided by the Organization's representative, [REDACTED], dated February 11, 2014; and
- The CRA's conclusions.

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

The CRA audit found that the Organization made the following transfers of funds to non-qualified donees during the period under audit:

- \$1,373,212 in 2011 and \$1,510,802 in 2010 to B'nai Brith Canada District No. 22 (BBC);
- \$135,000 in 2011 and \$290,000 in 2010 to the Institute for International Affairs (IIA);
- \$170,000 in 2011 and \$190,000 in 2010 to B'nai Brith Congregation Synagogue (Non-profit) Inc. (BBCS);

- \$189,678 in 2011 and \$244,363 in 2010 to B'nai Brith Hillel of Toronto Inc. (BBHT);
- \$30,000 in 2011 and \$15,000 in 2010 to the Jewish Tribune Inc.;
- \$47,500 in 2011 to [REDACTED] for video production support;
- \$41,752 in 2011 and \$50,780 in 2010 to B'nai Brith Lodges; and
- \$9,280 in 2011 and \$29,600 in 2010 to B'nai Brith Softball Montreal.¹

Our audit found that funds were transferred within the B'nai Brith Canada group through intercompany loan accounts, through direct bank transfers. There exists a large intercompany payable, most of which is owed back to the Organization. Despite several attempts to acquire further details about the loan accounts from the Organization,² no formal loan agreements or other related documentation or information have been provided. Funds were paid to [REDACTED] through the Organization's bank account.

During our audit review, we considered whether the transferred funds might represent the Organization undertaking its own activities through non-qualified donees as intermediaries. In our AFL, dated November 28, 2013, we noted the Organization failed to substantiate the application of its funds, or that any structured arrangements were in place surrounding the application of its funds. We further noted the Organization did not clearly identify activities towards which its funds were applied. We observed the regular programs and activities of the non-qualified donees that received transferred funds from the Organization, and noted we had not observed any programs and activities that would be considered charitable at law if these were identified as the Organization's own activities carried out through intermediaries. Based on the available information, we took the position that the Organization did not maintain continued direction and control over its resources and that it had resourced non-qualified donees in contravention of the Act. Overall, our audit found that the Organization had devoted 76% in 2011 and 80% in 2010 of its total expenditures to non-charitable activities.

We have reviewed all of the material provided as part of the Organization's February 11, 2014, representations, and we must respectfully advise that our concerns regarding the Organization's failure to devote its resources to charitable activities carried on by the Organization itself have not been alleviated. We have addressed the points the Organization raised in its representations as follows:

- 1) The Organization's representations dated February 11, 2014, confirm the Organization was the fundraising arm of the B'nai Brith Canada group of organizations, which "effectively operates parallel structures where those members of the group which are charitable raise funds through BBF." The representations also state "those members which are not registered charities do not receive outright transfers from charitable entities, but may, if warranted, receive payments for goods or services provided to the charitable organizations."

¹ These transfers amounted to \$1,996,422 in 2011 and \$2,330,545 in 2010, representing 46% and 47% of the Organization's total expenditures for these fiscal periods.

² The CRA sent queries to the Organization requesting additional details about its operations on May 17, 2012, September 24, 2012, November 6, 2012, November 26, 2012, December 17, 2012, January 21, 2013, and January 29, 2013.

The last statement is incongruous with the CRA's audit findings. As listed above, most of the B'nai Brith Canada group members that received funds from the Organization are not registered charities or otherwise qualified donees.³ Furthermore, the Organization's representations do not identify the charitable organizations, the goods and services provided, or any associated expenditures related to the funds it transferred to non-qualified donees. While the Organization's representations refer to attached spreadsheets "which attempt to characterize the movement of funds," the attachments do not include additional details about the movement of funds.⁴ As such, the Organization has not provided any information or documentation substantiating its position that funds transferred to non-qualified donees represent goods or services provided to qualified donees.

- 2) The Organization's February 11, 2014, representations state as follows: "your audit of the expenses of both (the Organization) and (the League for Human Rights of B'nai Brith) must have showed a distinct lack of expenditures in obvious areas such as bookkeeping, administrative and managerial staff. (Indeed, as you visited the premises of both organizations you must have expected to see expenditures of rent. Similarly, you examined the books of both groups and met staff acting on their behalf but you likely did not find direct expenditures for them in the Organization's books.)"

To the contrary, the CRA did consider and account for the Organization's staffing, administration, bookkeeping, and fundraising expenses, office supplies, equipment relating to head office, and rent expenses. The CRA accepted the amounts reported by the Organization as its fundraising, management and administrative expenditures.⁵ In particular, the Organization's related expenditures were substantiated in the CRA's audit findings as follows:

- The Organization provided a listing of the employees of BBC that were allocated as the Organization's own employees. Payroll expenditures associated with these employees, including allocation of time spent between charitable, administrative, and fundraising expenditures were accepted by the CRA as reported by the Organization.

³ The CRA audit revealed only one registered charity operating within the B'nai Brith Canada group received funds from the Organization during the audit period (\$170,000 in 2011 and \$190,000 in 2010 to the League for Human Rights of B'nai Brith, representing only 4% and 4% of its total expenditures). Of the funds that represented outright transfers to other organizations during the audit period, 90% in 2011 and 92% in 2010 were transferred to non-qualified donees.

⁴ These are a copy of the CRA's query sheets dated January 29, 2013, with no responses added. The January 29, 2013, query was the last made by the CRA, following a series of attempts to acquire additional details about the Organization's operations made May 17, 2012, September 24, 2012, November 6, 2012, November 26, 2012, December 17, 2012, and January 21, 2013. To date, most of our questions remain unanswered. On June 12, 2014, following attempts to contact the Organization's representatives made on June 9 and 11, the CRA confirmed the completeness of the February 11, 2014, representations with the Organization's representatives. While we were informed that the representatives would re-send the faxed documents on June 12, we did not receive another copy. On June 16, we left a final voicemail requesting a faxed copy of the Organization's representations.

⁵ These expenditures represented 29% and 32% of the Organization's total expenditures in 2011 and 2010.

- The Organization's management and administration expenditures, accepted by the CRA as reported by the Organization,⁶ included various accounts relating to 'General Admin Head Office' with account names including "Office supplies, Postage, Office Equipment Lease & Rent, Equipment Service Contract, Telephone and Fax, Cell Phone costs, ISP expenses, IT Consulting fees."
- The Organization provided the CRA with a listing of contract consulting services, and the associated expenditures were accepted by the CRA as reported by the Organization.⁷ These included various fundraising consultants and fees paid to [REDACTED], the Organization's CFO's company, which maintained the books and records of the Organization during the audit period.
- Expenditures related to audit and legal fees were accepted by the CRA as reported by the Organization.
- The CRA obtained a copy of the draft financial statements of B'nai Brith Congregation Synagogue (Non-profit) Inc. (BBCS), the owner of the building that houses the Organization.⁸ During our audit, the Organization stated that BBCS collects rent revenue from external third party tenants only, and BBCS does not charge rent to the members of the B'nai Brith Canada group members occupying space in the building. As such, rent was not incurred or expensed in the general ledger.

As a result, we respectfully disagree with the submission that our audit findings failed to account for the Organization's expenditures for its management and administration, including staffing and rent.

- 3) The Organization's representations claim that charitable activities are undertaken on the Organization's behalf by various members of the B'nai Brith Canada group, primarily through BBC. These activities are undertaken pursuant to an agency relationship, although no written agreements are in place.

We acknowledge there is no legal requirement to have a written agency agreement. However, in the absence of a written agreement, the Organization must still be able to demonstrate that it carried out its own activities. In order for the Organization to demonstrate that it carried out its own activities where it acted through non-qualified donees, it must show that it maintained direction and control over its resources, and over its agents' actions, as these related to its activities. In this regard, the Organization's representations state the staff implementing charitable programs under the Organization's direction maintained direction and control over its funds, and the B'nai Brith Canada group of entities shares directors to ensure control and direction is maintained. This is consistent with statements made by the Organization's representatives during our audit interview. However, it remains our position that it is not sufficient to demonstrate same control over the operations of the various charitable and not-for-profit organizations within the B'nai Brith Canada group, without substantiating

⁶ As appearing in the Organization's T3010, Registered Charity Information Returns.

⁷ As appearing in the Organization's general ledger and its T3010, Registered Charity Information Returns.

⁸ [REDACTED]

direction and control were exercised over charitable activities by the various non-qualified donees in their respective capacities as the Organization's agents.⁹

In this regard, we note the Organization's representations provide no further information or documentation that substantiates the application of its funds or its claim that funds transferred to non-qualified donees were applied to charitable activities carried on under the Organization's direction and control. To date, the Organization has not demonstrated that it carried on any activities (charitable, political, or other) pursuant to agency relationships with other members of the B'nai Brith Canada group, nor has it demonstrated that it received goods and services of proportionate value in exchange for the funds transferred to non-qualified donees.

4) The Organization's representations include the following additional details about transfers made to particular non-qualified donees:

a) Funds transferred to B'nai Brith Canada District No. 22 (BBC) related to expenses for administrative services provided to other qualified donees and the implementation of the Organization's charitable objects.

We have found no support for the Organization's statement that transfers to BBC related to expenses for administrative services provided to other qualified donees and the implementation of the Organization's charitable objects. Our review of BBC's draft financial statements¹⁰ revealed that BBC carried out minimal activities during the audit period, other than the payment of payroll expenses, interest on long-term debt, and amortization. Based on its financial statements, BBC does not appear to undertake any charitable activities.

b) Funds transferred to the Institute for International Affairs (IIA), represent payments made to an agent to accomplish the Organization's "(permissible) political aims... The leadership of IIA always assigned only the permitted activities of IIA to the resources contributed by (the Organization)."

The Organization's representations included no additional information or documentation that identified or substantiated the political activities in question. As such, we have found no support for the Organization's statement that transfers to IIA related to its permitted political activities.

The Act only allows a registered charity to conduct political activities if it continues to devote substantially all of its resources to charitable purposes and charitable activities. Political activities are non-charitable expenditures. As such, even if the CRA had enough information to reclassify these expenses from gifts to non-qualified donees to political activities, they would remain non-charitable. Furthermore, our audit found that

⁹ See, *Bayit Lepletot v MRN*, 2006 FCA 128, [2006] FCJ n°505 at para 5: "It is open for the appellant to carry on its charitable works through an agent but it must be shown that the agent is actually carrying on the charitable works. It is not sufficient to show that the agent is part of another charitable organization which carries on a charitable program."

¹⁰ Provided to us by the Organization during our audit.

the Organization did not devote substantially all of its resources to charitable purposes and activities. Therefore, it is our position that any political activities carried out by the Organization would not be considered ancillary and incidental to its charitable purposes and activities.

- c) Funds transferred to the B'nai Brith Congregation Synagogue (Non-profit) Inc. (BBCS) were "in the nature of rents" on behalf of the Organization "and other charitable organizations housed in the premises," as BBCS is the owner of the building that houses the Organization and other B'nai Brith Canada group member organizations.

As noted above, during our audit, the Organization stated that BBCS collects rent revenue from external third party tenants only, and BBCS does not charge rent to the members of the B'nai Brith Canada group members occupying space in the building. Rent was not incurred or expensed in the Organization's general ledger. As such, we have found no support for the Organization's statement that transfers to BBCS were in the nature of rents.

- d) Funds transferred to B'nai Brith Hillel of Toronto (BBHT) were made under the general terms of an agency relationship to ensure its Alzheimer's program home was successful.

The Organization's representations failed to demonstrate that the Alzheimer's program was the Organization's own activity, or that funds transferred to BBHT were applied to the Organization's own activities by BBHT in its capacity as the Organization's agent. As BBHT is a non-qualified donee, transferring funds to support BBHT's programs constitutes making a gift to a non-qualified donee in contravention of the Act.

- e) Funds transferred made to the Jewish Tribune Inc. were "in the nature of fundraising and advertising." Funds transferred to B'nai Brith Lodges "were essentially fundraising expenses."

The Organization's representations failed to demonstrate that the Organization received fundraising and advertising services of proportionate value in exchange for the funds transferred.

Although a charity can use some of its resources for fundraising to support the charitable activities that further its charitable purposes, it is the CRA's position that fundraising is not a charitable purpose in itself or a charitable activity that directly furthers a charitable purpose. As such, even if the CRA had enough information to reclassify these expenses from gifts to non-qualified donees to fundraising and advertising expenses, they would remain non-charitable expenses. Furthermore, our audit found that the Organization did not devote substantially all of its resources to charitable purposes and activities. Therefore, it is our position that fundraising carried out by the Organization would not be considered ancillary and incidental to its charitable purposes and activities.

- f) Funds transferred to [REDACTED] to support the production of a movie about anti-Semitism were wrongly characterized by the CRA as gifts to a non-qualified donee and should be characterized as payments for consideration.

The "Letter of Agreement and Indemnity," provided to the CRA during our audit,¹¹ is between [REDACTED] and BBC. The Organization is not a party to this agreement. As such, funds transferred to [REDACTED] may represent payments for consideration to BBC but they do not represent payments for consideration to the Organization.

- g) Funds transferred to B'nai Brith Softball were made in error.

Concerning the Organization's statement that funds transferred to B'nai Brith Softball were made in error, we accept this as the Organization's confirmation that related funds were gifted to a non-qualified donee.

- h) The CRA's comments about transfer payments to qualified donees amounting to only 5% and 4% of the Organization's expenditures is inaccurate as this ignores payments made to BBC and BBCS for services to qualified donees.

As the Organization's representations failed to demonstrate that the Organization received services of proportionate value in exchange for transferred funds, we have found no support for the Organization's statement that funds transferred to BBC and BBCS were for services provided to qualified donees.

Following our review of the Organization's February 11, 2014, representations, it remains our position that the Organization has not demonstrated it is able to account for the use of its funds to carry out charitable activities under its direction and control where it has transferred funds to non-qualified donees, and that the Organization is primarily resourcing non-qualified donees in contravention of the Act. The Organization has failed to meet the requirements of subsections 149.1(1) and 149.1(6.1) of the Act that it devote substantially all its resources to charitable activities carried on by the Organization itself. For these reasons, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

Failure to be Constituted for Exclusively Charitable Purposes

Our AFL dated November 28, 2014, stated that the Organization's stated purpose, pursuant to its letters patent dated October 29, 1968, is broadly worded, and allows for the undertaking of non-charitable activities and the delivery of non-charitable benefits, including by empowering the Organization to transfer its resources to non-qualified donees in contravention of the Act. The purpose fails to define the scope of the activities that can be engaged in by the Organization, thus confining it to charitable activities, and ensuring the delivery of a charitable benefit to the public or a sufficient segment thereof.

¹¹ "Letter of Agreement and Indemnity" between [REDACTED] and BBC, dated July 13, 2011

We also stated our concerns that the Organization may exist in part to further the B'nai Brith Canada group's political purposes, because the Organization appears to resource the group's work in a general manner, and the group's political activities are of such a frequency and quantity that would necessarily involve a significant devotion of resources. In particular, our AFL noted the following:

- During our audit interview, Dr. Frank Dimant, Chief Executive Officer (CEO) of the Organization, explained to us that the Organization functions as the fundraising arm for the B'nai Brith Canada group.
- Our audit findings show that the Organization and its resources and activities do not appear to be sufficiently separated from the rest of the group.
- The Organization has not demonstrated that it maintained control over the use of the funds it gifted to the various non-qualified donees within the group.
- The Organization failed to identify or substantiate any activities, charitable or other, that were conducted on the Organization's behalf by other members of the group.
- The Organization failed to demonstrate that it received goods and services of proportionate value in exchange for the funds it transferred to other members of the group.

The CRA audit found the Organization was primarily resourcing non-qualified donees in contravention of the Act during the audit period. Accordingly, we took the position that the Organization delivers unacceptable non-incidental private benefits as its purpose. Overall, the CRA determined that the Organization is not constituted for exclusively charitable purposes, based on its broad and vague purposes, collateral political purpose, and delivery of unacceptable, non-incidental private benefits.

The Organization's February 11, 2013, representations make no submission on the CRA's position that its stated purpose is not charitable at law because it is broadly worded other than proposing the Organization's registration as a registered charity should be annulled, and specifically "that the sanction for an organization incorporated for purposes which are broad and vague is not revocation but rather annulment."¹² In response to the CRA's concerns that the Organization exists in part to further the B'nai Brith Canada group's political purposes, the Organization's representations state that BBC's engaging in political activities is not necessarily indicative of the Organization having collateral political purposes, and the Organization's role as the fundraising arm of the B'nai Brith Canada group does not necessarily mean that it is the only source of funds for BBC itself. The representations state that as BBC is not the subject of the CRA's audit, the Organization has no representations on the nature of the political activity carried out by BBC. The representations state that funds transferred to BBC were for rent, employees/contractors, and supplies.

As noted above, during our audit, the Organization informed us that the reason rent was not incurred or expensed in its general ledger is B'nai Brith Congregation Synagogue

¹² This position is addressed in detail below under the title "Refusal of Annulment."

(Non-profit) Inc. (BBCS) does not charge rent to the members of the B'nai Brith Canada group. Also as noted above, other expenditures accepted by the CRA in our audit findings as these were reported by the Organization under fundraising,¹³ and management and administration,¹⁴ included payroll associated with employees identified by the Organization as its own, various accounts relating to 'General Admin Head Office' including "Office supplies, Postage, Office Equipment Lease & Rent, Equipment Service Contract, Telephone and Fax, Cell Phone costs, ISP expenses, IT Consulting fees," contract consulting services-related expenses, and audit and legal fees.

Separate from amounts reported and accepted as fundraising, management and administration expenditures, the Organization transferred \$1,373,212 and \$1,510,802 in 2011 and 2010 to BBC, representing 32% and 31% of its total expenditures for those fiscal periods. As addressed above, the Organization's representations contain no further information or documentation to substantiate its claims that funds transferred to BBC represented payments for rent, or payments for employees/contractors and supplies in excess of amounts already accepted as reported to us. Also, as addressed above, the Organization has failed to substantiate its alternative position that these funds were applied on the Organization's behalf, through non-qualified donees acting as its agents.

While the Organization's representations contained no submissions on the nature of the political activity carried out by BBC or other non-qualified donees resourced by the Organization during the audit period, as we described in our AFL, the focus of the B'nai Brith Canada group's work is significantly political.¹⁵ Moreover, the Organization has failed to demonstrate direction and control over, or otherwise substantiate the various group members' use of its funds. Accordingly, it remains our position that the Organization fails to meet the legal requirement that it be constituted for exclusively charitable purposes, with all its purposes falling within one or more of the four categories of charity and that it deliver a public benefit without conferring an unacceptable private benefit.

The Organization's stated purpose is broadly-worded, empowering the Organization to transfer resources to non-qualified donees. Its financing of the significantly political work of the B'nai Brith Canada group is indicative of a collateral political purpose. It delivers unacceptable, non- incidental private benefits by resourcing non-qualified donees. Overall, the Organization appears to exist primarily to resource the various non-qualified donee members of the B'nai Brith Canada group, in contravention of the Act.¹⁶ For these reasons, there are grounds for revocation of the charitable status of the Organization under subsections 149.1(1) and (6.1) and paragraph 168(1)(b) of the Act.

¹³ \$953,014 in 2011 and \$808,258 in 2010, representing 22% and 16% of its total expenditures.

¹⁴ \$305,706 in 2011 and \$792,911 in 2010, representing 7% and 16% of its total expenditures.

¹⁵ In particular, we note the Organization's representations state it transferred funds to the Institute for International Affairs to accomplish the Organization's "political aims."

¹⁶ Including funds transferred to other non-qualified members of the B'nai Brith Canada group and [REDACTED] \$1,996,422 and \$2,330,545 were transferred to non-qualified donees in 2011 and 2010, representing 46% and 47% of the Organization's total expenditures for these fiscal periods.

Failure to Maintain Adequate Books and Records

As stated in our AFL dated November 28, 2013, during the course of our audit, only partial books and records were made available to the CRA. Due to the lack of books and records, and outstanding queries, the CRA issued subsequent requests for additional information and documentation on September 24, 2012, November 6, 2012, November 26, 2012, December 17, 2012, January 21, 2013, and January 29, 2013. In our AFL, we noted that most of the queries contained in these requests remained outstanding, and accordingly, we took the position that the Organization failed to maintain adequate books and records of account as per subsection 230(2), and was therefore in contravention of paragraph 168(1)(e) of the Act.

The Organization's February 11, 2014, representations state that all CRA queries regarding the books and records of the Organization were addressed by [REDACTED] after the audit, and that any concerns remaining should be addressed by the spreadsheets attached to the representations. However, as noted above, the spreadsheets provided with the Organization's representations are an exact copy of query sheets sent by the CRA to the Organization, with no additional information added by the Organization. All queries contained therein (regarding the nature of transactions made in the intercompany loan accounts) remain outstanding. No further information has been provided regarding the inadequate books and records noted in our AFL dated November 28, 2013.

We also note the Organization's representations state that it was unable to provide any submissions concerning Appendix C to our AFL because it was "completely unintelligible."

Appendix C is the CRA's attempt at reconciling the reported received donations of the Organization to the Organization's various records provided during the audit. Received donation amounts reported on the T3010, Registered Charity Information Return, and the CFO's worksheet could not be reconciled to the electronic [REDACTED] general ledger [REDACTED] data or the Organization's [REDACTED] donor summary. Therefore, due to the inconsistent information provided to us by the Organization, the actual received donation amounts for the audit period remain unknown at this time.

It therefore remains our position that the Organization has failed to maintain adequate books and records of account as per subsection 230(2), and is therefore in contravention of paragraph 168(1)(e) of the Act.

Donation Receipts

As stated in our AFL, a charity may not issue an official receipt for income tax purposes if the donor has directed the charity to give the funds to a non-qualified donee. Our audit evidence shows that the Organization conducted fundraising on behalf of B'nai Brith Hillel of Toronto Inc. (BBHT), a related organization that lost its registered charitable

status in 2003. The Organization solicited donations for BBHT through regular fundraising activities, and through an art auction. In this regard, the Organization collected and received \$487,393 in 2010 and \$338,439 in 2011 on behalf of BBHT, a revoked charity (i.e., a non-qualified donee).¹⁷ We also noted that the Organization conducted fundraising on behalf of [REDACTED], who is also a non-qualified donee. The Organization also collected donations from other registered charities to support [REDACTED]

[REDACTED]'s video production in the amount of \$150,000 in 2011. The Organization explicitly communicated to donors that these donations would be directed to non-qualified donees, and in exchange for these donations, the Organization issued official receipts for income tax purposes. By issuing official receipts on behalf of non-qualified donees, the Organization was effectively lending its charitable registration number and corresponding tax-receipting privileges to non-qualified donees, in contravention of the Act.

In addition, the CRA audit revealed that the official donation receipts issued by the Organization did not comply with the requirements of Regulation 3501 of the Act.

The Organization's representations contain the following responses:

- a) The CRA failed to cite the evidence upon which it based this position.

All evidence supporting this position derived from the Organization's books and records. For example, the following chart denotes the Organization's account numbers and amounts related to directed donations given to B'nai Brith Hillel Toronto Inc. (BBHT) in support of BBHT's Alzheimer's home:¹⁸

Account #	Account Names	2011	2010
4001-10660-01	Donations - Rec Spcl-Alzheimer'sHome H/O	292,162.00	149,359.37
4004-10660-01	Gifts from Charities Spcl-Alzheimer'sHom	123,478.04	99,531.00
4005-10660-01	Gifts in kind Spcl-Alzheimer'sHome H/O	-	58,949.00
4002-10660-01	Other Gifts-UnRec Spcl-Alzheimer'sHome H	69,741.66	28,589.50
	Total	487,392.70	338,438.87

- b) There is no provision of the Act regulating fundraising of this type. As regulating fundraising is beyond the constitutional jurisdiction of the Federal government, the CRA cannot revoke the Organization for a law which does not exist.

While fundraising is not a charitable purpose in itself or a charitable activity that directly furthers a charitable purpose, the CRA has not taken the position that the Organization's breaching a provision of the Act regulating fundraising, but rather, that it

¹⁷ We note that in our AFL dated November 28, 2013, these figures were transposed (i.e., \$487,393 in 2011 and \$338,439 in 2010).

¹⁸ As noted above, the Organization's representations failed to demonstrate that the Alzheimer's program was the Organization's own activity, or that funds transferred to BBHT were applied to the Organization's own activities by BBHT in its capacity as the Organization's agent. As BBHT is a non-qualified donee, transferring funds to support BBHT's programs constitutes making a gift to a non-qualified donee in contravention of the Act.

used its receipting privileges in a non-compliant manner by soliciting donations for a non-qualified donee.

- c) A determination as to whether or not particular donations are directed involves a level of inquiry that is significantly deeper than any advertising an organization may have used to attract the donation in the first place. The Organization's representatives have seen no evidence that donors have specifically directed their donations. However, even if they had, there is no law which would make a charity accepting such donations liable to revocation.

As previously stated, all evidence cited in support of our position derived from the Organization's books and records.

Respectfully, the CRA's proposal to revoke the Organization's registration under the Act is not premised on its accepting of directed donations. Rather, our position, based on the Organization's materials,¹⁹ is that the Organization solicited donations on behalf of non-qualified donees and issued official receipts on behalf of non-qualified donees for directed donations, in contravention of the Act.²⁰

- d) There is no provision in the Act relating specifically to issuing receipts on behalf of non-qualified donees, and therefore no specific law which the Organization would have transgressed.

A charity may not issue an official receipt for income tax purposes if the donor has directed the charity to give the funds to a non-qualified donee, as this constitutes a contravention of the Act. 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.

By issuing official receipts on behalf of non-qualified donees, the Organization was effectively lending its charitable registration number and corresponding tax-receipting privileges to non-qualified donees, in contravention of the Act.

- e) Regulation 3501 only deals with the contents of the receipts. There is no mention thereof, for example, a requirement to retain a duplicate copy in a particular format.

The requirement to retain duplicate copies of the receipts is stated in section 230(2)(b) of the Act.

As a result of our review, it remains the CRA's position that the donations in question are directed donations given to non-qualified donees, in contravention of the Act. It remains our position there exist grounds for revocation of the charitable status of the

¹⁹ As cited in Section 4(b) of our AFL dated November 28, 2013.

²⁰ See *Canadian Committee for the Tel Aviv Foundation v Canada*, 2002 FCA 72, [2002] FCJ n°315 at para 30.

Organization under paragraph 168(1)(d) of the Act because the Organization is issuing inappropriate donation receipts for directed donations, receipts on behalf of non-qualified donees, and receipts not in accordance with the Act and/or its Regulations.

Refusal of Annulment

According to subsection 149.1(23) of the Act, "the Minister may, by registered mail, give notice to a person that the registration of the person as a registered charity is annulled and deemed not to have been so registered, if the person was so registered by the Minister in error or the person has, solely as a result of a change in law, ceased to be a charity." This means that registration may be annulled for only the following reasons:

- Registration was granted in error.
- An organization no longer qualifies as a registered charity because of a change in the law.

The Organization's representations dated February 11, 2014, proposed that the Organization's registration as a registered charity be annulled and indicated that if the objects of the Organization were not charitable at law at the time of its registration, the Organization must have been registered in error. We have considered whether the Organization was registered in error.

The objects contained in its letters patent dated October 29, 1968, under the Canada Corporations Act, and with which it was registered as a charity,²¹ are stated as follows:

a) *to receive and maintain a fund or funds and to apply the income and capital thereof, from time to time, for charitable, religious and cultural activities and more particularly, but without limiting the generality of the foregoing, to apply the said income and capital for the establishment and realization, through other appropriate organizations, of the following programs;*

- i) *Religious and cultural programs for students at Canadian Universities and for non-university youth;*
- ii) *Cultural program of inter-faith and intergroup community relations;*
- iii) *Programs of activities conducive to the relief of poverty and the advancement of science and art;*

provided, however, that nothing herein contained shall be deemed to empower the Corporation to carry out itself the activities of such programs, the Corporation being only a fund raising body incorporated for the purpose of financing such programs;

b) *in connection with the objects aforesaid, the Corporation, acting through its board of directors, shall have the following powers;*

²¹ We understand these remain its current objects.

- i) *to purchase or otherwise acquire for the Corporation any property, rights, privileges, stocks, bonds, debentures or other securities which the Corporation is authorized to acquire at such price or consideration and generally on such terms and conditions as they think fit;*
- ii) *at their discretion to pay for any property, rights, privileges, stocks, bonds, debentures or other securities acquired by the Corporation either wholly or partly in money, stocks, bonds, debentures or other securities owned by the Corporation;*
- iii) *to sell, lease or otherwise dispose of any property, real or personal, assets, interest or effects of the Corporation, for such price or consideration and generally on such terms and conditions as the board of directors may think fit.*

The operations of the Corporation may be carried on throughout Canada and elsewhere.

Following our review of the Organization's application, the CRA sent a letter dated July 31, 1969, to the Organization, indicating it was our understanding that the Organization's only activity would be to distribute its income to other registered charitable organizations. The Organization's solicitors confirmed our understanding in a letter dated October 15, 1969.

Even though at the time of the application, the Organization's stated objects may have been broad, the CRA applied the reasoning of the decision *Guaranty Trust Co. of Canada v. Minister of National Revenue*, [1967] S.C.R. 133. In doing so, the CRA looked beyond the stated objects of the Organization and examined its proposed activities. In light of the fact that the activities furthered only the limited charitable purpose of disbursing funds to registered charities, the CRA concluded that the Organization was in fact constituted for exclusively charitable purposes and that its sole activity, the gifting of funds to registered charities, was a charitable activity.

Therefore, it is our position that at the time of its registration, effective January 1, 1967, the Organization was constituted and operated exclusively for charitable purposes. The decision to register was a reasonable decision based on the information provided by the Organization. As such, we are of the opinion that the Organization was not registered in error.

We also considered if annulment could be granted as a result of a change in law, specifically a change to the legislation affecting the charitable nature of the Organization such as a change to the Act, or a change to the common law. The Organization has not shown, nor have we been able to identify, any changes to the law which would warrant its annulment. Accordingly, we have concluded there was no change in law that would justify the Organization's annulment.

As previously described in our letter dated November 28, 2013, our audit found that the Organization changed its operations since its registration and because of the changes it made to its operations, it no longer meets the requirements necessary for charitable registration under the Act. The Organization was not registered in error nor did it cease to be a charity solely as a result of a change in law. As a result, the Organization's registration as a registered charity cannot be annulled, but should be revoked in the manner described in subsection 168(1) of the Act.

Section 149.1 Qualified Donees

149.1(2) Revocation of registration of charitable organization

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

- (a) carries on a business that is not a related business of that charity; or
- (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.

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;
- (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 (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;
- (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

Where a registered charity or a registered Canadian amateur athletic association

- (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 as such,
- (c) fails to file an information return as and when required under this Act or a regulation,
- (d) issues a receipt for a gift or donation 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 or donation the granting of which was expressly or impliedly conditional on the association making a gift or donation to another person, club, society or association, the Minister may, by registered mail, give notice to the registered charity or registered Canadian amateur athletic association that the Minister proposes to revoke its registration.

168(2) Revocation of Registration

Where the Minister gives notice under subsection (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,
 - (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, or
 - (g) refuses to accept for registration for the purposes of this Act any retirement income fund,

the person in a case 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), or the administrator of the plan or an employer who participates in the plan, in a case described in paragraph (f) or (f.1), 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),
 - (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), or
 - (d) the time the decision of the Minister to refuse the application for acceptance of the amendment to the 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

Where 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 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” 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” 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.