



June 25, 2021

**REGISTERED MAIL**



J. F. of Canada



BN: 118974484RR0001

File #: 0514935

Dear 

**Subject: Notice of intention to revoke  
J. F. of Canada**

We are writing with respect to our letter dated November 21, 2018 (copy enclosed), in which J. F. of Canada (the Organization) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from September 1, 2015 to August 31, 2017. Specifically, the Organization was asked to explain why its registration should not be revoked in accordance with subsection 168(1) of the Income Tax Act.

We have reviewed and considered your written response dated December 30, 2018. Your reply has not alleviated our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity. Our concerns are explained in Appendix A attached.

**Conclusion**

The audit by the CRA found that the Organization is not complying with the requirements set out in the Act. In particular, it was found that the Organization was not constituted and operated exclusively for charitable purposes, failed to devote resources to charitable activities carried on by the Organization itself, failed to maintain adequate books and records, issued receipts not in accordance with the Act and/or the Income Tax Regulations, and failed to file an information return as and when required by the Act and/or its Regulations. For these reasons, it is our position that the Organization no longer meets the requirements for charitable registration.

Consequently, for the reasons mentioned in our letter dated November 21, 2018, and pursuant to subsections 168(1), 149.1(1), 149.1(2), and 149.1(14) of the Act, we hereby notify you of our intention to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, the revocation will be effective on the date of publication of the following notice in the Canada Gazette:

Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(c), 168(1)(d), 168(1)(e), and subsections 149.1(2) and 149.1(14) of the Income Tax Act, of our intention to revoke the registration of the charity listed below and that by virtue of paragraph 168(2)(b) thereof, the revocation of registration will be effective on the date of publication of this notice in the Canada Gazette.

<b>Business number</b>	<b>Name</b>
118974484RR0001	J. F. of Canada Toronto ON

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

Assistant Commissioner  
Appeals Branch  
Canada Revenue Agency  
13<sup>th</sup> Floor  
250 Albert Street  
Ottawa ON K1A 0L5

Should the Organization choose not to file an objection to this notice of intention to revoke with the CRA within this period, 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. As such, the Organization's registration will be revoked on the date of publication.

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

#### **Consequences of revocation**

As of the effective date of revocation:

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

- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the notice of intention to revoke. This revocation tax is calculated on Form T2046, Tax Return Where Registration of a Charity is Revoked. Form T2046 must be filed, and the tax paid, on or before the day that is one year from the date of the notice of intention to revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix B. Form T2046 and the related Guide RC4424, Completing the Tax Return Where Registration of a Charity is Revoked, are available on our website at **canada.ca/charities-giving**;
- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the Excise Tax Act. As a result, the Organization may be subject to obligations and entitlements under the Excise Tax Act that apply to entities other than charities. If you have any questions about your Goods and Services Tax/Harmonized Sales Tax (GST/HST) obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

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

Yours sincerely,



Tony Manconi  
Director General  
Charities Directorate

Enclosures

- CRA letter dated November 21, 2018
- Organization's response dated December 30, 2018
- Appendix A, Comments on Representations
- Appendix B, Relevant provisions of the Act

c.c.: Chaim Mandl  
Director



Canada Revenue  
Agency

Agence du revenu  
du Canada

November 21, 2018

Yehuda Rosenblatt  
Authorized Representative  
J. F. of Canada  
117 Barse Street  
North York ON M5M 4L3

BN: 118974484RR0001

File #: 0514935

Dear Yehuda Rosenblatt:

**Subject: Audit of J. F. of Canada**

This letter results from the audit of J. F. of Canada (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from September 1, 2015 to August 31, 2017.

On July 17, 2018, the Organization was advised that the CRA identified specific areas of non-compliance with the provisions of the Income Tax Act and its Regulations in the following areas.

AREAS OF NON-COMPLIANCE		
	Issue	Reference
1.	Failure to be Constituted Exclusively for Charitable Purposes <ul style="list-style-type: none"><li>i. Unstated Purpose</li></ul>	149.1(1) 149.1(2) 168(1)(b)
2.	Failure to Devote Resources to Charitable Activities Carried on by the Organization itself: <ul style="list-style-type: none"><li>i. Lack of direction and control over the use of resources/resourcing non-qualified donees</li><li>ii. Conduct of non-charitable activities</li><li>iii. Providing an undue benefit / Gifts to non-qualified donees</li></ul>	149.1(1) 149.1(2) 168(1)(b) 188.1(4) 188.1(5)
3.	Failure To Maintain Adequate Books and Records of Account	149.1(2) 230(2) 168(1)(b) 168(1)(e) 188.2(2)(a)
4.	Issuing Receipts Not in Accordance with the Act <ul style="list-style-type: none"><li>i. Directed donations</li><li>ii. Missing required elements</li><li>iii. Other receipting practices</li></ul>	149.1(2) 168(1)(d) 188.1(7) Regulation 3500 or 3501

Canada



5.	Failure to File an Information Return as and When Required by the Act and/or its Regulations	149.1(2) 149.1(14) 168(1)(c) 188.1(6)
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This letter describes the areas of non-compliance identified by the CRA relating to the legislative and common law requirements that apply to registered charities, and offers the Organization an opportunity to respond and present additional information.

The Organization must comply with the law; if it does not, its registered status may be revoked in the manner described in section 168 of the Act, and it may be subject to penalties and suspensions as described in Part V, section 188.1 of the Act.

### **General legal principles**

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

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

The public benefit requirement involves a two-part test:

- The first part of the test requires the delivery of a **benefit** that is recognizable and capable of being proved, and socially useful. To be recognizable and capable of being proved, a benefit must generally be tangible or objectively

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

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

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."<sup>3</sup> To be socially useful, a benefit must have public value and a demonstrable impact on the public.<sup>4</sup> In most cases, the benefit should be a necessary and reasonably direct result of how the purpose will be achieved and of the activities that will be conducted to further the purpose, and reasonably achievable in the circumstances.<sup>5</sup> An "assumed prospect or possibility of gain" that is vague, indescribable or uncertain, or incapable of proof, cannot be said to provide a charitable benefit.<sup>6</sup>

- The second part of the test requires the benefit be directed to the **public** or a sufficient section of the public. This means a charity cannot:
  - have an eligible beneficiary group that is negligible in size or restricted based on criteria that are not justified based on the charitable purpose(s); or
  - provide an unacceptable private benefit. Typically, a private benefit is a benefit provided to a person or organization that is not a charitable beneficiary, or to a charitable beneficiary that exceeds the bounds of charity. A private benefit will usually be acceptable if it is incidental, meaning it is necessary, reasonable, and not disproportionate to the resulting public benefit.<sup>7</sup>

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

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

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

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

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

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

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

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

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

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

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

#### **Identified areas of non-compliance**

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

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

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

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

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

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

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

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

The purpose of the Organization is as follows:

Help needy poverty stricken families of their financial burdens. Distribute grants and scholarships to subsidize the education and schooling needed of handicapped and underprivileged. Distribute scholarships to students with the ability to continue their advanced studies in the field of Research, Technology, Science, Theology and any field the board of directors [sic] may decide upon.

While we recognize that the Organization’s purpose is that with which it was originally registered on September 23, 1977, our consideration of both purpose and activities must be based on current legislation, court decisions, and Charities Directorate policies and procedures.

#### **Audit Findings**

##### **i. Unstated purpose**

Our audit results led us to conclude that the Organization’s purported activities show that it is carrying out activities in furtherance of purposes other than those in its governing documents.

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

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

Accordingly, it is our position that the Organization is not operating for exclusively charitable purposes. For this reason, it appears there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

**2. Failure to Devote Resources to Charitable Activities Carried on by the Organization itself:**

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

We refer to the comments of the Federal Court of Appeal in *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*<sup>13</sup>:

Pursuant to subsection 149.1(1) of the [Income Tax Act], a charity must devote all its resources to charitable activities carried on by the organization itself. While a charity may carry on its charitable activities through an agent, the charity must be prepared to satisfy the Minister that it is at all times both in control of the agent, and in a position to report on the agent's activities. (para 40)

and

Under the scheme of the Act, it is open to a charity to conduct its overseas activities either using its own personnel or through an agent. However, it cannot merely be a conduit to funnel donations overseas. (para 30)

As re-iterated by the Court in *Lepletot v Minister of National Revenue*,<sup>14</sup> it is not enough for an organization to fund an intermediary that carries on certain activities. The Act requires that the intermediary actually conduct those activities on the organization's behalf. Likewise, the Court in *Canadian Magen David Adom for Israel* mentions the importance of monitoring the activities when it stated that:

[A] charity that chooses to carry out its activities in a foreign country through an agent or otherwise must be in a position to establish that any acts that purport to be those of the charity are effectively authorized, controlled and monitored by the charity.<sup>15</sup>

Consequently, where a registered charity undertakes an activity through an intermediary<sup>16</sup>, it must be able to substantiate that it has actually arranged for the

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<sup>13</sup> *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*, 2002 FCA 72 (FCA) at paragraphs 40 and 30 respectively

<sup>14</sup> 2006 FCA 128.

<sup>15</sup> *Canadian Magen David Adom for Israel v MNR*, 2002 FCA 323 at para 66, [2002] FCJ no 1260.

<sup>16</sup> For more information see our Guidance CG-002, Canadian registered charities carrying out activities outside Canada at [canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidance-002-canadian-registered-charities-carrying-activities-outside-canada.html](http://canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidance-002-canadian-registered-charities-carrying-activities-outside-canada.html).

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.

### **Audit Findings**

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

During the audit period, the Organization distributed funds to the following intermediaries, who were then responsible for distributing funds to needy individuals within their respective communities within Canada.

#### Canadian Intermediaries

<b>Intermediary Name</b>	<b>2016</b>	<b>2017</b>	<b>Total</b>
Rabbi Joseph Sofer	\$ 28,300	\$ 15,600	\$ 43,900
Igor Sokolowski	8,000	25,700	33,700
Shimshom Katz	21,300	7,100	28,400
Mrs. S. Miller	11,880	10,460	22,340
Rabbi Yehoshua Weber	3,800	NIL	3,800
<b>Total</b>	<b>\$ 73,280</b>	<b>\$ 58,860</b>	<b>\$ 132,140</b>

The audit also revealed that the Organization disbursed funds to the following intermediaries located in Israel, who used the funds to carry out their own activities.

#### Foreign Intermediaries

<b>Intermediary Name</b>	<b>2016</b>	<b>2017</b>	<b>Total</b>
Mosdot Slonim	\$ 128,800	\$ 69,300	\$ 198,100
Yeshivath Beth Abraham		30,000	30,000
Yeshivat Birkat Moshe		27,000	27,000
<b>Total</b>	<b>\$ 128,800</b>	<b>\$ 126,300</b>	<b>\$ 255,100</b>



With respect to the abovementioned disbursements:

1. The Organization did not assess the capabilities of intermediaries to carry out its intended activities, particularly in the case of foreign intermediaries.
2. The Organization did not maintain agency or similar agreements with any of its intermediaries.
3. The Organization has acknowledged that its intermediaries made all decisions regarding how the Organization's funds were disbursed.
4. The Organization did not maintain ongoing communication with intermediaries to provide necessary instructions on how to carry out its intended activities or monitor the progress of activities carried out through intermediaries.
5. The Organization does not have any knowledge nor source documentation regarding how its funds were used.
6. The Organization has no financial or narrative reports from intermediaries.
7. The intermediaries are not qualified donees as defined in subsection 149.1(1) of the Act.
8. In many cases, donors instructed the Organization to direct their funds to a particular intermediary. The Organization acted as a conduit, forwarding funds to the identified intermediary as per the wishes of the donor. See Section 4, Issuing Receipts Not in Accordance with the Act, for a more detailed listing of these directed donations.
9. The Organization did not maintain any board of director meeting minutes, and has acknowledged that it did not conduct any board meetings during the audit period. All the Organization's activities were carried out under the sole oversight of one director, Yehuda Rosenblatt, until his resignation in February of 2017.

Given the absence of structured arrangements (such as agency agreements) and any supporting documentation, the Organization has not established that it has direction and control over its funds and purported activities. As a result, it is our position that the Organization failed to demonstrate that it restricted its activities to carrying on its own charitable activities or making gifts only to qualified donees as required by the Act. Rather, as outlined above, the audit found that the Organization is funding non-qualified donees.

ii. Conduct of non-charitable activities

In our opinion, should the Organization be able to establish the activities conducted through its intermediaries to be its own, not all of its purported activities are charitable at law.

a) Conducting activities contrary to public policy

The courts have held that an organization is not charitable at law if its activities are contrary to public policy. An activity cannot be held to be contrary to public policy unless there is a definite and officially declared and implemented policy (that is, found in an Act of Parliament, a regulation or other publicly available government document of any kind).<sup>17</sup>

That being said, Global Affairs Canada has officially declared and implemented a policy entitled "Canadian Policy on Key Issues in the Israeli-Palestinian Conflict"<sup>18</sup>. In part, it reads as follows:

**Occupied Territories and Settlements**

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

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

**United Nations Resolutions on the Middle East**

Every year, resolutions addressing the Arab-Israeli conflict are tabled in the United Nations, such as at the United Nations General Assembly and the Human Rights Council. Canada assesses each resolution on its merits and consistency with our principles. We support resolutions that are consistent with Canadian policy on the Middle East, are rooted in international law, reflect current dynamics, contribute to the goal of a negotiated two-state solution to the Arab-

<sup>17</sup> See CRA Summary Policy CSP-P13 Public policy.

<sup>18</sup> [http://www.international.gc.ca/name-anmo/peace\\_process-processus\\_paix/canadian\\_policy-politique\\_canadienne.aspx?lang=eng](http://www.international.gc.ca/name-anmo/peace_process-processus_paix/canadian_policy-politique_canadienne.aspx?lang=eng)

Israeli conflict, and address fairly and constructively the obligations and responsibilities of all parties to the conflict. Canada advocates a fair-minded approach and rejects one-sided resolutions and any politicization of the issues. Successive Canadian governments have been concerned about the polemical and repetitive nature of many of the numerous resolutions. Canada believes that the United Nations and its member states have a responsibility to contribute constructively to efforts to resolve the Israeli-Arab conflict. Canada will continue to examine carefully each of these resolutions as they come forward”.

### **The Barrier**

Canada recognizes Israel's right to protect its citizens from terrorist attacks, including through the restriction of access to its territory, and by building a barrier on its own territory for security purposes. However, Canada opposes Israel's construction of the barrier inside the West Bank and East Jerusalem which are occupied territories. This construction is contrary to international law under the Fourth Geneva Convention. Canada not only opposes Israel's construction of a barrier extending into the occupied territories, but also expropriations and the demolition of houses and economic infrastructure carried out for this purpose.

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

The Fourth Geneva Convention also establishes Israel's obligations as an occupying power, in particular Article 49 which provides that the “Occupying Power shall not deport or transfer part of its own civilian population into the territory it occupies”. Canada has also ratified the 1977 Protocols to the Geneva Convention. Article 85 of Protocol 1 makes “the transfer by the Occupying Power of parts of its own civilian population into the territory it occupies” a grave breach of that Protocol.

### **Audit Findings**

It is our understanding that the following projects are being carried out in the Occupied Territories.

<b>Intermediary Name</b>	<b>2016</b>	<b>2017</b>	<b>Total</b>
Mosdot Slonim	\$ 128,800	\$ 69,300	\$ 198,100
Yeshivat Birkat Moshe		27,000	27,000
<b>Total</b>	<b>\$ 128,800</b>	<b>\$ 96,300</b>	<b>\$ 225,100</b>

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

While it is our opinion that the Organization does not maintain direction and control over its resources that are used to support activities conducted through intermediaries, in our view, should the Organization establish that it maintains direction and control over these resources, the activities exceed acceptable legal parameters, and cannot be accepted as activities that can be carried out by a Canadian registered charity.

b) Other non-charitable activities

The Organization has indicated that it provided financial support to cover legal costs for an individual who was attempting to avoid extradition from Canada. The Organization was unable to provide any additional information relating to the circumstances of this individual. As a result, we are unable to verify if this activity furthered a charitable purpose.

iii. Providing an undue benefit/ Gifts to non-qualified donees

Subsection 188.1 (4) of the Act provides for the levying of a penalty to registered charities under specific circumstances.

Under the Act, a registered charity cannot confer on a person an undue benefit (for example, a transfer of property or other resources of the charity to a person who does not deal with the charity at arm's length or who is the beneficiary of a transfer because of a special relationship with a donor or charity.)

Under subsection 188.1(4) of the Act, a registered charity that confers on a person an undue benefit is liable to a penalty equal to 105% of the amount of the benefit. This penalty increases to 110% and the suspension of tax-receipting privileges for a repeat infraction within 5 years.

The CRA takes the position that the penalty also applies to a charity that makes a gift to a person (which includes individuals, and entities like companies and organizations) who is not a qualified donee.<sup>19</sup>

A registered charity that contravenes or continues to contravene the Act could also have its registration revoked.

As indicated above under the subheading "Lack of direction over the use of resources/resourcing non-qualified donees" the Organization transferred resources to intermediaries, both within and outside Canada.

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<sup>19</sup> A list of the items which are included in the meaning of the term "undue benefit" can be found in subsection 188.1(5).

The Organization provided the CRA with documentation to support that these amounts were transferred, but it failed to provide documentation demonstrating that the Organization maintained ongoing direction and control over these funds once they had been transferred to the intermediaries. The Organization failed to demonstrate that it is in a position to control, monitor, and report on all its purported activities (those carried out by the intermediaries). Therefore, it is our position that the Organization has made its resources available to non-qualified donees.

We consider that the amounts transferred to the various intermediaries are gifts to non-qualified donees. As per the definitions of "charitable gifts" in subsection 110.1(1) and "total charitable gifts" in subsection 118.1(1) of the Act, the gift must be made to a "qualified donee," which is defined in subsection 149.1(1).

Due to the serious nature of the non-compliance, it is our view that a penalty under 188.1(4)(a) of the Act can be assessed against the Organization for making gifts to entities other than qualified donees. Below we have included a calculation of the penalty that would be applicable to the amounts that are currently under consideration.

For the fiscal period ended August 31, 2016

Undue benefits (gifts to Canadian Intermediaries)	\$ 73,280
Undue benefits (gifts to Foreign Intermediaries)	<u>\$128,800</u>
Total Undue Benefits	\$202,080
Penalty of 105%	<u>x 105%</u>
Total penalty	\$212,184

For the fiscal period ended August 31, 2017

Undue benefits (gifts to Canadian Intermediaries)	\$ 58,860
Undue benefits (gifts to Foreign Intermediaries)	<u>\$126,300</u>
Total Undue Benefits	\$185,160
Penalty of 105%	<u>x 105%</u>
Total penalty	\$194,418

To summarize, it is our position that the Organization fails to meet the definition of a charitable organization as outlined in subsection 149.1(1) the Act. That is, that it devote substantially all its resources to charitable activities carried on by the Organization itself or to gifting to qualified donees. As a result, it appears there may be grounds for revocation of the charitable status of the Organization under paragraphs 168(1)(b) and 149.1(2)(b) of the Act.

### 3. Failure To Maintain Adequate Books and Records of Accounts

Pursuant to subsection 230(2) of the Act, every registered charity:

shall keep records and books of account [...] at an address in Canada recorded with the Minister or designated by the Minister containing:

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

Subsection 230(4) states:

Every person required by this section to keep records and books of account shall retain:

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

The policy of the CRA relating to the maintenance of books and records, and books of account<sup>20</sup>, is based on several judicial determinations, which have held that:

- i. it is the responsibility of the registered charity to prove that its charitable status should not be revoked;<sup>21</sup>
- ii. a registered charity must maintain, and make available to the CRA *at the time of an audit*, meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required documentation and records subsequent thereto;<sup>22</sup> and
- iii. the failure to maintain proper books, records, and records of account in accordance with the requirements of the Act is itself sufficient reason to revoke an organization's charitable status in the case of material or repeated non-compliance.<sup>23</sup>

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<sup>20</sup> As outlined on our webpage, Books and Records at [canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/books-records.html](http://canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/books-records.html).

<sup>21</sup> See Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at paras 26-27, [2002] 2 CTC 93.

<sup>22</sup> Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at paras 30,40; The Lord's Evangelical Church of Deliverance and Prayer of Toronto v Canada, [2004] FCA 397.

<sup>23</sup> See Prescient Foundation v MNR, 2013 FCA 120 at para 51, [2013] FCJ no 512.



## Audit Findings

Our audit found that the Organization did not maintain adequate books and records. The following is a list of some of our concerns:

1. The Organization did not maintain proper books of account. Financial transactions of the Organization were summarized from bank statements on to a single sheet of paper for 2017 and on to 2 sheets of paper for 2016.
2. For revenues, the Organization maintained no bank deposit slips or copies of cancelled cheques. Unless an official donation receipt (ODR) was issued for the donation, there was no record of the source of individual donations, as revenue was calculated from total bank deposits on a monthly basis. ODRs were issued for only 35 percent<sup>24</sup> of revenue during the 2016 year and 26 percent<sup>25</sup> of revenue during the 2017 year<sup>26</sup>. The Organization was unable to confirm the source of the rest of its revenue, with the exception of copies of three cheques from the Allan and Susan Seidenfeld Charitable Foundation for a total of \$30,000.
3. For expenses, there were copies of cancelled cheques, but there were no source documents to support the actual charitable use of any disbursement, whether the amount was disbursed directly to a needy beneficiary or through an intermediary.
4. The Organization had no documentation to support the existence of \$268,000 in investments, and these amounts were reported as expenses within the books and records of the Organization, and on its financial statements.
5. For disbursements made to "needy individuals", the Organization maintained no supporting documentation to show that it had conducted a means test prior to disbursing those funds, and no source documentation to demonstrate what the funds would be used for. Documenting the selection criteria used to select beneficiaries and documenting how relief is being provided to beneficiaries is essential with respect to maintaining adequate books and records.<sup>27</sup> Well documented selection criteria allows the CRA to verify that an organization's

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<sup>24</sup> Total donation receipts issued during the 2016 year were \$210,236, total revenue reported was \$596,556 (210,236/596,556 = 35%)

<sup>25</sup> Total donation receipts issued during 2017 were \$108,930, total revenue reported was \$415,452 (108,930/415,452 = 26%)

<sup>26</sup> These figures includes ODRs issued in error to other registered charities of \$20,800 in 2016 and \$2,500 in 2017

<sup>27</sup> A registered charity must keep adequate books and records and must allow the Canada Revenue Agency (CRA) to:

- verify revenues, including all charitable donations received;
- verify that resources are spent on charitable programs; and
- verify that the charity's purposes and activities continue to be charitable.

resources are spent on charitable programs and that an organization's purposes and activities continue to be charitable<sup>28</sup>.

Due to the lack of adequate books and records, we were unable to verify the accuracy of reported disbursements to intermediaries, or to determine if the Organization maintained ongoing direction and control over the funds transferred to the agents, and over the activities conducted by the agents. Specifically, the Organization had no documentation that demonstrated:

- i. that it assessed the capabilities of intermediaries to conduct activities on its behalf prior to making disbursements;
- ii. the existence of written agreements with intermediaries;
- iii. any ongoing communication between itself and its intermediaries including, any financial, narrative or progress reports;
- iv. the existence of source documents with respect to when its intermediaries made disbursements with the Organization's funds.

Under paragraph 188.2(2)(a), a charity may receive a notice of suspension of its authority to issue an ODR if it contravenes subsection 230(2), which is related to books and records. It is our position that there may be grounds for sanctions under this paragraph of the Act. Under paragraph 168(1)(e) of the Act, the registration of a charity may be revoked if it fails to comply with or contravenes subsection 230(2) of the Act.

The Organization's serious failure to fulfill its requirement to maintain adequate books and records, as described above, constitutes material non-compliance. For this reason, it is our position that there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(e) of the Act. Note that both paragraphs 168(1)(e) and 188.2(2)(a) can be applied to address this non-compliant behavior.

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

##### **i. Directed donations**

A registered charity cannot issue an ODR 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 receipts to be issued for donations made to non-qualified donees, or to specified persons.

A donation subject to a general donor direction that it be used in a particular program operated by a charity is acceptable, if all decisions regarding use of the donation within a program rest with the charity. The donation must be used to further the charity's

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<sup>28</sup> See *Income Tax Act, RSC 1985, c 1 (5th Supp)*, s 230(2)(a) which requires registered charities to keep books and records containing "information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under this Act."

charitable purposes 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 Organization assumes actual responsibility for making the final decisions regarding usage; and
- (iii) donors relinquish ownership and custody of the gift.

If donors are simply treating an organization as a conduit, the donation is not acceptable, and cannot be receipted.

### **Audit Findings**

The Organization has acknowledged that many of the funds that it has received and for which it issued ODRs were subject to direction from the donor. The following are some examples:

1. Yehuda Rosenblatt indicated that an individual donor or group of donors directed funds be transferred to the religious education facility Yeshivat Birkat Moshe, but he was unsure of the name of the donor(s). As outlined in more detail in Section 2 above, the Organization is unsure how Yeshivat Birkat Moshe used these funds.
2. A specific donor or donors made a donation to the Organization and instructed that the funds be directed to [REDACTED] was to distribute the funds to needy individuals. The Organization was unable to identify who the donor was, has never met [REDACTED] and made no attempt to direct and control the use of these funds.
3. [REDACTED] made donations to the Organization under the understanding that the funds would be returned to him to be distributed to needy individuals who were associated with the synagogue that he leads. Similar to Yehuda Rosenblatt, [REDACTED] made these donations to the Organization rather than directly to his own synagogue because donations to his synagogue would be administered by the leadership of the synagogue, which would have restricted his ability to access those funds for his preferred purposes.
4. [REDACTED] made a donation on April 6, 2016 for \$2,400. On April 7, 2016, an identical amount was forwarded by the Organization to [REDACTED] the [REDACTED]
5. An individual made donations of \$1,350 and \$1,650 to the Organization and directed that these funds be forwarded to Bnei Akiva Schools. The cheque for one of these donations appeared to reference the [REDACTED] and, Yehuda

Rosenblatt acknowledged that it is reasonable to conclude that these funds were designated to pay the tuition [REDACTED]

6. As confirmed during a discussion with Yehuda Rosenblatt on June 7, 2018, the Organization regularly received donations from donors who requested that the funds be forwarded to specific individuals or families who were experiencing specific challenges.

ii. Missing required elements

The law provides various requirements with respect to issuing ODRs by registered charities. These requirements are contained in Regulations 3500 and 3501, and are explained in Income Tax Folio S7-F1-C1, Split-receipting and Deemed Fair Market Value.

**Audit Findings**

Our review of the Organization's ODRs found that they did not contain the following required information:

- The current address of the Organization - ODRs listed a historical address and,
- The place or locality where the ODR was issued.

iii. Other receipting practices

The Organization did not maintain an up to date log with record of all of its ODRs whether they were issued or voided.

As well, the Organization did not maintain a summary listing of issued ODRs, including the donor's name and address, the date of the donation, the date of the receipt if that date differs from the date of the donation, the serial number of the receipt, the type of gift and the donation amount.

The Organization did not keep all copies of incorrectly completed ODRs.

The Organization issued ODRs to other registered charities. During the audit period, we identified four ODRs issued to other registered charities for a total of \$23,300. Gifts to other registered charities are classified as gifts to qualified donees and are not eligible for an ODR.

It is our position that the Organization issued receipts otherwise than in accordance with the Act and the Regulations. Specifically, the Organization has failed to meet the requirements of sections 3500 and 3501 of the Regulations about issuing receipts only when allowed and ensuring all the required information is present. For each reason identified above, there may be grounds for revocation of the Organization's charitable status under paragraph 168(1)(d) of the Act.

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

Subsection 149.1(14) of the Act says that every registered charity shall, within six months from the end of each taxation year of the charity, file with the Minister both an information return and a public information return for the year, each in prescribed form and containing prescribed information, without notice or demand therefore.

It is the responsibility of the Organization to ensure that the information provided in its Form T3010, Registered Charity Information Return, including all schedules and attached statements, is factual and complete.

The Organization is required to properly allocate its expenses on Form T3010. Charitable expenditures are expenses essential for the Organization to carry out its activities that directly further its charitable purposes. Some expenses, such as administration and fundraising costs, should not be considered charitable. Some expenditures, such as salaries and occupancy costs, can be considered a mix of charitable and non-charitable (such as management, administration or fundraising). In these cases, it is necessary to properly allocate the amounts between the appropriate lines in Form T3010.

### **Audit Findings**

The audit revealed that the Organization made the following errors when completing its Form T3010. Except where identified, the errors apply to both years under audit.

1. In section C4, (line 2100), the Organization indicated that it did not carry out any activities outside Canada and did not complete Schedule 2. As identified earlier in this letter, the Organization forwarded substantial resources to multiple intermediaries outside Canada and to one direct beneficiary outside of Canada.
2. The Organization has indicated on Line 4020 of Schedule 6, that financial information was reported based on accrual accounting, which is not accurate. For example, we noted a cheque issued on July 24, 2016 (Chq. # [REDACTED] to Yeshivat Birkat Moshe for \$27,000) that was not deposited by the recipient until the following year. This cheque was reported as a disbursement in the year that the recipient deposited it (2017).
3. The Organization reported three separate investments as expenses and allocated these amounts to Line 5000 – Total Expenditures on Charitable Activities of Schedule 6. The individual amounts reported in error were \$150,000, and \$18,000 in 2016 and \$100,000 in 2017. These amounts represented long term investments and should have been reported on Line 4140 – Long-term investments. In total, the Organization overstated its charitable expenditures and understated its assets by \$268,000 during the audit period.

4. On Schedule 6, the Organization reported all revenues on Line 4500 as receipted donations. Based on the records reviewed, ODRs were issued for only 35 percent of revenue during the 2016 year (\$210,236/596,556) and 26 percent of revenue during the 2017 year (\$108,930/415,452). Further, these ODRs included \$20,800 in 2016 and \$2,500 in 2017 that were issued to other registered charities in error. While the books and records did not allow confirmation of the source for the remaining revenue, it appears that it was primarily from other registered charities and should have been reported on Line 4510 – Total amount received from other registered charities.
5. The Organization reported the majority of its disbursements on Line 4920. This was primarily because it included all disbursements to intermediaries on this line. Line 4920 is intended to include expenses that do not fit into any of the expense lines between Lines 4800 and 4910. Where an organization funds activities through an intermediary, it should be receiving sufficiently detailed financial reports to allow it to allocate the expenses among other expense lines. For example, if the intermediary spends funds from the Organization on travel or vehicle expense, these disbursements should be reported on Line 4810 – Travel and vehicle expenses.
6. In 2016, the Organization did not report all gifts to qualified donees on Line 5050 – Total amount of gifts made to all qualified donees.
7. The Organization has not completed Lines 5900 or 5910 on Schedule 6 to identify any property not used in charitable activities. For example, the \$268,000 in investments from item 1 above should have been included on these lines.
8. In 2016, the Organization did not report all gifts to qualified donees on its Form T1236, Qualified Donees Worksheet/Amounts Provided to Other Organizations.
9. The Organization has not included any contact information on its Form TF 725, Registered Charity Basic Information sheet. Further, with respect to the completed portion of the form, the Organization reported only one program area, “E1 - Places of worship, congregations, parishes, dioceses, fabriques, etc.” which does not represent all program areas supported by the Organization.

Under subsection 168(1)(c) of the Act, the registration of a charity may be revoked if it fails to file a Form T3010 when required under the Act. It is our position the Organization has not complied with the Act by failing to file an accurate Form T3010. For this reason, there may be grounds to revoke the registered status of the Organization under paragraph 168(1)(c) of the Act.



**The Organization's options:**

**a) Respond**

If the Organization chooses to respond, send written representations and any additional information regarding the findings outlined above **within 30 days** from the date of this letter to the address below. After considering the response, the Director General of the Charities Directorate will decide on the appropriate course of action. The possible actions include:

- no compliance action;
- issuing an educational letter;
- resolving the issues through a Compliance Agreement;
- applying penalties or suspensions or both, as described in sections 188.1 and 188.2 of the Act; or
- issuing a notice of intention to revoke the registration of the Organization in the manner described in subsection 168(1) of the Act.

**b) Do not respond**

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

If the Organization appoints a third party to represent it in this matter, send us a written request with the individual's name, the individual's contact information, and explicit authorization that the individual can discuss the 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. My team leader, Maria Grieco, may also be reached at (519) 584-3974.

Yours sincerely,

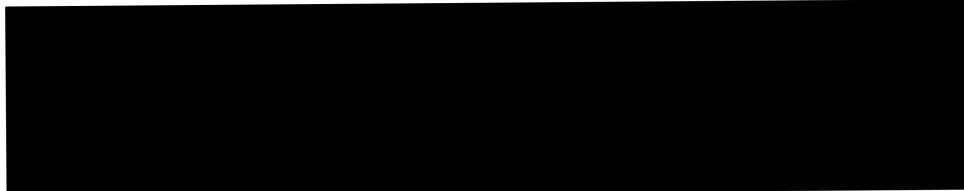


Luke Jantzi  
Charities Audit  
Kitchener TSO

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

c.c.: Chaim Mandl





**Transmitted 2 Pages by Fax: 519-585-2803**

**Canada Revenue Agency**  
Charities Directorate - Charities Audit  
Kitchener TSO  
166 Frederick Street  
Kitchener ON N2H 0A9

**ATTN: Mr. Luke Jantzi and Ms. Maria Grieco, Team Leader**

Dear Sir/Madam:

**Re: J.F. of Canada**  
**BN: 11897 4484 RR0001**  
**CRA Ref #: 0514935**

I am writing in response to your letter dated November 21 and further to our correspondence and phone conversations regarding this matter.

The Charity's directors appreciate the 30-day extension to respond.

As we discussed over the phone, Mr. Rosenblatt undertook this charity work with the best of intentions, though he was obviously unaware of many of the requirements for running a Canadian charity, as outlined in your letter referenced above.

As you know, Mr. Rosenblatt is no longer associated with the Organization. He is of retirement age, and no longer has the energy to be involved in projects such as the Organization.

After meetings with the current Directors, in which we reviewed your letter and explained their responsibilities, they are mindful of what will be required to comply with the Act and CRA policies, and have agreed that if the charity is allowed to continue operations, they will ensure that the Organization operates exclusively within its stated mandates, all books and records are kept properly, the Organization will retain full direction control of all its resources, and receipts will be issued in accordance with the Act.

Specifically:

1. The Charity will adopt a strict policy that all distributions to foreign intermediaries be



done solely in accordance with validly executed agency agreements which comply with CRA guidelines. If the Organization is permitted to continue, it will provide such agreements for review by your office. Furthermore, each such agent will be informed of their obligations pursuant to the agreements to ensure that the Organization is carrying on its own activities in the foreign jurisdiction.

2. The Charity has created an Assistance Application Form and implemented it into its process for providing financial assistance to individuals. All cheques for financial assistance will be payable directly to the individual. The cheque records will include proper backup with all pertinent details and cross-referenced to the application form.

3. Many of the concerns relating to the Charity's books and records will be addressed through the new policies and procedures outlined above. In addition, the Charity will work with its auditor to adopt policies and procedures to improve its record keeping.

Specifically, the following issues will be addressed:

- deposit slips with details of the contributor are maintained for each contribution;
- correct names and charity registration numbers for all qualified donees receiving funds;
- receipts no longer issued to qualified donees;
- maintenance of proper records for all expenses incurred by the Charity.

4. The Charity will work out an arrangement with its auditor to provide the information that is required by the auditor on a timely basis to ensure that the T3010 Charity Information Return is filed correctly and on time.

5. There will be no further non-arm's-length loans or advances.

The new Directors request that the Organization be allowed to resolve the issues addressed in your audit letter through the issuance of an Education Letter or Compliance Agreement and provide them an opportunity to demonstrate that the Organization will henceforth be operated within the confines of the law. If, however, the CRA determines that an Education Letter or Compliance Agreement is not warranted in this case, the Directors respectfully request that the Organization's charity status be revoked.

I reiterate that the charity understands the importance of adhering to the requirements of the Income Tax Act and the policies expressed by the CRA and is eager to work together with the CRA to ensure that all such requirements are met.

We look forward to hearing your reply.

Encl.

**J. F. of Canada**

**Comments on Representations**

In our administrative fairness letter (AFL) dated November 21, 2018, we explained that the audit conducted by the Canada Revenue Agency (CRA) for the period from September 1, 2015 to August 31, 2017, identified that J. F. of Canada (the Organization) is not operating in compliance with the provisions of the Income Tax Act in the following areas:

1. It is not constituted and operated exclusively for charitable purposes
2. Failure to devote resources to charitable activities carried on by the Organization itself:
  - Lack of direction and control over the use of resources/resourcing non-qualified donees
  - Conducting non-charitable activities
  - Providing an undue benefit/gifts to non-qualified donees
3. Failure to maintain adequate books and records
4. Issuing receipts not in accordance with the Act:
  - Directed donations
  - Missing required elements
  - Other receipting practices
5. Failure to file an information return as and when required by the Act and/or its Regulations

In its representations dated December 30, 2018, the Organization requested that it be allowed to resolve the areas of non-compliance identified in our AFL through the issuance of an education letter or a compliance agreement. The Organization also requested that if the CRA determines that an education letter or a compliance agreement is not warranted, that its charity status be revoked. We have reviewed and considered the representations, and our position remains that the non-compliance issues identified during our audit, with the exception of our position on activities undertaken during the audit period in Israeli settlements, represent a serious breach of the requirements of the Act. As a result of this non-compliance, the Organization's registration as a charity should be revoked.

The basis for our position is described in detail below, including:

- A summary of the issues raised in our AFL dated November 21, 2018;
- The Organization's representations dated December 30, 2018; and
- The CRA's response to the representations.

## **1. It is not constituted and operated exclusively for charitable purposes**

As stated in our AFL, in order to maintain charitable registration under the Act, an organization must demonstrate that it is constituted and operated exclusively for charitable purposes (or objects) and that it devotes its resources to charitable activities carried on by the organization itself in furtherance thereof.<sup>1</sup>

The audit found that the Organization was not operated exclusively for charitable purposes. Given the Organization's lack of direction and control over its resources and over the conduct of its activities (see section 2.a. below), it was our position that the Organization did not devote its resources to its own charitable activities which led us to conclude that the Organization was carrying out activities in furtherance of purposes other than those in its governing documents.

### **Organization's representations:**

The Organization's representations did not adequately address this issue (see section 2.a. below).

### **CRA's response:**

The Organization's representations have not alleviated our concerns with respect to operating exclusively for charitable purposes. The representations lacked the necessary details or documentary evidence to enable us to establish that the Organization had or would adequately direct and control the use of its resources for its own activities, in furtherance of charitable purposes, as required by common law. As such, our position remains that the Organization has failed to meet the requirements of subsection 149.1(1) of the Act, and it is our position that there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

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

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

Our audit found that the Organization:

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

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<sup>1</sup> See subsection 149.1(1) of the *Act*, which requires that a charitable organization devote all of its resources to "charitable activities carried on by the organization itself" and *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10, 1999 CanLII 704 (SCC) at paras 156-159. A registered charity may also devote resources to activities that, while not charitable in and of themselves, are necessary to accomplish their charitable purposes (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.

During the audit period, the Organization disbursed a total of \$132,140 to intermediaries, who were then purportedly responsible for providing funds to needy individuals within their respective communities in Canada.

The Organization also disbursed a total of \$255,100 to intermediaries located in Israel, who purportedly used the funds to carry out their own activities.

We also found that:

- formal arrangements were not documented or confirmed between the Organization and its intermediaries;
- the Organization did not provide clear, complete, and detailed instructions to its intermediaries on an ongoing basis;
- the Organization did not monitor and supervise the activities on an ongoing basis;
- the Organization did not maintain control over funding provided to its intermediaries. In fact, during the audit the Organization acknowledged that its intermediaries made all decisions regarding how the Organization's funds were disbursed; and
- the Organization was not provided with written progress or financial reports by its intermediaries.

In effect, the Organization has neither direction nor control over its resources, over the activities being conducted with its resources or over the intermediaries conducting such activities.

#### **Organization's representations:**

The Organization's representations stated that it will adopt a strict policy that all distributions to foreign intermediaries be done solely in accordance with validly executed agency agreements which comply with the CRA guidelines. Furthermore, agents will be informed of their obligations pursuant to the agreements to ensure that the Organization is carrying on its own activities in the foreign jurisdiction.

The Organization has advised that it created an assistance application form and implemented it into its process for providing financial assistance to individuals. All cheques for financial assistance will be payable directly to the individual. The cheque records will include proper backup with all pertinent details and cross-referenced to the application form.

#### **CRA's response:**

We acknowledge the steps that the Organization advised that it will or has taken to comply with the CRA guidelines.

For example, in its response the Organization stated "it will adopt a strict policy that all distributions to foreign intermediaries be done solely in accordance with validly executed agency agreements which comply with the CRA guidelines. If the Organization is permitted to continue, it will provide such agreements for review". However, providing these documents to the CRA at a later day is not sufficient, the Organization must be able to show how it plans to execute the terms of its agency agreements to comply with the



CRA guidelines. It must also be able to show through its books and records that it has a real, ongoing, and active relationship with its intermediary. The Organization also indicated it has created an assistance application form that will be completed prior to providing financial assistance to beneficiaries; however, it failed to provide us with a copy of the form and its criteria for selecting beneficiaries.

The Organization offers commitments, and demonstrates a potential capacity to exercise direction and control. However, the representations lack the necessary details or documentary evidence to enable us to establish that the Organization would, in actual fact, adequately direct and control the use of its resources for its own activities, in furtherance of charitable purposes, as required by common law.

For the above reasons, the Organization's representations have not alleviated our concerns regarding the Organization's ability to maintain adequate ongoing direction and control over the use of its resources, and its purported activities.

#### **b. Conducting non-charitable activities**

In our AFL, our concerns focused on three issues:

##### **i. Conducting activities contrary to public policy**

We stated our position that establishing and maintaining physical and social infrastructure elements and providing assistance to Israeli settlements serves to encourage and enhance the permanency of the infrastructure and settlements, and appears to be contrary to Canada's public policy and international law on this issue. The stated Canadian public policy we relied upon was the Global Affairs Canada policy, "Canadian policy on key issues in the Israeli-Palestinian conflict."<sup>2</sup>

We then identified projects supported by the Organization that were being carried out during the audit period in Israeli settlements.

##### **ii. Other non-charitable activities**

The Organization provided financial support to cover legal costs for an individual who was attempting to avoid extradition from Canada. The Organization was unable to provide any additional information relating to the circumstances of this individual. As a result, we were unable to verify if this activity was in furtherance of the Organization's purpose.

##### **iii. Delivery of non-incidental private benefits/providing an undue benefit to a person**

The Organization provided us with documentation to support amounts transferred to intermediaries, but it failed to provide documentation demonstrating that it maintained ongoing direction and control over these funds once they had been transferred to the intermediaries. As

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<sup>2</sup> [https://www.international.gc.ca/world-monde/international\\_relations-relations\\_internationales/mena-moan/israeli-palstinian\\_policy-politique\\_israelo-palestinien.aspx?lang=eng](https://www.international.gc.ca/world-monde/international_relations-relations_internationales/mena-moan/israeli-palstinian_policy-politique_israelo-palestinien.aspx?lang=eng). Accessed on May 11, 2021.

explained in our AFL, a registered charity cannot confer on a person an undue benefit. For example, a transfer of property or other resources of the charity to a person who does not deal with the charity at arm's length or who is the beneficiary of a transfer because of a special relationship with a donor or charity. As such, it was our position that the Organization had gifted its resources to non-qualified donees.

**Organization's representations:**

The Organization did not provide adequate information or documentation to address this issue in its representations.

**CRA's response:**

The nature of the Organization's activities undertaken during the audit period in Israeli settlements was not a factor in our decision to propose revocation of the Organization's charitable status.

With respect to our second and third concerns, the Organization's response did not adequately address these concerns. As such, our position remains that the Organization has failed to meet the requirements of subsection 149.1(1) of the Act that it devote all its resources to charitable activities carried on by the Organization itself. For this reason, it is our position that there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

**3. Failure to maintain adequate books and records**

Due to the lack of adequate books and records, we were unable to verify the accuracy of reported disbursements to intermediaries, or to determine if the Organization maintained ongoing direction and control over the funds transferred to its agents, and over the activities conducted by the agents. Specifically, the audit found that the Organization did not provide documentation to demonstrate:

- that it assessed the capabilities of intermediaries to conduct activities on its behalf prior to making disbursements;
- the existence of written agreements with intermediaries;
- any ongoing communication between itself and its intermediaries, including any financial, narrative or progress reports; and,
- the existence of source documents with respect to disbursements of the Organization's resources made by its intermediaries.

**Organization's representations:**

The Organization's representations stated that "[m]any of the concerns relating to the [Organization's] books and records will be addressed through the new policies and procedures". It further stated that "[i]n addition, the [Organization] will work with its auditor to adopt policies and procedures to improve its record keeping.

Specifically, the following issues will be addressed:

- deposit slips with details of the contributor are maintained for each contribution;
- correct names and charity registration numbers for all qualified donees receiving funds;
- receipts no longer issued to qualified donees;
- maintenance of proper records for all expenses incurred by the Organization.”

In addition, the Organization advised that there will be no further non-arm’s length loans or advances.

**CRA’s response:**

The Organization’s representations offer commitments. However, it does not alleviate our concerns with respect to the serious non-compliance to date with the requirement to maintain adequate books and records.

Subsection 230(2) of the Act requires that registered charities maintain adequate books and records of account, at an address in Canada registered with the CRA, containing information in such form as will enable the Minister to determine whether there are grounds for the revocation of its registration under the Act. Failure to maintain adequate books and records in accordance with the requirements of the Act is itself sufficient reason for the CRA to revoke an organization’s charitable registration.

In order to meet these requirements, a charity’s books and records must allow the CRA to verify the charity’s revenues and expenses, as well as any official donation receipts it may have issued. Further, the Act requires that a charity’s records contain such information so as to allow the CRA to determine whether the charity’s activities continue to be charitable at law.

As such, our position remains that the Organization does not meet the requirements of subsection 230(2) of the Act. It is our position that there is material non-compliance, and grounds for revocation of the charitable status of the Organization under paragraph 168(1)(e) of the Act.

**4. Issuance of official donation receipts not in accordance with the Act**

The audit found that the Organization issued official donation receipts (ODRs) for directed donations; issued ODRs without adequate internal controls; issued ODRs that did not contain all required elements; and, issued ODRs to other registered charities.

**Organization’s representations:**

In its response, the Organization stated receipts will be issued in accordance with the Act, and the Organization will no longer issue receipts to qualified donees.

**CRA's response:**

The Organization's representations offered commitments to comply with the Act, however, it did not provide any documentation to allow us to verify that the Organization has addressed the inadequacies found in its ODRs and/or with its receipting practices.

As a result, the Organization's representations did not alleviate our concerns and our position remains that it has issued receipts not in accordance with the Act. For this reason, it is our position that there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(d) of the Act.

**5. Failure to file an information return as and when required by the Act and/or its Regulations**

In our AFL, we identified numerous errors with the Organization's completion of the required Form T3010, Registered Charity Information Return, for the audit period.

**Organization's representations:**

The Organization's representations stated that it will "work out an arrangement with its auditor to provide the information that is required by the auditor on a timely basis to ensure that the T3010 Charity Information Return is filed correctly and on time."

**CRA's response:**

The Organization's representations indicated it would work out an arrangement with its auditor. However, this does not adequately address the concerns described in our AFL. Further, the representations did not provide any information or documentation to demonstrate how the Organization intends to remedy the non-compliance identified.

It is the responsibility of the Organization to ensure that the information provided in its T3010 returns, schedules and statements, is factual and complete in every respect. A charity is not meeting its requirements to file an information return in prescribed form if it fails to exercise due care with respect to ensuring the accuracy thereof. The Federal Court of Appeal has confirmed that a significant number of inaccuracies, or beyond what might reasonably be viewed as minor in a T3010 are a sufficient basis for revocation.<sup>3</sup>

As a result, the Organization's representations have not alleviated our concerns and our position remains that the Organization has failed to meet the requirements of subsection 149.1(14) of the Act that it file its information return as and when required by the Act and/or its Regulations. For this reason, it is our position that there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(c) of the Act.

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<sup>3</sup> *Opportunities for the Disabled Foundation v MNR*, 2016 FCA 94 at paras 50-51.

## **Conclusion**

For the reasons explained above and in our letter dated November 21, 2018, with the exception to activities undertaken during the audit period in Israeli settlements, it is the CRA's position that the Organization has failed to meet the requirements for registration as a charitable organization as outlined in subsections 168(1), 149.1(1) and 149.1(2) of the Act. As such, the Organization should have its registration as a charity revoked pursuant to subsection 168(1) of the Act.

**Qualified Donees**

**149.1 (1) Definitions**

**charitable foundation** means a corporation or trust that is constituted and operated exclusively for charitable purposes, no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof, and that is not a charitable organization

**charitable organization**, at any particular time, means an organization, whether or not incorporated,

(a) constituted and operated exclusively for charitable purposes,

(a.1) all the resources of which are devoted to charitable activities carried on by the organization itself,

(b) no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof,

(c) more than 50% of the directors, trustees, officers or like officials of which deal at arm's length with each other and with

(i) each of the other directors, trustees, officers and like officials of the organization,

(ii) each person described by subparagraph (d)(i) or (ii), and

(iii) each member of a group of persons (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(l)) who do not deal with each other at arm's length, if the group would, if it were a person, be a person described by subparagraph (d)(i), and

(d) that is not, at the particular time, and would not at the particular time be, if the organization were a corporation, controlled directly or indirectly in any manner whatever

(i) by a person (other than Her Majesty in right of Canada or of a province, a municipality, another registered charity that is not a private foundation, and any club, society or association described in paragraph 149(1)(l)),

(A) who immediately after the particular time, has contributed to the organization amounts that are, in total, greater than 50% of the capital of the organization immediately after the particular time, and



(B) who immediately after the person's last contribution at or before the particular time, had contributed to the organization amounts that were, in total, greater than 50% of the capital of the organization immediately after the making of that last contribution, or

(ii) by a person, or by a group of persons that do not deal at arm's length with each other, if the person or any member of the group does not deal at arm's length with a person described in subparagraph (i)

**qualified donee**, at any time, means a person that is

(a) registered by the Minister and that is

a housing corporation resident in Canada and exempt from tax under this Part because of paragraph 149(1)(i) that has applied for registration,

(ii) a municipality in Canada,

a municipal or public body performing a function of government in Canada that has applied for registration,

(iv) a university outside Canada, the student body of which ordinarily includes students from Canada, that has applied for registration, or

(v) a foreign charity that has applied to the Minister for registration under subsection (26),

(b) a registered charity,

(c) a registered Canadian amateur athletic association, or

(d) Her Majesty in right of Canada or a province, the United Nations or an agency of the United Nations

#### **149.1 (2) Revocation of registration of charitable organization**

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

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

(b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the organization's disbursement quota for that year; or

(c) makes a disbursement by way of a gift, other than a gift made

(i) in the course of charitable activities carried on by it, or

(ii) to a donee that is a qualified donee at the time of the gift.

### **149.1 (3) Revocation of registration of public foundation**

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

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

### **149.1 (4) Revocation of registration of private foundation**

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

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

#### **149.1 (4.1) Revocation of registration of registered charity**

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

- (a) of a registered charity, if it has entered into a transaction (including a gift to another registered charity) and it may reasonably be considered that a purpose of the transaction was to avoid or unduly delay the expenditure of amounts on charitable activities;
- (b) of a registered charity, if it may reasonably be considered that a purpose of entering into a transaction (including the acceptance of a gift) with another registered charity to which paragraph (a) applies was to assist the other registered charity in avoiding or unduly delaying the expenditure of amounts on charitable activities;
- (c) of a registered charity, if a false statement, within the meaning assigned by subsection 163.2(1), was made in circumstances amounting to culpable conduct, within the meaning assigned by that subsection, in the furnishing of information for the purpose of obtaining registration of the charity;
- (d) of a registered charity, if it has in a taxation year received a gift of property (other than a designated gift) from another registered charity with which it does not deal at arm's length and it has expended, before the end of the next taxation year, in addition to its disbursement quota for each of those taxation years, an amount that is less than the fair market value of the property, on charitable activities carried on by it or by way of gifts made to qualified donees with which it deals at arm's length;
- (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; and
- (f) of a registered charity, if it accepts a gift from a foreign state, as defined in section 2 of the State Immunity Act, that is set out on the list referred to in subsection 6.1(2) of that Act.

#### **Revocation of Registration of Certain Organizations and Associations**

##### **168 (1) Notice of intention to revoke registration**

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

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

(f) in the case of a registered Canadian amateur athletic association, accepts a gift the granting of which was expressly or implicitly conditional on the association making a gift to another person, club, society or association.

### **168 (2) Revocation of Registration**

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

(a) if the charity or association has applied to the Minister in writing for the revocation of its registration, the Minister shall, forthwith after the mailing of the notice, publish a copy of the notice in the Canada Gazette, and

(b) in any other case, the Minister may, after the expiration of 30 days from the day of mailing of the notice, or after the expiration of such extended period from the day of mailing of the notice as the Federal Court of Appeal or a judge of that Court, on application made at any time before the determination of any appeal pursuant to subsection 172(3) from the giving of the notice, may fix or allow, publish a copy of the notice in the Canada Gazette,

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

### **168 (4) Objection to proposal or designation**

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

(a) in the case of a person that is or was registered as a registered charity or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(2) to (4.1), (6.3), (22) and (23);

(b) in the case of a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.2) and (22); or

(c) in the case of a person described in any of subparagraphs (a)(i) to (v) of the definition “qualified donee” in subsection 149.1(1), that is or was registered by the Minister as a qualified donee or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.3) and (22).

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

Where the Minister

(a) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.2) and (22) and 168(1) by the Minister, to a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for registration as a registered Canadian amateur athletic association, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,

(a.1) confirms a proposal, decision or designation in respect of which a notice was issued by the Minister to a person that is or was registered as a registered charity, or is an applicant for registration as a registered charity, under any of subsections 149.1(2) to (4.1), (6.3), (22) and (23) and 168(1), or does not confirm or vacate that proposal, decision or designation within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal, decision or designation,

(a.2) confirms a proposal or decision in respect of which a notice was issued under any of subsections 149.1(4.3), (22) and 168(1) by the Minister, to a person that is a person described in any of subparagraphs (a)(i) to (v) of the definition “qualified donee” in subsection 149.1(1) that is or was registered by the Minister as a qualified donee or is an applicant for such registration, or does not confirm or vacate that proposal or decision within 90 days after service of a notice of objection by the person under subsection 168(4) in respect of that proposal or decision,

(b) refuses to accept for registration for the purposes of this Act any retirement savings plan,

(c) refuses to accept for registration for the purposes of this Act any profit sharing plan or revokes the registration of such a plan,

(d) [Repealed, 2011, c. 24, s. 54]

(e) refuses to accept for registration for the purposes of this Act an education savings plan,

(e.1) sends notice under subsection 146.1(12.1) to a promoter that the Minister proposes to revoke the registration of an education savings plan,

(f) refuses to register for the purposes of this Act any pension plan or gives notice under subsection 147.1(11) to the administrator of a registered pension plan that the Minister proposes to revoke its registration,

(f.1) refuses to accept an amendment to a registered pension plan,

(g) refuses to accept for registration for the purposes of this Act any retirement income fund,

(h) refuses to accept for registration for the purposes of this Act any pooled pension plan or gives notice under subsection 147.5(24) to the administrator of a pooled registered pension plan that the Minister proposes to revoke its registration, or

(i) refuses to accept an amendment to a pooled registered pension plan,

the person described in paragraph (a), (a.1) or (a.2), the applicant in a case described in paragraph (b), (e) or (g), a trustee under the plan or an employer of employees who are

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

### **180 (1) Appeals to Federal Court of Appeal**

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

(a) the day on which the Minister notifies a person under subsection 165(3) of the Minister's action in respect of a notice of objection filed under subsection 168(4),

(b) [Repealed, 2011, c. 24, s. 55]

(c) the mailing of notice to the administrator of the registered pension plan under subsection 147.1(11),

(c.1) the sending of a notice to a promoter of a registered education savings plan under subsection 146.1(12.1),

(c.2) the mailing of notice to the administrator of the pooled registered pension plan under subsection 147.5(24), or

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

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

### **Tax and Penalties in Respect of Qualified Donees**

#### **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

$$\mathbf{A - B}$$

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) a registered charity
  - (i) 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,
  - (ii) that is not the subject of a suspension under subsection 188.2(1),
  - (iii) that has no unpaid liabilities under this Act or under the Excise Tax Act,
  - (iv) that has filed all information returns required by subsection 149.1(14), and
  - (v) 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; or
- (b) a municipality in Canada that is approved by the Minister in respect of a transfer of property from the particular charity.

## **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) Joint and several, or solidary, liability – tax transfer**

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

#### **188 (5) Definitions – In this section,**

**net asset amount** 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 described in paragraph 188(1.3)(a) 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.