

December 8, 2022

**REGISTERED MAIL**

John Maas, Director  
Brothers of Our Lady of Lourdes  
405 – 11012 MacLeod Trail SE  
Calgary AB T2J 6A5

BN: 118820232 RR0001  
Case number: 42701541

Dear John Maas

**Subject: Notice of intention to revoke**

We are writing with respect to our letter dated October 7, 2021, (copy enclosed) in which Brothers of Our Lady of Lourdes (the Organization) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from January 1, 2015 to December 31, 2018. 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 (the Act).

In response to our letter, the Organization submitted a written request for voluntary revocation through its legal representative on March 7, 2022. After reviewing the Organization's request, it was our finding that voluntary revocation was not a suitable resolution to the audit. We informed the Organization of this decision in a letter dated March 16, 2022 (attached). The Organization was given an additional 30 days to provide representations to the AFL. In a subsequent faxed response submitted by the Organization's legal representative on April 11, 2022, the Organization stated that while it had hoped voluntary revocation could be an option, it accepts our finding that voluntary revocation is not a suitable resolution to the audit.

**Conclusion**

The audit by the CRA found that the Organization has continued to fail to comply with the requirements set out in the Act. In particular, the organization failed to implement the corrective measures outlined in the compliance agreement to remedy the non-compliance found in our previous audit. The Organization failed to devote resources to charitable activities carried on by the Organization itself, is not constituted and operated exclusively for charitable purposes, failed to maintain adequate books and records, failed to file an information return as and when required by the Act and/or its Regulations, failed to comply with the requirements of the Act as they apply to the Organization's designation, and failed to meet its disbursement quota. This non-compliance constitutes a serious breach of the requirements for registration. For these reasons, and for each reason alone it

is our position that the Organization no longer meets the requirements for charitable registration.

Consequently, for the reasons mentioned in our letter dated October 7, 2021, 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)(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.

<b>Business number</b>	<b>Name</b>
118820232RR0001	Brothers of Our Lady of Lourdes Calgary AB

In addition, due to the serious and material nature of non-compliance found in the audit, the CRA has decided to publish a copy of the notice in the Canada Gazette immediately after the expiration of 30 days from the date of mailing of this notice pursuant to paragraph 168(2)(b) of the Act.

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 include the BN account number and be sent to:

Assistant Commissioner  
Appeals Intake Centre  
Post Office Box 2006, Station Main  
Newmarket ON L3Y OE9

However, please note that even if the Organization files a notice of objection with the CRA, this will not prevent the CRA from publishing the notice of revocation in the Canada Gazette immediately after the expiration of 30 days from the date of mailing of this notice.

The Organization has the option of filing an application with the Federal Court of Appeal (FCA), as indicated in paragraph 168(2)(b) of the Act, to seek an order staying publication of the notice of revocation in the Canada Gazette. The FCA, upon reviewing this application, may extend the 30-day period during which the CRA cannot publish a copy of the notice.

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 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 that may result in significant changes in how the Organization calculates its Good and Services Tax/Harmonized Sales Tax (GST/HST) to be collected, input tax credits, and rebate entitlements. If you have any questions about your GST/HST obligations and entitlements, please go to **canada.ca/gst-hst** or call GST/HST Rulings at 1-800-959-8287.

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.

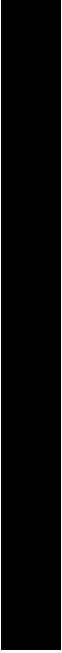
Yours sincerely,

*Sharmila P. Khare*

Sharmila Khare  
Director General  
Charities Directorate

Enclosures

- Appendix A, Relevant provisions of the Act
- CRA letter dated October 7, 2021
- CRA letter dated March 16, 2022
- Organization's faxed letter dated April 11, 2022



## 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

(i) 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,

(iii) 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,

(b.1) a registered journalism organization,

(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.



October 7, 2021

**REGISTERED**

John Maas  
Director  
Brothers of Our Lady of Lourdes

BN: 118820232RR0001  
File#: 0202549

Dear John Maas:

**Subject: Audit of Brothers of Our Lady of Lourdes**

This letter results from the audit of the Brothers of Our Lady of Lourdes (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from January 1, 2015, to December 31, 2018.

The Organization is advised that the CRA had identified specific areas of non-compliance with the provisions of the Income Tax Act and/or Income Tax Regulations in the following areas.

<b>AREAS OF NON-COMPLIANCE</b>		
	<b>Issue</b>	<b>Reference</b>
1.	Failed to devote resources to charitable activities carried on by the organization itself: a) Lack of direction and control over its own resources/ resourcing non-qualified donees	149.1(1), 149.1(2), 168(1)(b)
2.	It is not constituted and operated exclusively for charitable purposes a) Unstated collateral non-charitable purpose b) Not operating exclusively for charitable purposes c) <b>Gifting to non-qualified donees*</b>	149.1(1), 149.1(2), 168(1)(b), 188.1(4), 188.1(5)
3.	<b>Failed to maintain adequate books and records*</b>	149.1(2), 168(1)(e), 188.2(2)(a), 230(2)
4.	Failed 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)
5.	Failed to comply with the requirements of the Act as they apply to the Organization's designation	149.1(1), 149.1(2), 149.1(6.3), 168(1)(b), 248(1), 250(4)
6.	Failed to meet its disbursement quota	149.1(2)(b), 168(1)(b)

\* Non-compliance issue subject to sanctions (penalties/suspension)

This letter describes the areas of non-compliance identified by the CRA relating to the legislative and common law requirements applicable to registered charities, and offers the Organization an opportunity to respond and present additional information and explain why its registered status should not be revoked. 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.

Registered charities must comply with the law, failing which penalties and/or suspensions may be applicable pursuant to sections 188.1 and/or 188.2 of the Act. These include suspension of the Organization's authority to issue official receipts and suspension of its status as a "qualified donee". While the purpose of a sanction is to provide an alternative to revocation, notice may still be given of our intention to revoke the registration of the Organization by issuing a notice of intention to revoke in the manner described in subsection 168(1) of the Act.

## **Background**

The Organization was audited previously for its fiscal periods ending December 31, 2011, and December 31, 2012.

The previous audit revealed that the Organization failed to maintain adequate books and records, made gifts to non-qualified donees, failed to devote resources to charitable activities and made payments to directors without proper documentation.

The CRA provided the Organization with the opportunity to address the identified areas of non-compliance by entering into a Compliance Agreement<sup>1</sup> with CRA. This agreement, which was certified by the Organization's sole director, John Maas, on September 22, 2014, contained corrective measures for the Organization to implement which are attached in Appendix A.

Based on our current audit findings in combination with the findings of the prior audit, we have concerns regarding the Organization's future compliance, particularly given its failure to remedy identified areas of non-compliance in accordance with the corrective measures outlined in the above-mentioned agreement.

The balance of this letter describes the identified areas of non-compliance and the sanction(s) proposed in further detail.

## **General legal principles**

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<sup>1</sup> Compliance Agreement - Such an agreement is reached through discussion with, and agreement from, the charity. The terms of the agreement are spelled out in a formal document called a compliance agreement that is signed by both the charity and the CRA. The agreement identifies the problems, the steps the charity will take to bring itself into compliance, and the potential consequences to the charity of not abiding by the agreement.

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>2</sup> To be exclusively charitable, a purpose must fall within one or more of the following four categories (also known as “heads”) of charity<sup>3</sup> and deliver a public benefit:

1. relief of poverty;
2. advancement of education;
3. advancement of religion; or
4. certain other purposes beneficial to the community in a way the law regards as charitable.

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.<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>

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<sup>2</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 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 be incidental to charitable purposes.

<sup>3</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 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.

<sup>4</sup> 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*].

<sup>5</sup> 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.

<sup>6</sup> 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 446-447.

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:

- 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>

As well, a charitable purpose<sup>8</sup> 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 registration<sup>9</sup>.

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

But the inquiry cannot stop there. In *Guaranty Trust*, supra at p.144, this Court expressed the view that the question of whether an organization was constituted exclusively for charitable purposes cannot be determined solely by reference to the objects and purposes for which it was originally established. It is also necessary to consider the nature of the activities presently carried on by the organization as a potential indicator of whether it has since adopted other purposes. In other words, as Lord Denning put it in *Institution of Mechanical Engineers v Cane*, [1961] A.C. 696 (H.L.), at p. 723, the real question is, "for what purpose is the Society at present instituted?"<sup>10</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, or even form, a separate

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

<sup>8</sup> For more information about charitable purposes see CRA Guidance CG-019, How to Draft Purposes for Charitable Registration.

<sup>9</sup> *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.

<sup>10</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.

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

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>11</sup>

A charity’s own charitable activities may be carried out by its directors, employees or volunteers, or through intermediaries (a person or non-qualified donee that is separate from the charity, but that the charity works with or through, such as an agent, contractor or partner). If acting through an intermediary, the charity must establish that the activity to be conducted will further its charitable purposes, and that it maintains continued direction and control over the activity and over the use of the resources it provides to the intermediary to carry out the activity on its behalf.<sup>12</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>13</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.

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.<sup>14</sup>

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<sup>11</sup> A “qualified donee” means a donee described in subsection 149.1(1) of the Act.

<sup>12</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>13</sup> 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].

<sup>14</sup> See for example *Canadian Magen David Adom for Israel v MNR*, 2002 FCA 323 at para 69, [2002] FCJ no 1260, Sharlow JA.

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

### **1. Failed to devote resources to charitable activities carried on by the organization itself:**

#### **a) Lack of direction and control over its own resources/resourcing non-qualified donees**

#### Legislation:

Subsection 149.1(1) of the Act defines a charitable organization, which reads in part as:

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

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

Accordingly, a charitable organization must be careful about how it carries on its activities and it must ensure that it keeps sufficient direction and control over its resources, or it could possibly be transferring money to non-qualified donees, which is not a charitable activity.

A “qualified donee” means a donee defined in subsection 149.1(1). Qualified donees are as follows:

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

As the Act specifically states what constitutes a qualified donee, entities not expressly stated in this list are not considered qualified donees.

Though made in reference to an agency relationship, the underlying principles enunciated by the Federal Court of Appeal in *Canadian Committee for the Tel Aviv Foundation v Canada* are applicable to most intermediary arrangements:

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.<sup>15</sup>

And

Pursuant to subsection 149.1(1) of the Act, a charity must devote all its resources to charitable activities carried on by the organization itself. While a charity may carry on its charitable activities through an agent, the charity must be prepared to satisfy the Minister that it is at all times both in control of the agent, and in a position to report on the agent's activities.<sup>16</sup>

As re-iterated by the Court in *Lepletot v MNR*<sup>17</sup>, an organization may carry on charitable activities through an agent if the activities are conducted on behalf of the organization. However, it is not enough for an organization to fund an intermediary that carries on certain activities. The Act requires that the intermediary actually conduct those activities on the organization's behalf. Likewise, the Court in *Canadian Magen David Adom for Israel* mentions the importance of monitoring the activities when it stated that:

[A] charity that chooses to carry out its activities in a foreign country through an agent or otherwise must be in a position to establish that any acts that purport to be those of the charity are effectively authorized, controlled and monitored by the charity.<sup>18</sup>

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

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

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<sup>15</sup> *Canadian Committee for the Tel Aviv Foundation v Canada*, 2002 FCA 72 at para 30, [2002] 2 CTC 93.

<sup>16</sup> *Canadian Committee for the Tel Aviv Foundation v Canada*, 2002 FCA 72 at para 40, [2002] 2 CTC 93.

<sup>17</sup> *Lepletot v MNR*, 2006 FCA 128 at para 5, [2006] 3 CTC 252.

<sup>18</sup> *Canadian Magen David Adom for Israel v MNR*, 2002 FCA 323 at para 66, [2002] FCJ no 1260.

To this end, the Organization is required to establish that it maintains continued direction and control over the substantive charitable activities that are ostensibly being carried out on its behalf. In this regard, the existence of an arrangement with an intermediary, written or otherwise, is not enough to prove that a charity meets the own activities test. The Organization must be able to show that the terms of any arrangement establish a real, ongoing, active relationship with the intermediary,<sup>19</sup> and are actually implemented. For instance, the documentation should include:

- a clear, complete, and detailed description of the activity that is to be conducted, how it furthers the charitable purposes of the Organization and how it is to be carried out by the project participant on the Organization's behalf, including parameters, deliverables, milestones or goals;
- provision for real and effective monitoring and supervision of the activity, and the project participant carrying on the activity, with mechanisms for someone accountable to the Organization to give instructions about, have input into, and modify the nature or scope of, the activity on an on-going basis; and
- a requirement for the Organization to receive regular, meaningful reports as the activity progresses. To be meaningful, reporting requirements must specify issues to be covered, and when they must be submitted, to ensure the Organization has the opportunity to make significant decisions in regard to the conduct of the activity on a timely and ongoing basis.

Audit findings:

During the audit the following concerns were raised with regards to the direction and control over the Organization's resources:

- a) The Organization transferred funds to its sister church in the Netherlands, a non-qualified donee named Broeders OLV Van Lourdes;
- b) No agency agreements were made with the sister church regarding how funds would be used, nor when and what progress reports would be received by the Organization;
- c) There were no meeting minutes provided describing the Organization's decision and approval process for sending funds to the sister church;
- d) The accountant for the sister church appears to make decisions regarding the Organization's funds here in Canada, as opposed to the Organization's directors; and
- e) No expenditure receipts were provided indicating what funds transferred to the sister church had been used for, nor was any evidence provided to indicate that records of this type had been maintained.

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<sup>19</sup> See notably Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at para 40, [2002] 2 CTC 93.



The supporting documentation reviewed during the audit included several email messages sent from an individual by the name of [REDACTED] the accountant of the sister church in the Netherlands. These messages were directed to the Organization's accountant, [REDACTED] and consisted of requests for funds to be transferred from the Organization's Canadian bank account to the Broeders Olv Van Lourdes' Netherlands bank account.

Our review of the Organization's activities has led to the determination that the Organization's main activity is to facilitate the transfer of funds to its sister church in the Netherlands. As this activity is directed by the sister church, in addition to providing resources to a non-qualified donee, it shows a lack of direction and control by the Organization over the use of its resources.

Conclusion:

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

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

**a) Unstated collateral non-charitable purpose**

Legislation:

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>20</sup>

As previously mentioned, to be exclusively charitable in law, a purpose must fall within one or more of the four categories of charity and deliver a charitable public benefit. If a purpose is worded in broad or vague language that could permit non-charitable activities and/or result in the delivery of non-charitable benefits (where, for example, the words used may be interpreted in different ways and/or encompass concepts that go beyond the scope of charity),<sup>21</sup> it will not be clear that it is charitable in law (falls within a charitable purpose category and provides a public benefit), or that it defines the scope of the organization's activities.

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<sup>20</sup> See *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10 at para 158; *Travel Just v Canada Revenue Agency*, 2006 FCA 343 at para 8, [2007] 1 CTC 294.

<sup>21</sup> See for example *Re Tetley*, [1941] Ch 308 (where the court held that the word philanthropy can encompass purposes and activities that go beyond the realm of charity).

Although the formal purposes of a registered charity are the obvious source of reference of whether or not the charity is constituted exclusively for charitable purposes, it is not the sole indicator. The CRA also examines an organization's activities to determine whether it may be pursuing an unstated collateral purpose. Under the Act and in common law, an organization established for a collateral purpose cannot be a registered charity.

#### The Organization's purposes

At the time of registration (in 1967) the Organization's purpose was "Taking care of displaced boys and providing facilities such as sports equipment and camping etc."

In a T3010 information return filed in 1985, the Organization's purposes were described as "Involved in Religious and Charitable activities".

During the prior audit, the Organization described its purpose as "To engage in and carry on works of piety, mercy, and charity".

During the current audit, the Organization described its purpose as "The congregation provided reference for various other societies, teaching, counselling, and therapy to different groups, organizations, and individuals." Based on the initial interview with the accountant, these most recent amendments occurred in 2015. However, the Organization has not sought approval from CRA for this amendment to its original governing document, nor is there any evidence that they have updated their by-laws and governing documents with the Province of Alberta.

Finally, additional draft purposes were received from the Organization on February 27, 2020, however these amendments have not been approved.

From the information described above, it appears that the Organization has been pursuing unstated collateral purposes for much of its existence as a registered charity. There appears to be no evidence that the Organization has attempted to formally amend its purposes to reflect any of the above-mentioned changes. It appears therefore, that the Organization has been established for a collateral purpose. As explained earlier, under the Act and in common law, an organization established for a collateral purpose cannot be a registered charity.

It should be noted that the Organization's stated position regarding its most recently amended purposes is that "they are met through the withdrawal and gifting of the income received that is provided to the Church in Holland". This issue is discussed further in Section B below.

#### Audit findings:

The information obtained during the audit has led to the determination that the Organization is carrying out activities in furtherance of purposes other than those stated in its governing documents. Specifically, the audit revealed that the Organization had not

received approval from the Charities Directorate for the unstated collateral purpose of funding the programs and activities of a foreign entity in the Netherlands that is a non-qualified donee.

**b) Not operating exclusively for charitable purposes**

Legislation:

As previously noted, subsection 149.1(1) of the Act defines a “charitable organization” to mean, in part, an organization that is:

- (a) **constituted** and **operated** exclusively for charitable purposes, and
- (a.1) all the resources of which are devoted to charitable activities carried on by the organization itself... (emphasis added)

In order to satisfy the definition of a “charitable organization” pursuant to subsection 149.1(1) of the Act, an organization must satisfy two requirements—it must be both “constituted” and “operated” exclusively for charitable purposes.

The first requirement is constitutional. This requirement is achieved by having a governing document (letters patent, articles of incorporation, a constitution, or a trust document) that establishes the organization for exclusively charitable purposes and gives an organization its legal existence.<sup>22</sup> The Organization appears to have been constituted for charitable purposes, based on our review of the Organization’s original incorporating document dated May 20, 2008. Our review of the Organization’s purposes is discussed in detail in the previous section.

However as described above, in order to satisfy the definition of a charitable organization in subsection 149.1(1) of the Act, an organization must also demonstrate that it meets the second requirement, which is operational and requires an assessment of the activities of the Organization.

The Oxford Canadian Dictionary, University Press First Published 2000; reissued 2004, defines “operate” (of a person or an organization) as “manage, work, control; put or keep in a functional state” and as to “be in action; function”. There is no way to determine whether an organization is managed, worked, or run in a specific way without having specific activities to which this standard can be applied.

It is a principle of law that Parliament has taken not to employ redundant language in legislation, therefore “operated” would be unnecessary if activities were not required since “constituted” would be sufficient.

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<sup>22</sup> All registered charities must be legally established by a governing document. Charitable organizations can be established as a corporation, a trust, or under a constitution. Charitable foundations can be established as a corporation or a trust.

Furthermore, the definition of “charitable organization” is expressed in the present tense, indicating an existing state of affairs. It appears evident that without activities a registered charity cannot establish that it is a “charitable organization”, and therefore cannot meet the designation requirement.

Prior audit findings:

During the prior audit, the Organization advised CRA that they had not been and were not currently undertaking any programs. The Organization advised further that they were in the process of winding up operations.

Audit findings:

The current audit revealed that as was the case during the previous audit, the Organization has remained inactive regarding the undertaking of any programs in furtherance of its formal purposes. It was also found that the Organization has not wound up any of its operations.

The current audit also revealed the following regarding whether the Organization is undertaking charitable activities:

- a) As mentioned previously, the Organization describes its current purpose as “to provide reference for various other societies, teaching, counselling, and therapy to different groups, organizations, and individuals”. In furtherance of this purpose, it is the Organization’s stated opinion that it achieves this through the activity of gifting funds to the church in the Netherlands;
- b) With respect to the funding of projects through other organizations (inside or outside Canada) either by agreement or understanding, the Organization has confirmed that no agreements of any sort exist between the Organization and the church in the Netherlands;
- c) The Organization has no employees operating in the Netherlands.

The Organization provided no documentation, written agreements, or progress reports to support its position that charitable activities were being undertaken through the transfer of funds to the Organization’s sister church in the Netherlands.

While the Organization was originally constituted for a charitable purpose, the current audit revealed that it does not appear to be carrying out any activities in furtherance of that stated purpose and is instead transferring funds to a foreign organization that is not a qualified donee.

Without documentary evidence substantiating that the Organization is carrying on or plans to carry on any activities in furtherance of exclusively charitable purposes, it is our position that the Organization does not meet the designation requirements of a “charitable organization.”

Conclusion:

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 the Act for its registration. It is our position that the present case consists of material non-compliance. For this reason, it appears that there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

**c) Gifting to non-qualified donees (non-compliance issue subject to penalties)**

Legislation:

The Act permits a registered charity to carry out its charitable purposes both inside and outside Canada in only two ways: it can make gifts to other organizations that are on the list of qualified donees set out in the Act, and it can carry on its own charitable activities under its own direction and control. In contrast to the relatively passive transfer of money or other resources involved in making gifts to qualified donees, carrying on one's own activities implies that the charity is an active and controlling participant in a program or project that directly achieves a charitable purpose.

Prior audit findings:

A review of the Organization's ledgers during the prior audit revealed that it had donated \$700 to two non-qualified donees. In 2011 the Organization donated \$200 to an organization called the CDN Religious Conference, and in 2012 it donated \$500 to an organization called Together in Action.

The prior audit also revealed that the Organization had donated \$843,000 in two transactions to an organization called the Congregation of the Brothers Church in Holland. The first transaction in the amount of \$500,000 occurred on May 7, 2013, while the second transaction in the amount of \$343,000 occurred on August 23, 2013. A review of CRA records indicates that the Congregation of the Brothers Church is also a non-qualified donee.

Audit findings:

During the current audit it was revealed that the Organization had donated funds to Broeders OLV Van Lourdes, the Organization's sister church in the Netherlands. As mentioned previously in this letter, Broeders OLV Van Lourdes is a non-qualified donee.

Specifically, the Organization sent the following funds to Broeders OLV Van Lourdes on the following dates:

- a. \$475,000 on November 18, 2015;
- b. \$125,000 on December 13, 2016;

- c. \$ 70,000 on August 21, 2017; and
- d. \$150,000 on December 7, 2018.

The audit revealed further that apart from funding Broeders Oly Van Lourdes, the Organization is not undertaking any additional activities. As such, it is our determination that the Organization is acting as a conduit, raising funds in Canada and sending those funds to organizations outside of Canada that are non-qualified donees.

As mentioned previously, at the conclusion of the prior audit the Organization was advised that it cannot make gifts to non-qualified donees and was given an opportunity to correct this non-compliance by signing a compliance agreement. The compliance agreement contained a statement that the Organization will refrain from making gifts to non-qualified donees, in addition to maintaining direction and control at all times if using intermediaries to carry out its activities. The results of the current audit demonstrate that the Organization has failed to adhere to the terms of that agreement, certified on September 22, 2014, by continuing to make gifts to non-qualified donees.

A gift to a non-qualified donee is sanctionable as an undue benefit at subsection 188.1(5) of the Act, while the calculation of that undue benefit sanction is found at subsection 188.1(4) of the Act, as follows:

#### **188.1(4) Undue benefits**

A registered charity or registered Canadian amateur athletic association that, at a particular time in a taxation year, confers on a person an undue benefit is liable to a penalty under this Part for the taxation year equal to

- (a) 105% of the amount of the benefit, except if the charity or association is liable under paragraph (b) for a penalty in respect of the benefit; or
- (b) if the Minister has, less than five years before the particular time, assessed a liability under paragraph (a) or this paragraph for a preceding taxation year of the charity or association and the undue benefit was conferred after that assessment, 110% of the amount of the benefit.

#### **188.1(5) Meaning of undue benefits**

For the purposes of this Part, an undue benefit conferred on a person (referred to in this Part as the "beneficiary") by a registered charity or registered Canadian amateur athletic association includes a disbursement by way of a gift or the amount of any part of the income, rights, property or resources of the charity or association that is paid, payable, assigned or otherwise made available for the personal benefit of any person who is a proprietor, member, shareholder, trustee or settlor of the charity or association, who has contributed or otherwise paid into the charity or association more than 50% of the capital of the charity or association, or who deals not at arm's length with such a person or with the charity or association, as well as any benefit conferred on a beneficiary by another

person, at the direction or with the consent of the charity or association, that would, if it were not conferred on the beneficiary, be an amount in respect of which the charity or association would have a right, but does not include a disbursement or benefit to the extent that it is

- (a) an amount that is reasonable consideration or remuneration for property acquired by or services rendered to the charity or association;
- (b) a gift made, or a benefit conferred,
  - (i) in the case of a registered charity, in the course of a charitable act in the ordinary course of the charitable activities carried on by the charity, unless it can reasonably be considered that the eligibility of the beneficiary for the benefit relates solely to the relationship of the beneficiary to the charity, and
  - (ii) in the case of a registered Canadian amateur athletic association, in the ordinary course of promoting amateur athletics in Canada on a nationwide basis;

Or

- (c) a gift to a qualified donee.

Because the Organization has conferred an undue benefit on a non-qualified donee it is in contravention of subsection 188.1(5), and is liable to a financial penalty under subsection 188.1(4). We have therefore calculated the proposed financial penalty to the Organization as follows:

<b>Fiscal year</b>	<b>Payment Date</b>	<b>Amount</b>	<b>Penalty</b>	<b>Total</b>
2015	November 18, 2015	475,000	X 105%	= \$498,750
2016	December 13, 2016	125,000	X 105%	= \$131,250
2017	August 21, 2017	70,000	X 105%	= \$ 73,500
2018	December 7, 2018	150,000	X 105%	= \$157,500
				<b>= \$861,000</b>

At this time we are not proposing to apply these sanctions due to our current proposal to revoke the charitable status of the Organization under paragraph 168(1)(b) of the Act. Nevertheless, please note that we maintain our right to consider the application of these sanctions depending on the nature of your response and representations to this letter. Details about the representation process are provided at the end of this letter.

Conclusion:

Accordingly, it is our position that the Organization has failed to meet the requirements of subsection 149.1(1) of the Act - that it be constituted for exclusively charitable purposes, with all its purposes falling within one or more of the four categories of charity and delivering a public benefit, without conferring an undue benefit. For these reasons,

and each of these reasons, it appears there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

**3. Failed to maintain adequate books and records (non-compliance issue subject to suspension)**

Legislation:

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;<sup>23</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>24</sup> and

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<sup>23</sup> See Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at paras 26-27, [2002] 2 CTC 93.

<sup>24</sup> Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at para 39, [2002] 2 CTC 93. Furthermore, failing to comply with the requirements of section 230 of the Act by refusing to make documents available can lead to a fine and imprisonment, in addition to the penalty otherwise provided. See subsection 238(1) of the Act.



- 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>25</sup>

Prior audit findings:

During the course of the prior audit, the following deficiencies were found with regards to the Organization's books and records:

- a review of expenditures for both years audited revealed that there was insufficient source documentation to verify that all amounts reported as "donations" in the ledger were paid to qualified donees; and
- the Organization failed to provide any evidence that it maintained a minute book or any additional documentation that would describe its direction and decision making processes.

Audit findings:

During the course of the current audit, the following deficiencies were found with regard to the Organization's books and records:

- a. As mentioned previously, the Organization describes its current purpose and activities as follows: "The congregation provided reference for various other societies, teaching, counselling, and therapy to different groups, organizations, and individuals. The registered objectives are met through the withdrawal and gifting of the income received that is provided to the Church in Holland". However, the Organization has failed to amend its original governing document to record this change, either with CRA or the province of Alberta;
- b. The Organization failed to provide meeting minutes during the audit. We were therefore unable to determine the Organization's decision making processes regarding the distribution of funds to the Netherlands;
- c. The Organization failed to provide all deposit slips required to verify claimed revenue amounts;
- d. The Organization states that its "brothers" have taken a vow of perpetual poverty and the pensions they receive go back into the church bank account in the form of revenues. While the audit revealed that there were several deposits into the Organization's bank account throughout the audit period, these revenues were under-reported on the T3010 for 2015 and were not reported at all on the T3010s from 2016 to 2018.
- e. Inadequate source documentation was provided in regards to expenses;
- f. The following wire/cable transfers were made by the Organization during the audit period:

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<sup>25</sup> See *Prescient Foundation v MNR*, 2013 FCA 120 at para 51, [2013] FCJ no 512.

- \$475,000 on November 18, 2015;
- \$125,000 on December 13, 2016;
- \$70,000 on August 21, 2017; and
- \$150,000 on December 7, 2018.

While the Organization provided a summary of costs as well as bank debit memos during the audit, the documentation provided was insufficient to describe the purpose of these transfers;

- g. There was no supporting documentation in the books and records to indicate how the amounts reported in the general ledger under “Expenses” (as “assessment to Dutch province” and “Professional fees”) were determined;
- h. There was no evidence of any formal agreements regarding funds that were transferred to the Organization’s sister church in the Netherlands;
- i. There were no expenditure receipts or progress reports regarding funds that were transferred to the church in the Netherlands; and
- j. While an external accountant is hired by the Organization to prepare all of its bookkeeping and financial statements, there is no review or confirmation of those financial statements or the T3010s by the Organization’s board.

Due to the serious nature of the non-compliance issues identified and described above, it is our view that the Organization should be suspended, for failing to maintain proper books and records, under paragraph 188.2(2)(a) of the Act which states that:

The Minister may give notice by registered mail to a person referred to in any of paragraphs (a) to (c) of the definition qualified donee in subsection 149.1(1) that the authority of the person to issue an official donation receipt referred to in Part XXXV of the Income Tax Regulations is suspended for one year from the day that is seven days after the day on which the notice is mailed

(a) if the person contravenes any of sections 230 to 231.5...

At this time we are not proposing to apply the suspension due to our current proposal to revoke the charitable status of the Organization under paragraph 168(1)(e) of the Act. Nevertheless, please note that we maintain our right to consider the application of this suspension depending on the nature of your response and representations to this letter. Details about the representation process are provided at the end of this letter

#### Conclusion:

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.

#### **4. Failed to file an information return as and when required by the Act and/or its Regulations**

##### Legislation:

Subsection 149.1(14) of the Act states that:

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

It is the responsibility of 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 major inaccuracies in a T3010 are a sufficient basis for revocation.<sup>26</sup>

##### Audit findings:

The audit revealed that the Organization improperly completed its Form T3010s for the fiscal periods ending December 31, 2015, through December 31, 2018, inclusive. Specifically, the audit revealed the following items for each fiscal year:

2015:

- i) C2 was not completed;
- ii) Schedule 2 was not completed;
- iii) Schedule 3 was not completed;
- iv) Lines 5900 and 5910 were not completed; and
- v) The financial statements did not reconcile to the amounts reported on Form 3010.

2016:

- i) The financial statements and general ledger did not reconcile to the Form T3010;
- ii) Section E was not certified;
- iii) Schedule 2 was not completed;
- iv) Lines 4500 to 4700 were not completed when there was revenues received in the year;
- v) Lines 5900 and 5910 were not completed; and
- vi) Amounts sent to the Netherlands were not reported in the expenditures.

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<sup>26</sup> Opportunities for the Disabled Foundation v MNR, 2016 FCA 94 at paras 48-51.

2017 and 2018:

- i) C2 was not completed;
- ii) Schedule 2 was not completed;
- iii) Section E requires a date, which was not provided;
- iv) Although the Organization received revenue during both audit periods, it failed to report that income in Schedule 6 for both years;
- v) Financial statements were not included with the Form T3010 for both years;
- vi) Lines 4500 to 4700 were not completed although there were revenues received during both years;
- vii) Amounts sent to the Netherlands were not reported in the expenditures;
- viii) We were not able to reconcile the financial statements to the T3010 for both years as the financial statements were not provided;
- ix) Lines 5000 to 5050 were not completed; and
- x) Lines 5900 and 5910 were not completed.

Finally, the Organization was late in filing its Form T3010's for the fiscal periods ending December 31, 2015, and December 31, 2018.

Conclusion:

Under subsection 188.2(2.1) of the Act, an Organization may receive a notice of suspension of its authority to issue official donation receipts for failing to report information that is required to be included in a return filed under subsection 149.1(14) of the Act. It is our position that the Organization has failed to comply with the Act by failing to file an accurate T3010 information return. 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.

In addition, 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 as and when required under the Act. It is our position that the Organization has failed to comply with the Act by failing to file an accurate charity information return. For this reason, there may be grounds to revoke the registered status of the Organization under paragraph 168(1)(c) of the Act.

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

Legislation:

Per subsection 248(1) of the Act, a registered charity, at any time means,

- (a) a charitable organization, private foundation or public foundation, within the meanings assigned by subsection 149.1(1), that is resident in Canada and was either created or established in Canada,

Or

- (b) a branch, section, parish, congregation or other division of an organization or foundation described in paragraph (a), that is resident in Canada and was either created or established in Canada and that receives donations on its own behalf,

that has applied to the Minister in prescribed form for registration and that is at that time registered as a charitable organization, private foundation or public foundation.

For the purposes of the Act, if an organization is incorporated, it is deemed to be resident under subsection 250(4) of the Act. If an organization is not incorporated, CRA looks at a variety of factors such as the country of residency of the officers, the meeting place of officers, and the location of control and management.

In order to establish residency, there must not only be some substantial operation in the country, but some part of the superior and directing authority as well. (Thibodeau 78 DTC 6376).

Furthermore, the Income Tax Act definition of "charitable organization" found in subsection 149.1(2) also requires that more than 50% of the directors, trustees, officers or similar officials of a charitable organization must deal with each other and with each of the other directors, trustees, officers or similar officials at arm's length. In order to meet this requirement there must be at least 3 directors.

#### Audit findings:

The current audit revealed the following issues with respect to the Organization's designation:

- i) The Organization's Chairperson, John Maas, is the only individual listed on the board of directors as of June 2019. He is also the only individual listed on Form T3010, as well as in the corporate registry of the Province of Alberta;
- ii) A search of the corporate records indicated that the address of John Maas is [REDACTED]
- iii) John Maas [REDACTED] and [REDACTED]
- iv) The charity has only one director and therefore should be designated as a private foundation.

There is currently no substantial operation being undertaken in Canada, in addition to no direct Canadian authority over the Organization. Based on the information obtained during the audit, it appears that control and management of the Organization takes place in the Netherlands, rather than in Canada.

Conclusion:

The CRA has concluded that although the Organization is constituted in Canada, there appears to be no significant Canadian presence or activity attributable to the Organization. The Minister feels there are grounds to revoke under paragraph 168(1)(b) of the Act as the Organization has ceased to comply with the requirements of this Act for its registration.

**6. Failed to meet its Disbursement Quota**

Legislation:

In order to maintain its status as a charitable organization within the meaning of subsection 149.1(1) of the Act, a registered charity must expend amounts equal to or greater than their disbursement quota calculation. The disbursement quota is the minimum amount a registered charity is required to spend each year on its own charitable activities, or on gifts to qualified donees (for example, other registered charities). The disbursement quota calculation is based on the value of a charity's property **not** used for charitable activities or administration.

If the average value of a registered charity's property **not** used directly in charitable activities or administration during the 24 months before the beginning of the fiscal period exceeds \$100,000, the charity's disbursement quota is: 3.5% of the average value of that property. For the purposes of calculating the disbursement quota, property includes any real estate, investments, or other assets that were not used directly in charitable activities or administration. This may include, for example, cash in bank accounts, inventory, stocks, bonds, mutual funds, GICs, land, and buildings.

A charity is allowed by virtue of subsection 149.1(20) of the Act to offset any shortfalls in its disbursement quota by applying excesses in its disbursement quota from its immediately preceding taxation year and 5 or less of its immediately subsequent taxation years.

Audit findings:

In order to determine the disbursement quota, we reviewed the cash in the bank at the end of each year, accounts receivables, and the investment balances. We noted these below.

Line 5900: To establish the average value, we first determined the value of the charity's property that is **not** used directly in charitable activities or administration at the end of each period within the 24-months. We then added all of the values together and divided the total by the number of periods. The result is the charity's average value of property for the purpose of calculating the disbursement quota, as follows:

	2014-12-31	2015-12-31	2016-12-31	2017-12-31	2018-12-31
Bank account	115,059	36,262	25,670	64,435	16,480
Investments	300,638	655			
Accounts Receivable					
Total	415,697	36,917	25,670	64,435	16,480
Total Line 5900	439,968	647,817	225,980	\$30,965	\$45,052
Multiply line 5900 by 3.5%		x 3.5%	x 3.5%	x 3.5%	x 3.5%
		= 22,674	= 7,909	= 1,084	= 1,577
Less: Amounts spent on charitable expenditures		0	0	0	0
Total Disbursement quota		= 22,674	= 7,909	= 1,084	= 1,577
<b>Total disbursement shortfall</b>		<b>\$33,244</b>			

Based on our calculations, the charity has not met its disbursement quota for the period under audit. We have calculated the Organization's cumulative disbursement shortfall is \$33,244.

#### Conclusion:

The CRA has concluded that the Organization failed to meet its disbursement quota obligation as defined under 149.1(1) of the Act and it is therefore the Minister's position that there are grounds to revoke under paragraph 149.1(2)(b).

#### **The Organization's options:**

##### **a) Respond**

Should you choose to make representations regarding this proposal, please provide your written representations and any additional information regarding the findings outlined above **within 30 days** from the date of this letter. After considering the representations submitted by the Organization, the Director General of the Charities Directorate will decide on the appropriate course of action, which may include:

- no compliance action necessary;
- the issuance of an educational letter;
- resolving these issues through the implementation of a Compliance Agreement;
- the application of penalties and/or suspensions provided for in sections 188.1 and/or 188.2 of the Act; or

- giving notice of its intention to revoke the registration of the Organization by issuing a notice of intention to revoke in the manner described in subsection 168(1) of the Act.

**b) Do not respond**

You may choose not to respond. In that case, the Director General of the Charities Directorate may proceed with the application of penalties and/or suspensions described in sections 188.1 and/or 188.2 of the Act or give notice of its intention to revoke the registration of the Organization by issuing a notice of intention to revoke in the manner described in subsection 168(1) of the Act.

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

If you have any questions or require further information or clarification, please do not hesitate to contact me at the numbers indicated below. My team leader, Francis Yu, may also be reached at 587-335-6904.

Yours sincerely,



Michelle Towns  
Audit Division  
Edmonton Tax Services Office

Telephone: 587-334-8559  
Facsimile: 780-495-6908  
Address: Suite 10 9700 Jasper Avenue Northwest  
Edmonton AB T5J 4C8

Appendix A: Compliance agreement dated September 22, 2014





March 16, 2022




BN: 118820232 RR0001

File #: 0202549

**Subject: Brothers of Our Lady of Lourdes audit review  
for period Jan 1, 2015 to Dec 31, 2018**

Dear 

We acknowledge that in your letter dated March 7, 2022, Brothers of Our Lady of Lourdes requested voluntary revocation of its charitable status, stating that:

- During the audit period the Organization transferred \$820,000 to a sister church in the Netherlands. Had the Organization been advised of the requirement to have direction and control over the use of funds transferred to the sister church by way of an agency agreement they would have entered into an agreement prior to transferring the funds.
- It was not the Organization's intention to violate the requirements under subsection 149.(1) of the Income Tax Act.
- The Organization has transferred \$211,300 from its Canadian bank account to  trust account awaiting transfer to another qualified donee.

A registered charity may request that its charitable status be voluntarily revoked, however, the granting of voluntary revocation is a discretionary process on the part of the CRA. Based on our audit findings, it is our current position that voluntary revocation is not a suitable resolution to the audit and the Organization's request will not be granted at this time for the following:

- The Organization was audited previously for the 2011 & 2012 fiscal periods and the audit determined that, in 2013, it had transferred significant funds to a sister church in the Netherlands. During the prior audit, the Organization was advised to enter into an agreement with the intermediary to ensure it maintains direction and control at all times over activities and funds sent overseas. Additionally, it was advised to maintain, in Canada, adequate books and records to verify all expenditures. These identified areas of non-compliance are both serious and material.

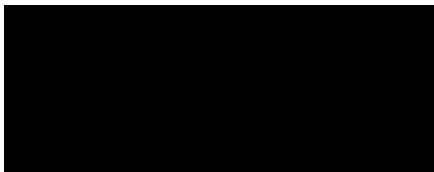
- The current audit determined the Organization did not take any steps to remedy the non-compliance issues of the prior audit and in fact, disregarded the compliance agreement it entered into during the prior audit, and continued transferring funds to the sister church without an intermediary agreement and without maintaining adequate books and records in Canada to support these expenditures.
- The Organization stated during the prior audit that it was winding up and would seek voluntary revocation but operations continued. Voluntary revocation cannot be used as a means to circumvent compliance measures when serious and material non-compliance have been identified.

Per our discussion on January 27, 2022, as the request for voluntary revocation has been denied, you would like the opportunity to respond to the Administrative Fairness Letter of October 7, 2021.

Please provide representation within 30 days from the date of this letter.

Should you have any questions or concerns, I can be reached at the phone number below. My team leader, Francis Yu, can also be reached at 587-335-6904.

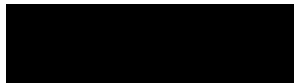
Yours truly,



Bronwyn MacKinnon  
Audit Division  
Edmonton Tax Services Office

Telephone: 587-334-2182  
Toll Free: 1-800-267-2384 (Charities Directorate)  
Facsimile: 780-495-6908  
Address: Suite 10, 9700 Jasper Avenue NW  
Edmonton AB T5J 4C8

cc:



April 11, 2022

**Private and Confidential**

Canada Revenue Agency  
Suite 10 9700 Jasper Avenue NW  
Edmonton, AB T5J 4C8

Attention: Bronwyn MacKinnon

**Delivered Via Fax: 780-495-6908**

Dear Bronwyn MacKinnon:

**Re: Brothers of Our Lady of Lourdes audit review for period Jan 1, 2015 to Dec 31, 2018**  
**BN: 118820232 RR 0001**  
**Your File No. 0202549**

We write on behalf of the Brothers of Our Lady of Lourdes (the "Charity") in response to your letter dated March 16, 2022.

While we had hoped voluntary revocation could be an option for the Charity, we accept your conclusion that is it not a suitable resolution to the audit. We appreciate the opportunity to respond to the Administrative Fairness Letter of October 7, 2021.

On behalf of the Charity, we accept the proposal outlined in the Administrative Fairness Letter to revoke the charitable status of the Charity under paragraph 168(1) of the *Income Tax Act*.

We will work with you to implement the revocation as you may require.

Yours truly,

[Redacted]

Per:

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]