




July 14, 2022

REGISTERED MAIL

Albert Friedberg
Trustee
Canadian Friends of Ner Israel Rabbinical College


BN: 89063 0593 RR0001
File #: 

Dear Albert Friedberg:

**Subject: Notice of intention to revoke
Canadian Friends of Ner Israel Rabbinical College**

We are writing with respect to our Administrative Fairness Letter (AFL) dated September 17, 2020 (copy enclosed), in which Canadian Friends of Ner Israel Rabbinical College (the Organization) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from July 1, 2014 to June 30, 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 October 22, 2020. 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 below.

1. Failure to issue donation receipts in accordance with the Act

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

Your representations stated that the specified donors had specific interests in funding Ner Israel Baltimore's training of future rabbinic leaders in communities around the United States. Donations were related to this training and were not directed to other donees. Further, due to the difficulty in allocating donations to specific rabbinic students, the Organization no longer accepts donations earmarked for these programs.

As noted in our AFL, it was confirmed that separate cheques were received from the same donor each month, referencing the same non-qualified donees. The Organization's records included detailed notes for each cheque received that specified the non-qualified donee, and calculated the US dollar conversion amount for each monthly cheque. These donations are material and account for 59% of donations received in 2017, 74% in 2016, and 76% in 2015.

We remain of the view that the donations were directed by the donor to non-qualified donees. While it is noted in the representations that donations are no longer accepted for these programs due to the difficulty in allocating donations to specific rabbinic students, it remains that a material portion of the receipts issued during the audit period were directed by the donor to be transferred to non-qualified donees. It also remains our view that the primary motivation of the donor was not to enrich the Charity, rather, these were gifts intended to be directed to the specified recipient.

Lending registration number

Your representations stated the CRA found that the Organization did not demonstrate direction and control over its receipting practices based on "thank you" letters from Ner Israel Baltimore thanking Canadian donors, and that receipting duties were delegated to Ner Israel Baltimore as receipts were signed by the president of Ner Israel Baltimore. Your representations also stated that the Organization was created to support Ner Israel Baltimore, and most of the donors have a connection to the school. To maintain positive relationships with donors "thank you" letters are sent from Ner Israel Baltimore to donors around the world. In addition, to maintain relations and recognition with donors, the Organization authorized Mr. Jerome Kadden, a trustee of the Organization, or [REDACTED] of Ner Israel Baltimore, to sign the receipts. The Organization stated that going forward, only trustees of the Organization will sign receipts.

While the "thank you" letters did thank the donor for their support, it is our contention that the intent of the letters was to provide a donation summary to the donor, rather than a thank you to maintain positive relationships with donors. There were three separate letters covering donations made in 2013, 2014, and 2015, and all of the letters were dated September 30, 2016. The summaries detailed all donations that were made by the donor to the Ner Israel Rabbinical College, and not to the Organization. Each summary included the statement "Our Canadian tax identification number is BN 89063 0593 RR0001" and also referenced a tax identification number identifying that the Ner Israel Rabbinical College is a 501(c)(3) organization.

It was identified in our letter that receipts were signed by the [REDACTED]. The Organization is able to authorize the signature of someone other than a trustee, however there was no documentation provided to indicate that this had occurred during the audit period. Of further concern, was the fact that receipts for the Organization were issued on paper watermarked with Ner Israel Rabbinical College, with a small notation of "Canadian Friends" included under the date. It is clear that the overarching intent was to donate to the Ner Israel Rabbinical College and not to the Organization. Further evidence included donation receipts issued by the receipting system that were not connected to the Organization, as these particular donation receipts were not issued sequentially with the other Organization's donation receipts or accounted for in the books and records of the Organization.

It remains our opinion that the Organization did not maintain adequate direction and control over its receipting practices, and had effectively lent its charitable registration number and tax receipting privileges to the Ner Israel Rabbinical College.

Issuing donation receipts in names other than the true donor

The Organization stated that donations are received from a variety of donors, with some donors making personal and corporate donations, and that donations often come with requests to have the donations issued to the shareholder(s) of the corporation. The Organization operates under the assumption that the donations were charged to the shareholder loan account and not expensed within the corporation, however it commits to obtaining confirmation of the facts in the future. It was also noted that many of the receipts listed were issued to the corporations, but had names listed as "c/o" as that is how they are recorded in the database.

As described in CRA Policy Commentary CPC-010, Issuing a receipt in a name other than the donor's, if a registered charity receives a cheque from a corporation and is subsequently asked to issue the official donation receipt in the name of an individual who controls the corporation, the charity must refuse to issue the receipt to the individual. The charity may only issue a donation receipt to the individual if there is evidence to show that the individual is the true donor.

Your representations stated that "many" of the donation receipts were issued to the corporations, but had names listed as "c/o" as that is how they are recorded in the database. This is not accurate based on the donation receipts that were made available for review. It is acknowledged that a number of donation receipts were issued in the name of both the individual(s) and the corporations as identified in our AFL, however, they were not issued in "care of".

While it is understood that the Organization has committed to obtain the required documentation in the future, the audit evidence is clear that during the audit period donation receipts were not issued correctly as adequate documentation was not retained by the Organization to allow receipts in names other than the corporate donors.

Issuing receipts to other registered charities

Your representations stated that the Foundation received donations from private foundations. The donation receipts issued had the names of the individuals who control the foundation listed as a "c/o" on the receipt as part of the address, to allow for an accurate database of donors to be maintained.

As stated in our letter, official donation receipts should not be issued to other registered charities.

Failure to meet the requirements of Regulation 3501 of the Act

The Organization agreed to ensure that the correct name, address, and place or locality of where the receipt is issued will be added to donation receipts going forward, and that receipts will be signed by a trustee of the Organization.

CRA's Response

For the reasons noted above it remains our opinion that the Organization failed to issue donation receipts in accordance with the Act and its Regulations.

2. Failure to maintain adequate books and records

Internal Controls

You representations state there was a misunderstanding of the process for maintaining the books and records, and clarifies that [REDACTED] is responsible for reviewing both the receipt of cheques as well as the deposit book. However, due to her age, and other responsibilities, she delegates the act of going to the bank to [REDACTED] another employee at [REDACTED] are then sent from [REDACTED] to [REDACTED] where they are reviewed by [REDACTED] who is authorized by the trustees to sign the receipts for the Organization.

The description of the receipting practices detailed in our letter were taken from the Organization's letter dated July 19, 2018. Concerns identified in the AFL related to the inconsistencies between the books and records process provided by the Organization, and what was found in the records, as well as what appeared to be significant involvement in the record keeping, receipting, and control by the [REDACTED]. Information received from the [REDACTED] provided details of the Organization's bank account, which included that the account is registered as Non-Canadian, based out of the United States, and that there are four individuals who have signing authority:

<u>Name</u>	<u>Position</u>
Jerome Kadden	School Administrator
[REDACTED]	School Administrator
[REDACTED]	School President
[REDACTED]	Administrator

While Jerome Kadden is a trustee for the Organization, the remaining individuals with signing authority on the account appear to be employed by the [REDACTED] based on open source information. It remains our opinion that the Organization is not maintaining adequate direction and control over their resources and receipting.

Reconciliation Issues

The Organization has committed to creating reconciliation schedules going forward.

Board Minutes

The Organization has committed to holding board meetings no less than annually to review compliance with the Act as well as to review and approve the T3010, Registered Charity Information Return and the financial statements.

CRA's Response

It is acknowledged that the Organization has stated they will improve their books and records as identified above. However, it remains our opinion that the Organization failed to maintain adequate books and records as required under subsection 230(2) of the Act.

3. Failure to file an accurate T3010, Registered Charity Information Return

Your representations state that the Organization will commit to creating supporting schedules to support the numbers reported on the T3010, will add the start and end dates for the trustees of the Organization, and that adequate financial statements will be included with the filed T3010, Registered Charity Information Return.

CRA's Response

It is acknowledged that the Organization has stated that corrections will be made on a go forward basis for errors noted on the T3010, Registered Charity Information Return. However, it remains our opinion that the Organization failed to file an accurate T3010 for each year under audit as required under subsection 149.1(14) of the Act.

4. Failure to comply with the requirements of the Act as they apply to the Organization's designation

Your representations state that counsel will be engaged to draft the new governing documents for the Organization.

CRA's Response

It is acknowledged that the Organization has expressed an intent to provide valid governing documents. However, it remains our opinion that the Organization has not complied with the requirements of the Act for its continued registration as a charitable organization under subsection 149.1(1) of the Act.

Conclusion

The audit by the CRA found that the Organization is not complying with the requirements set out in the Act. In particular, it was found that the Organization:

- Failed to issue donation receipts in accordance with the Act
- Failed to maintain adequate books and records
- Failed to file an accurate T3010, Registered Charity Information Return

- Failed to comply with the requirements of the Act as they apply to the Organization's designation.

The representations state that the Organization has been proactive in improving its governance and operations based on potential issues noted during the audit process, and the Organization wishes to continue to improve and intends to rectify areas of non-compliance. However, it is our view that the audit revealed significant and material non-compliance, and it remains our position that the Organization no longer meets the requirements for charitable registration.

Consequently, for the reasons mentioned in our letter dated September 17, 2020, and pursuant to subsection 168(1) and 149.1(2) 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 subsection 149.1(2), 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.

Business number	Name
890630593RR0001	Canadian Friends of Ner Israel Rabbinical College 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 Intake Centre
Post Office Box 2006, Station Main
Newmarket ON L3Y 0E9

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 A, attached.

Consequences of revocation

As of the effective date of revocation:

- a) the Organization will no longer be exempt from Part I tax as a registered charity and **will no longer be permitted to issue official donation receipts**. This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3) 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 A. Form T2046 and the related Guide RC4424, Completing the Tax Return Where Registration of a Charity is Revoked, are available on our website at canada.ca/charities-giving;
- 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 1-800-959-8287.

Yours sincerely,

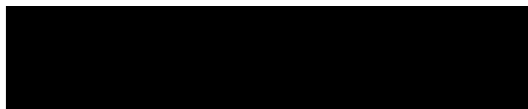
Sharmila P. Khare

Sharmila Khare
Director General
Charities Directorate

Enclosures

- Appendix A, Relevant provisions of the Act
- CRA letter dated September 17, 2020

c.c.: Jerome Kadden, Trustee



APPENDIX A

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

$$A - B$$

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.



September 17, 2020

Albert Friedberg
Trustee
Canadian Friends of Ner Israel Rabbinical College
[REDACTED]

BN: 89063 0593 RR0001

File #: [REDACTED]

Dear Albert Friedberg:

Subject: Audit of Canadian Friends of Ner Israel Rabbinical College

This letter results from the audit of the Canadian Friends of the Ner Israel Rabbinical College (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from July 1, 2014, to June 30, 2017.

The CRA has 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 IDENTIFIED		
	Issue	Reference
1.	Failure to issue donation receipts in accordance with the Act	149.1(2), 168(1)(d), 188.1(7), Reg. 3501
2.	Failure to maintain adequate books and records	149.1(2), 230(2), 168(1)(b), 168(1)(e), 188.2(2)
3.	Failure to file an accurate T3010, Registered Charity Information Return	149.1(2), 168(1)(c), 188.2(2.1)
4.	Failure to comply with the requirements of the Act as they apply to the Organization's designation	149.1(1), 168(1)(b)

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.

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.¹ To be exclusively charitable, a purpose must fall within one or more of the following four categories (also known as "heads") of charity² and deliver a public benefit:

- relief of poverty (first category);
- advancement of education (second category);
- advancement of religion (third category); or
- 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 measurable. Benefits that are not tangible or objectively measurable must be shown to be valuable or approved by the common understanding of enlightened opinion for the time being.³ 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.⁴ 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.⁵
- The second part of the test requires the benefit be directed to the **public** or a sufficient section of the public. This means a registered charity cannot:

¹ See subsection 149.1(1) of the Act, which requires that a charitable organization devote all of its resources to "charitable activities carried on by the organization itself" except to the extent that an activity falls within the 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 MNR*, [1999] 1 SCR 10 at paras 155-159 [*Vancouver Society*]. 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 the associated activities must not become ends in and of themselves.

² The Act does not define charity or what is charitable. The exception is subsection 149.1(1) which defines charitable purposes/objects as including "the disbursement of funds to qualified donees". The CRA must therefore rely on the common law definition, which sets out four broad categories of charity. The four broad charitable purpose/object categories, also known as the four heads of charity, were outlined by Lord Macnaghten in *Commissioners for Special Purposes of the Income Tax v Pemsel*, [1891] AC 531 (PC) [*Pemsel*]. The classification approach was explicitly approved of by the Supreme Court of Canada in *Guaranty Trust Co of Canada v MNR*, [1967] SCR 133, and confirmed in *Vancouver Society*, supra note 4.

³ See generally *Vancouver Society*, supra note 4 at para 41, Gonthier J, dissenting; *Gilmour v Coats et al*, [1949] 1 All ER 848 [*Gilmour*]; *National Anti-Vivisection Society v IRC*, [1947] 2 All ER 217 at 224 (HL), Wright LJ [*National Anti-Vivisection Society*].

⁴ See for example *In re Grove-Grady*, [1929] 1 Ch 557 at 573-574; *Plowden v Lawrence*, [1929] 1 Ch 557 at 588, Russell LJ; *National Anti-Vivisection*, supra note 6 at 49, Wright LJ; *IRC v Oldham Training and Enterprise Council*, [1996] BTC 539 [*Oldham*]; *Pemsel*, supra note 5 at 583.

⁵ See *National Anti-Vivisection Society*, supra note 6 at 49, Wright LJ; *In re Shaw decd*, [1957] 1 WLR 729; *Gilmour*, supra note 6, Simonds LJ at 448-447.

- 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.⁶

As well, a charitable purpose⁷ should not be broad or vague. If the wording is too broad or vague, it will not be clear that a purpose is charitable (falls within a charitable purpose category and provides a public benefit) and defines the scope of the organization's activities. "Broad" means the purpose may allow for both charitable and non-charitable activities and/or the delivery of unacceptable private benefits. "Vague" means the wording may be interpreted in different ways. A purpose that is too broad or vague may not be eligible for registration⁸.

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

But the inquiry cannot stop there. In *Guaranty Trust*, supra at p.144, this Court expressed the view that the question of whether an organization was constituted exclusively for charitable purposes cannot be determined solely by reference to the objects and purposes for which it was originally established. It is also necessary to consider the nature of the activities presently carried on by the organization as a potential indicator of whether it has since adopted other purposes. In other words, as Lord Denning put it in *Institution of Mechanical Engineers v Cane*, [1961] A.C. 696 (H.L.), at p. 723, the real question is, "for what purpose is the Society at present instituted?"⁹

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, or even form, a separate or collateral purpose. An organization with a collateral non-charitable purpose is ineligible for registration under the Act.

⁶ For more information about public benefit, see CRA Policy Statement CPS-024, Guidelines for Registering a Charity: Meeting the Public Benefit Test.

⁷ For more information about charitable purposes see CRA Guidance CG-019, How to Draft Purposes for Charitable Registration.

⁸ *Vancouver Society*, supra note 4 per Iacobucci J at para. 158; *Travel Just v. Canada Revenue Agency*, 2006 FCA 343, [2007] 1 C.T.C. 294.

⁹ *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.

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.¹⁰

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.¹¹

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,¹² and are actually implemented. A charity must record all steps taken to exercise direction and control as part of its books and records, to allow the CRA to verify that the charity's funds have been spent on its own activities. While the nature and extent of the required direction and control may vary based on the particular activity and circumstances, the absence of appropriate direction and control indicates that an organization is resourcing a non-qualified donee in contravention of the Act.

The CRA must be satisfied that an organization's activities directly further charitable purposes in a manner permitted under the Act. In making a determination, we are obliged to take into account all relevant information. Accordingly, the current audit encompassed an enquiry into all aspects of the Organization's operations. The fact that some of the areas of non-compliance identified in this letter may, or may not, have been evaluated in preceding audits does not preclude the need for compliance with existing legal requirements. Furthermore, the CRA may take a position that differs from that reached previously based on reconsideration of the pertinent facts and law.¹³

Background of the Organization

The Organization was registered as charitable organization in a letter dated July 14, 1967, with an effective date of January 1, 1967.

¹⁰ A "qualified donee" means a donee described in subsection 149.1(1) of the Act.

¹¹ 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.

¹² See notably *Canadian Committee for the Tel Aviv Foundation v Canada*, 2002 FCA 72 at para 30, [2002] FCJ no 315 [Canadian Committee for the Tel Aviv Foundation].

¹³ See for example *Canadian Magen David Adom for Israel v MNR*, 2002 FCA 323 at para 69, [2002] FCJ no 1260, Sharlow JA.

At the time of registration the Organization submitted a Declaration of Partnership as their governing document. There were no registered objects included in the Declaration of Partnership, however the Aims and Objectives noted on the Application for Registration was to provide funds for scholarship and general assistance to Canadian students in attendance at [REDACTED] in Baltimore USA.

As detailed in the Organization's representations dated July 19, 2018 the only activity of the Organization is receiving donations and transferring the funds to the [REDACTED] which is a prescribed university under Schedule VIII of the Act.

Areas of Non-Compliance Where Sanctions May Apply:

1.) Failure to issue donation receipts in accordance with the Act

The law provides various requirements with respect to issuing official donation receipts by registered charities. These requirements are contained in Regulation 3500 and 3501 of the Act and are described in detail in Income Tax Folio S7-F1-C1, Split-receipting and Deemed Fair Market Value. Furthermore, as stated in section 168(1)(d) of the Act "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 issues a receipt for a gift otherwise than in accordance with this Act and the regulations or that contains false information."

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

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

At law, a gift is a voluntary transfer of property without consideration. An essential element of a gift is that there be intent to donate by the donor. It must be clear that the donor intends to enrich the donee, by giving away property, and to grow poorer as a result of making the gift. Furthermore, a "completed gift"¹⁴ is a gift that is no longer in the donor's possession and control.

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

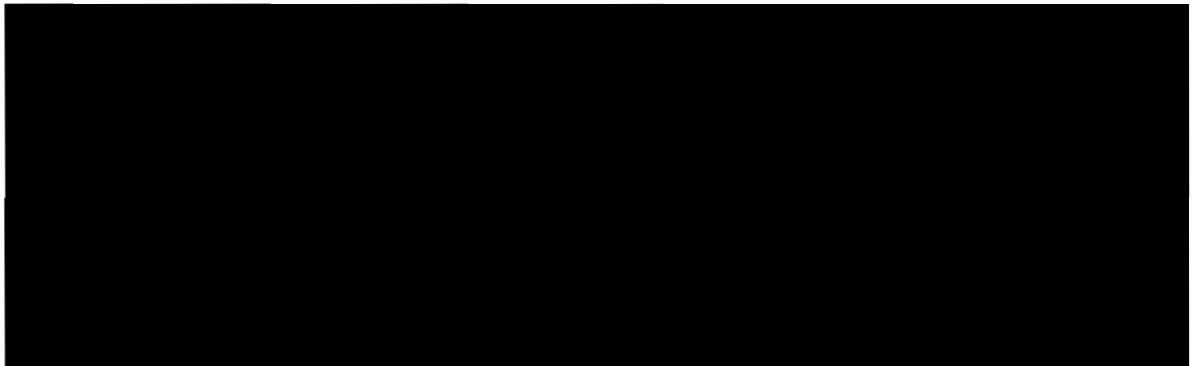
¹⁴ As defined by Blacks Law Dictionary

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

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

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

On the donation sheet prepared by the Organization it was noted that each month there were separate entries relating to the same donor, with notes that referenced the following non-qualified donees:



A query was issued to the Organization to determine the purpose of the reference to the organizations in their books and records. The Organization responded in a letter dated July 19, 2018 and stated that the [REDACTED] educates and trains Rabbinic students so they will be able to eventually move and establish Jewish communities around the United States. Many of their donors would like to help to establish these communities and sponsor the training of these future community leaders and document as such when making their donations".

A review of open source media demonstrated that the above named organizations consist of existing Jewish community organizations and kollels, as well as private preschools, elementary and girls schools, and Hebrew academies.

During the review of donations received it was confirmed that multiple cheques were received from the same donor each month, in each year under audit. The Organization's records included detailed notes for each cheque received that specified the non-qualified

donee, and calculated the US dollar conversion amount for each monthly cheque. Based on the number of separate cheques prepared and the details recorded on the donation summary by the Organization it appears that the donor had directed the Organization to give the funds to the referenced non-qualified donees. As noted above, a charity cannot issue a donation receipt if a donor has directed the charity to give the donated funds to a non-qualified donee. In total the Organization received \$105,465 in 2017, \$384,959 in 2016 and \$411,960 in 2015 of gifts in which official donation receipts were issued. These gifts received were directed by the donor to be transferred to non-qualified donees. It is our view, based on the transactions described above that the primary motivation of the donor was not to enrich the Charity, but through the Organization transfer funds to a non-qualified donee and receive an official donation receipt.

Lending registration number

Under no circumstances should a registered charity lend its registration number to another organization for receipting purposes. A registered charity is responsible for all tax receipts issued under its name and number and must account for the corresponding donations on its annual information return.

The audit has revealed that the Organization did not demonstrate direction and control over its receipting practices, and in our opinion the Organization is effectively lending its charitable registration number and corresponding tax-receipting privileges to the [REDACTED]. Third party documentation available to the CRA included donation summaries issued by the [REDACTED] thanking a donor for their support for the years 2013, 2014, and 2015. The summaries detailed all donations that were made by the donor to the Ner Israel Rabbinical College, and not to the Organization. Each summary included the statement "Our Canadian tax identification number is BN 89063 0593 RR0001" and also referenced a tax identification number identifying that the [REDACTED] is a 501(c)(3) organization.

In addition, based on the documents provided by the Organization during the audit, it further appears that the receipting duties for the Organization are under full control of the [REDACTED] for the following reasons:

- Receipts were issued on paper that contained a watermark for the [REDACTED]. A small notation of "Canadian Friends" was included under the date on each receipt provided.
- Receipts were signed by the president of the [REDACTED]

The address on the receipt was the address for the [REDACTED]. Representations dated July 19, 2018 from the Organization stated that details of the donations are sent to Baltimore, MD for data entry and the receipts are then generated by the data base system, and signed by [REDACTED] or Mr. Jerome Kadden. All of the receipts for 2017 provided in the representations are signed by [REDACTED] who is the President of the [REDACTED]. A sample of receipts for 2015 and 2016 available through the Charities Directorate were on the same template as the receipts issued in 2017, and also include the signature of [REDACTED].

[REDACTED] It does not appear that any other individual has signed any donation receipts for the period under audit.

Issuing donation receipts in names other than the true donor

A registered charity can only issue an official donation receipt to the individual or organization that made the gift, and the name and address of the donor must appear on the receipt. A charity cannot issue an official donation receipt in the name of anyone but the true donor as further described in Policy Commentary CPC-010, Issuing a receipt in a name other than the donor's.

A detailed review was completed for the 2017 fiscal year as it was the only year where the Organization provided copies of donation receipts and bank deposit books that could be reconciled with the donor summary sheet prepared. The following issues were noted:

- All donation receipts issued to [REDACTED] and [REDACTED] were from funds received from [REDACTED]
- Funds received from [REDACTED] included a notation to issue a "receipt to [REDACTED]". The receipt was issued in the name of [REDACTED]
- Funds received from [REDACTED] had a receipt issued to [REDACTED] and [REDACTED] and [REDACTED]
- Funds received from [REDACTED] had a receipt issued to [REDACTED] and [REDACTED]
- Funds received from Canada Helps had a receipt issued to [REDACTED]
- Funds received from [REDACTED] had a receipt issued to [REDACTED]
- Funds from [REDACTED] had a receipt issued to [REDACTED] and [REDACTED]
- Funds received from [REDACTED] had a receipt issued to [REDACTED] and [REDACTED]
- Where the donor was not known receipts were issued in the name of "Anonymous".

Although a detailed review could not be completed for 2015 and 2016 it appears that receipts were issued in the same manner as in 2017. The donor summary sheet was prepared in the same manner for each year under review, and on numerous occasions in each year there were notations for cheques received from corporations, with receipts issued to an individual or to an individual and a corporation. There was no documentation provided by the Organization to demonstrate that the receipts should have been issued in any name other than the corporate names on the cheques received.

Issuing official donation receipts to other registered charities

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

The Organization received funds from multiple registered charities each year under review and issued official donation receipts for each donation received. Further, there were occasions where funds were received from registered charities, but receipts were issued in the individual's name, for example:

- Funds were received from the George and Sylvia Foundation and receipted to [REDACTED]
- Funds received from the Dov Zimmerman Foundation were receipted to [REDACTED]
- Funds from the Heitner Charitable Foundation were receipted to [REDACTED]

Failure to meet the requirements of Regulation 3501 of the Act

Subsection 3501(1) of the Regulations provides that each official donation receipt that a registered charity issues must include, in a manner that cannot be readily altered, the prescribed contents of a receipt.

The official donation receipts issued by the Organization did not contain the following required elements:

- The Organization's name as recorded with the CRA
 - Recorded as "Canadian Friends of the Ner Israel Rabbinical College" rather than the registered name of "Canadian Friends of Ner Israel Rabbinical College".
- The Organization's address as recorded with the CRA
 - Address on the receipts is 400 Mt. Wilson Lane Baltimore MD 21208 which is the address of the Ner Israel Rabbinical College
- The signature of an authorized person
 - Receipts are signed by [REDACTED] President. [REDACTED] is the president of the [REDACTED] and does not appear to be related to the Organization.
- The place or locality where the receipt was issued

In addition, the receipts were not issued in a sequential manner, and a significant number of receipts were not accounted for.

In cases where a registered charity is involved in serious non-compliance, or for repeat or multiple infractions, the CRA may impose intermediate sanctions (that is, financial penalties or suspensions) as outlined in sections 188.1 and 188.2 of the Act.

Under subsection 188.1(7) of the Act, a registered charity that issues an official donation receipt that includes incorrect information is liable to a penalty equal to 5% of the eligible amount stated on the receipt for the first infraction, or 10% for a repeat infraction. The Organization issued official donation receipts where the amount should be nil as the gift

was a donor directed donation which may result in the following sanctions being applied under subsection 188.1(7) of the Act:

Potential sanctions under 188.1(7) for issuing official donation receipts where there is no gift - directed donations			
Year	Incorrect Received Amount	Sanction under 188.1(7) of the ITA	Potential Sanction
2017	\$ 105,465.00	5%	\$ 5,273.25
Total Potential 188.1(7) Sanction:			\$ 5,273.25

While it also appears that receipts were issued in the same manner all years under audit, complete records were only made available for the fiscal period ending June 30, 2017. As copies of receipts were not available for prior periods it was not possible to know with certainty that receipts were issued for any or all of the directed donations. The books and records of the Organization are addressed below in greater detail.

Under paragraph 168(1)(d) of the Act, the registration of a charity may be revoked if it fails to issue donation receipts in accordance with the Act and its Regulations. It is our position that the present case consists of material non-compliance and for this reason, there may be grounds to revoke the registered status of the Organization under paragraph 168(1)(d) of the Act.

2.) Failure to maintain adequate books and records

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

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

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

- a) the records and books of account referred to in this section in respect of which a period is prescribed, together with every account and voucher necessary to verify the information contained therein, for such a period as is prescribed;

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

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

- i. it is the responsibility of the registered charity to prove that its charitable status should not be revoked;¹⁵
- 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;¹⁶ 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.¹⁷

The Organization provided donation summary sheets and bank statements for each year under audit. For the fiscal 2017 year the Organization also provided copies of deposit slips and copies of all donation receipts issued. Copies of the deposit slips and donation receipts were not made available for the 2015 and 2016 years. In addition, the following issues were noted in regards to the books and records of the Organization during the audit:

Internal Controls

The Organization was requested to provide a detailed description of their receipting practices on June 18, 2018. Representations from the Organization dated July 19, 2018 provided the following information:

- Donations are received either online, by formal fundraisers, or by [REDACTED]
- [REDACTED] deposits any necessary cheques
- The information is then sent to Baltimore for data entry
- Receipts are generated by the database system and are signed by [REDACTED] or Mr. Jerome Kadden

¹⁵ See Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at paras 26-27, [2002] 2 CTC 93.

¹⁶ Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at para 39, [2002] 2 CTC 93.

Furthermore, failing to comply with the requirements of section 230 of the Act by refusing to make documents available can lead to a fine and imprisonment, in addition to the penalty otherwise provided. See subsection 238(1) of the Act.

¹⁷ See Prescient Foundation v MNR, 2013 FCA 120 at para 51, [2013] FCJ no 512.

The following inconsistencies were noted between representations received and the review of the books and records:

- The Organization stated in their representations that donations are received online, by formal fundraiser, or by [REDACTED]. It was noted through an open source media search that there is a [REDACTED] employed by [REDACTED] which is located at the same address as the books and receipts address filed on the T3010. A review of the summary sheet prepared by the Organization and bank deposit books show that donations are almost exclusively by cheque. As per the deposit slips, the individual depositing the cheques has the initials [REDACTED] which does not support that [REDACTED] is responsible for making the majority of the deposits. Further, it was noted during the revenue reconciliation that a small portion of deposits could not be reconciled to deposit slips. For those deposits the donor summary sheet prepared by the Organization included notations such as "Deposited by [REDACTED] directly into [REDACTED] 9/22/16" and "Deposited by [REDACTED] 12/16/16" making it appear that [REDACTED] is responsible for a very small number of cheques received.
- All of the receipts for 2017 provided in the representations are signed by [REDACTED] who is the president of the [REDACTED]. A sample of receipts for 2015 and 2016 available through the Charities Directorate are on the same template as the receipts issued in 2017, and also include the signature of [REDACTED]. It does not appear that any other individual has signed any donation receipts for the period under audit.
- There were no details provided as to what "information" was sent to Baltimore for data entry as it appears the only source documents are the cheques received from the donors. As noted above, it does not appear that [REDACTED] is responsible for completing the majority of the deposits, making it unclear if donations are being sent to another individual within the Organization, or directly to the Ner Israel Rabbinical College.

There are serious concerns with the internal controls of the Organization, and it does not appear that the Organization is maintaining adequate direction and control over their resources or their receipting.

Reconciliation issues

Copies of the deposit slips and donation receipts were not made available for the 2015 and 2016 years. The donation summary sheet prepared by the Organization was not able to be reconciled with the amounts filed on the T3010 Return. This was in part due to receipts being issued to other charities, funds being received from other charities and receipts being issued in the name of the individual donor, and post-dated cheques being received and recorded on the summary, but not yet accounted for as revenue as the amounts were not yet deposited into the bank accounts.

Board minutes

The Organization maintains no Board minutes and it does not appear that board meetings take place.

Under paragraph 188.2(2)(a), an Organization may receive a notice of suspension of delivering official receipts if it contravenes to subsection 230(2). It is our position the Organization has failed to comply with the Act by failing to maintain adequate books and records. For this reason, there may be grounds to suspend the Organization's authority to issue official receipts under paragraph 188.2(2)(a) 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 dealing with books and records. It is our position that the present case consists of material non-compliance. For this reason, it appears to us that there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(e) of the Act.

3.) Failure to file an accurate T3010, Registered Charity Information Return

Pursuant to subsection 149.1(14) of the Act, every registered charity must, within six months from the end of the charity's fiscal period (taxation year), without notice or demand, file a Registered Charity Information Return with the applicable schedules.

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

The audit showed the following errors with the T3010 Returns filed during the audit period:

Line 4100 - Cash, bank accounts, and short term investments

An error during preparation of the T3010 Return for the fiscal period ending 2017-06-30 resulted in amounts reported on Line 4100 being overstated by \$198,344.

Line 4500 - Total eligible amount of all gifts for which the charity issued tax receipts

Line 4500 was overstated in each year as it included amounts received from other registered charities which should have been included on Line 4510.

Line 4510 - Total amount received from other registered charities

Line 4510 was understated as a portion of amounts received from other registered charities were included on Line 4500 in error.

T1235 - Directors/Trustees and Like Officials Worksheet

The start and end dates for directors were not completed for each year under review.

Financial Statements

Financial statements included with the T3010 Return should include, at a minimum, a balance sheet, income statement, and relevant notes to the financial statements.

The financial statement filed by the Organization was not adequate as a separate balance sheet and income statement were not filed, and no notes were provided detailing the non-arm's length relationship between the individuals in control of the Canadian Friends of Ner Israel Rabbinical College and the Ner Israel Rabbinical College. Also, the financial statements inaccurately listed the main disbursement as "Awards" when no awards were granted by the Organization.

Under subsection 188.2(2.1), an Organization may receive a notice of suspension of receipting privileges for failing to meet the requirements under subsection 149.1(14). It is our position the Organization has failed to comply with the Act by failing to file an accurate T3010. For this reason, there may be grounds to suspend the Organization's authority to issue official receipts under subsection 188.2(2.1) of the Act.

Under paragraph 168(1)(c) of the Act, the registration of a charity may be revoked if it fails to file a charity information return when required under the Act. It is our position the Organization has failed to comply with the Act by failing to file an accurate T3010. For this reason, there may be grounds to revoke the registered status of the Organization under paragraph 168(1)(c) of the Act.

Areas of Non-Compliance Where Sanctions Do Not Apply:

4.) Failure to comply with the requirements of the Act as they apply to the Organization's designation

As detailed in Guidance CG-017, General requirements of charitable registration, registered charities must continue to meet all registration requirements in order to retain their registered status.

A charitable organization must meet the following requirements for continued registration:

- be established as a corporation, a trust, or under a constitution
- have exclusively charitable purposes
- primarily carry on its own charitable activities, but may also gift funds to other qualified donees
- more than 50% of its governing officials must be at arm's length with each other
- generally receive its funding from a variety of arm's length donors
- its income cannot be used for the personal benefit of any of its members, shareholders, or governing officials

The Organization was granted registration as a charitable organization in a Notification of Registration letter dated July 14, 1967.

In a letter dated November 6, 1972 from the CRA, the Organization was informed that the Declaration of Partnership no longer constitutes a legally binding governing document, and that new governing documents were required to be submitted to the CRA to continue to qualify as a charitable organization. There have been no revised governing documents submitted to the Charities Directorate. On June 18, 2018 the Organization was asked to provide copies of current governing documents, to which their response was that they were uncertain as to what governing documents referred to. As a result, it appears that the originally filed Declaration of Partnership has not been replaced by valid governing documents as required for continued registration.

Under paragraph 168(1)(b) of the Act, the registration of a charity may be revoked if it ceases to comply with the requirements of this Act for its registration. It is our position that the Organization has failed to comply with the Act by failing to meet the requirements of a charitable organization. For this reason, there may be grounds to revoke the registered status of the Organization under paragraph 168(1)(b) 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, do not hesitate to contact me at the numbers indicated below. My manager, Michael Speakman, may also be reached at (343) 543-7518.

Yours sincerely,



Katie Kesselring
Audit Division

Telephone: (226) 989-2784

Facsimile: (519) 585-2803

Address: 166 Frederick Street
Kitchener ON N2H 0A9

c.c.: Jerome Kadden, Trustee

