



PROTECTED B

July 2, 2024

**REGISTERED MAIL**

Jonah Libman  
Director  
Ne'eman Foundation Canada

BN: 810956565RR0001  
Case number: 21471541

Dear Jonah Libman:

**Subject: Notice of intention to revoke**

We are writing further to our letter dated March 3, 2021 (copy enclosed), in which Ne'eman Foundation Canada (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, 2016, to December 31, 2017. Specifically, the Organization was asked to explain why its registration should not be revoked in accordance with subsection 168(1) of the Income Tax Act. The assessment of penalties under section 188.1 of the Act and the suspension of its receipting privileges under section 188.2 of the Act were also presented.

We have reviewed and considered your written response dated August 24, 2021, submitted on your behalf by [REDACTED]

[REDACTED] Your reply has not alleviated the majority of our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity. Our concerns are explained in Appendix A attached.

**Conclusion**

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

While we maintain our position that the Organization failed to issue donation receipts in accordance with the Act, which is sanctionable under section 188.1 of the Act and for which a suspension of its receipting privileges under section 188.2 of the Act is applicable, we are no longer considering assessing Part V sanctions as we have declared our intention to revoke the Organization's registered status.

Consequently, for the reasons mentioned in our letter dated March 3, 2021, and pursuant to subsection 168(1) of the Act, we hereby notify you of our intention to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, the revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

Notice is hereby given, pursuant to paragraphs 168(1)(b), 168(1)(c), 168(1)(d) and 168(1)(e) 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>
810956565RR0001	Ne'eman Foundation Canada
	Toronto, ON

After considering the Organization's response, this letter is to inform you that the CRA has decided to issue this notice of intention to revoke the Organization's registration and will 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. It was found that the Organization demonstrated a serious breach of the fundamental requirements for registration, and as such, should be revoked immediately.

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 **30 days** from the day this letter was mailed. The notice of objection should be sent to:

Assistant Commissioner  
Appeals Intake Centre  
Post Office Box 2006, Station Main  
Newmarket ON L3Y 0E9

However, please note that even if the Organization files a notice of objection with the CRA Appeals Branch, 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.<sup>1</sup>

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<sup>1</sup> Unless an order from the FCA is issued extending the 30-day period, the Minister may publish the notice of revocation in the *Canada Gazette* after the 30-day period has elapsed.

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

### **Consequences of revocation**

As of the effective date of revocation:

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

**Reminder**

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

- CRA letter dated March 3, 2021
- Appendix A, Comments on representations
- Appendix B, Relevant provisions of the Act

c.c.: 





March 3, 2021

**REGISTERED MAIL**

Manuel Greenberg  
Director  
Ne'eman Foundation Canada  
75 Lisa Crescent  
Thornhill, Ontario L4J 2N2

BN: 810956565 RR0001  
File #: 3045848

Dear Manuel Greenberg:

**Subject: Audit of Ne'eman Foundation Canada**

This letter results from the audit of the Ne'eman Foundation Canada (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from January 1, 2016, to December 31, 2017.

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

AREAS OF NON-COMPLIANCE		
	Issue	Reference
1.	It is not constituted and operated exclusively for charitable purposes: a) Unstated collateral non-charitable purpose b) Delivery of non-incidental private benefits/conferring an undue benefit to a person	149.1(1), 149.1(2), 168(1)(b), 188.1(4), 188.1(5), 188.2(1)(b)
2.	Failed to devote resources to charitable activities carried on by the Organization itself: a) Lack of direction and control over the use of resources b) Conduct of non-charitable activities / activities do not further a charitable purpose	149.1(1), 168(1)(b)
3.	Failed to maintain adequate books and records	230(2), 230(4), 230(4.1), 168(1)(e), 188.2(2)(a)
4.	Failed to issue donation receipts in accordance with the Act and/or its Regulations	168(1)(d), Regulations 3500 and 3501
5.	Failed to file an information return as and when required by the Act and/or its Regulations	149.1(14), 168(1)(c), 188.2(2.1)

This letter describes the areas of non-compliance identified by the CRA relating to the legislative and common law requirements that apply to registered charities, and offers the Organization with

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.

### General legal principles

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

- relief of poverty;
- advancement of education;
- advancement of religion; and
- other purposes beneficial to the community as a whole in a way which the law regards as charitable.

An organization’s purposes must fall within one or more of these categories to be considered for registration as a charity. The formal purposes as set out in an organization’s governing document must be clear and precise so as to reflect exclusively charitable purposes.

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 may be measurable or intangible. Benefits that are not tangible or objectively measurable should be shown to be valuable or approved by the common understanding of enlightened opinion for the time being.<sup>3</sup> In most cases, the benefit should be a

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<sup>1</sup> See subsection 149.1(1) of the Act, which requires that a charitable organization devote all of its resources to “charitable activities carried on by the organization itself” and *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10, 1999 CanLII 704 (SCC) at paras 156-159. A registered charity may also devote resources to activities that, while not charitable in and of themselves, are necessary to accomplish their charitable purposes (such as expenditures on fundraising and administration). However, any resources so devoted must be within acceptable legal parameters and the associated activities must not become ends in and of themselves.

<sup>2</sup> The Act does not define charity or what is charitable. The exception is subsection 149.1(1) which defines charitable purposes 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 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). The classification approach was explicitly approved of by the Supreme Court of Canada in *Guaranty Trust Co of Canada v Minister of National Revenue*, [1967] SCR 133, and confirmed in *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10, 1999 CanLII 704 (SCC).

<sup>3</sup> For more information about public benefit, see CRA Policy statement CPS-024, Guidelines for registering a charity: Meeting the public benefit test. See also generally *British Columbia (Assessor of Area #09 - Vancouver) v Arts Umbrella*, 2008 BCCA 103; and *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10, 1999 CanLII 704 (SCC).

necessary and reasonably direct result of how the purpose will be achieved.<sup>4</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>5</sup>

- The second part of the test requires the benefit be directed to the **public** or a sufficient section of the public. This means a 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>6</sup>

The CRA must be satisfied that an organization's purposes are exclusively charitable in law, and that its activities directly further these charitable purposes in a manner permitted under the Act. In making a determination, we are obliged to take into account all relevant information.

### **Background**

The Organization was registered effective March 16, 2011, as a charitable organization, with the following purposes:

- Relieve poverty by providing basic amenities including food, clothing and shelter to the needy.
- Advance and teach the religious tenets, doctrines and observances associated with the Jewish faith.
- Advance the Jewish faith by providing spiritual and educational resources to Jews in Israel.
- To promote health by providing affected populations with health care services or products that prevent and manage serious threats to health and survival.

The Organization filed a Certificate of Amendment dated March 23, 2015, to add the following objects:

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<sup>4</sup> For more information about public benefit, see CRA Policy statement CPS-024, Guidelines for registering a charity: Meeting the public benefit test, and CRA Guidance CG-019, How to draft purposes for charitable registration. See also; Commissioners for Special Purposes of the Income Tax v Pemsel, [1891] AC 531 (PC) at 583.

<sup>5</sup> Co-operative College of Canada v. Saskatchewan (Human Rights Commission), 1975 CanLII 808 (SKCA) at para 19; Vancouver Society of Immigrant and Visible Minority Women v MNR, [1999] 1 SCR 10, 1999 CanLII 704 (SCC) at para 202; for more information about charitable purposes see CRA Guidance CG-019, How to draft purposes for charitable registration at para 19.

<sup>6</sup> For more information about public benefit, see CRA Policy statement CPS-024, Guidelines for registering a charity: Meeting the public benefit test.

- To promote health by providing accident victims with physical, occupational or speech therapy.
- To promote health by providing individuals with cancer with access to related counseling, information, or group support programs.
- To promote health by providing public ambulance, paramedic, or firefighting services.

The activities at the time of registration were:

- Distributing food and basic amenities to the needy in Israel. To do so, it intends to complete an agency agreement with Yad Ezra V'Shulamit at [REDACTED] [REDACTED] As agent this organization will distribute food baskets to the needy.
- The Organization intends to engage in Jewish outreach. Initially at least it will do this by contracting with an agent in Israel called Ma'anyei Hayeshua. This organization will help the Organization engage in outreach by setting up outreach kiosks in Israel.

The registration was based on the information supplied by the Organization and on the understanding that it would be carrying out the activities listed in its application. Our review of the Organization's current activities illustrates a significant expansion in scope and nature since the date of registration.

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

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

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

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

#### **Legislation and jurisprudence**

As mentioned above, to be registered as a charity under the Act, Canadian law requires that an organization's purposes be exclusively charitable, and define the scope of the activities that can be engaged in by the organization.<sup>7</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:

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

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<sup>7</sup> See *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10, 1999 CanLII 704 (SCC) at para 159; *Travel Just v Canada Revenue Agency*, 2006 FCA 343 at para 2.

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? (emphasis in original)."<sup>8</sup>

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

### Audit findings

We reviewed a sample of the documentation provided by the Organization for the 210 agents it used during fiscal years 2016 and 2017. Due to the limited documentation provided regarding the Organization's purported activities, we also conducted an internet search. Based on our assessment of those documents and our internet search, it is our view that, beyond the purposes for which the Organization was constituted, the purported activities show that the Organization also operates in a manner which furthers the unstated non-charitable collateral purposes identified below.

The following, while not an exhaustive list, are a few examples of those purported activities.

Agents	Payments to Agent		Activity Description
	2016	2017	
Elad Ir David	\$175,608.26	\$710,159.00	The Organization provided an expense sheet entitled "3D Interactive Model Expenses", but it failed to provide a detailed description of its activities conducted by this agent. We found a [REDACTED] website that states Elad Ir David's "aims to strengthen the Jewish connection to Jerusalem, create a Jewish majority in Arab neighborhoods of East Jerusalem and renew the Jewish community in the City of David, which is also part of the neighborhood of Silwan. The foundation works to achieve its goals by tourism, education, archaeological excavations and obtaining homes in the area to establish a Jewish presence." <sup>9</sup>

<sup>8</sup> *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10, 1999 CanLII 704 (SCC) at para 194, Iacobucci J. See also *AYSA Amateur Youth Soccer Association v Canada (Revenue Agency)*, 2007 SCC 42 at para 42.

<sup>9</sup> [REDACTED] accessed on January 16, 2020.

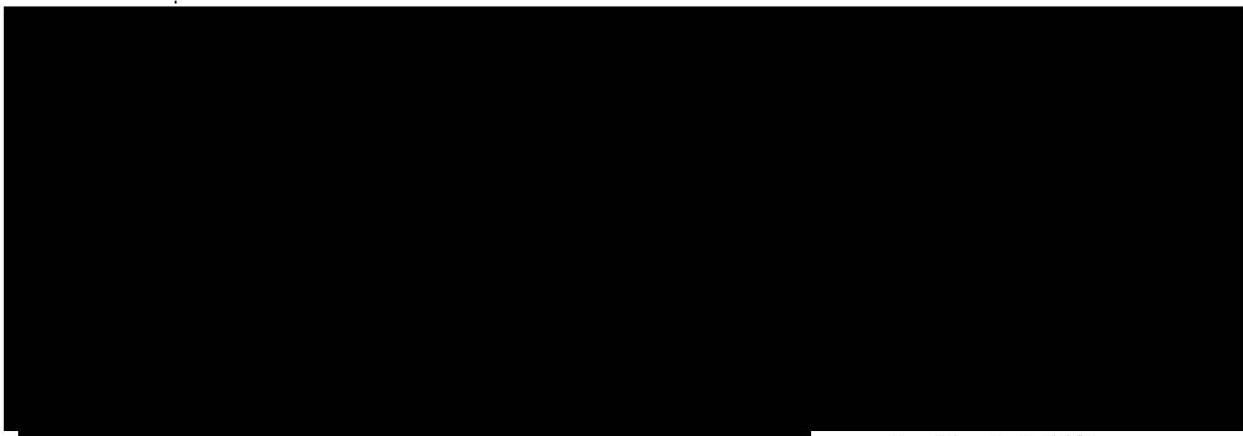
Hapotential Haleumi Ltd	\$0	\$63,625.00	No documentation was submitted by the Organization for this agent. Our internet research <sup>10</sup> indicates that this is a private corporation and there is no indication that it conducts any charitable activities.
Women in Green	\$2,354.95	\$13,851.00	No documentation was submitted by the Organization for this agent. The Organization's website under the "project details" section states: "Women in Green is advancing a grassroots apolitical historical initiative to re-apply Israeli sovereignty over Judea and Samaria with an extensive educational public relations campaign the purpose of which is to bring about a revolution in the national consciousness" <sup>11</sup> .
<b>Total above</b>	<b>\$177,963.21</b>	<b>787,635.00</b>	

"Strengthen the Jewish connection to Jerusalem, and create a Jewish majority in Arab neighborhoods" and "advancing a grassroots apolitical historical initiative to re-apply Israeli sovereignty" shown in the table above, are not purposes the courts have found to be charitable.

Further, while increasing the effectiveness and efficiency of Canada's armed forces is charitable, supporting the armed forces of another country is not. It is our view that the Organization's purported activities described in section 2 b) – conduct of non-charitable activities / activities do not further a charitable purpose below, are to further the purpose of increasing the efficiency and effectiveness of the Israeli armed forces, which is not a recognized charitable purpose in Canada.

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

<sup>10</sup>



accessed on January 5, 2021.

<sup>11</sup> <http://www.neemanfoundation.com/projects/women-in-green/>, accessed on January 5, 2021.



Accordingly, it is our view that the Organization is not constituted and operated exclusively for charitable purposes due to the unstated collateral non-charitable purpose. 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.

b) Delivery of non-incidental private benefits/conferring an undue benefit to a person

**Legislation and jurisprudence**

In order to satisfy the definition of a **charitable organization** pursuant to subsection 149.1(1) of the Act, charitable organization is, amongst other criteria, defined as, "an organization [...] no part of the income of which is payable to, or otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settler thereof."

A registered charity must be established and operated for the purpose of delivering a charitable benefit to the public or a sufficient segment thereof. The public benefit requirement prevents a charity from conferring an unacceptable private benefit in the course of pursuing charitable purposes.

At common law, a private benefit<sup>12</sup> means a benefit provided to a person or organization that is not a charitable beneficiary, or a charitable beneficiary where a benefit goes beyond what is considered to be charitable. Private benefits can be conferred on a charity's staff, directors, trustees, members, and/or volunteers while they are carrying out activities that support the charity, or to third parties who provide the charity with goods or services. Where it can be fairly considered that the eligibility of a recipient relates solely to the relationship of the recipient to the organization, any resulting benefit will not be acceptable.

Providing a private benefit is unacceptable unless it is **incidental** to accomplishing a charitable purpose. A private benefit will usually be incidental where it is necessary, reasonable, and proportionate to the resulting public benefit.<sup>13</sup>

(i) **Necessary** – Necessary means legitimately and justifiably resulting from:

- (a) an action taken to achieve a charitable purpose; or
- (b) a necessary step, a consequence, or a by-product of an action taken to achieve a charitable purpose; or
- (c) the operation of a related business as defined in paragraph 149.1(1) of the Act.

and

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<sup>12</sup> Personal benefit is also sometimes used instead of **benefit** in the common law private benefit context; See CRA Guidance product CG-019, How to draft purposes for charitable registration.

<sup>13</sup> For more information, see CRA Policy statement CPS-024, Guidelines for registering a charity: Meeting the public benefit test.

- (ii) **Reasonable** – Reasonable means related to the charitable need and no more than is needed to achieve the purpose, and fairly and rationally assessed and distributed.

and

- (iii) **Proportionate** – Proportionate means the private benefit cannot be a substantial part of a purpose or activity, or be a non-charitable end in itself. The private benefit must be secondary and the public benefit must be predominant and more significant.

The public benefit cannot be too speculative, indirect or remote, as compared to a more direct private benefit, particularly when a direct benefit is to private persons, entities, or businesses.

Examples of unacceptable (not incidental) private benefit might include:

- paying excessive salaries/remuneration;
- paying for expenses, or providing benefits that are not justified or needed to perform required duties;
- providing excessive per diems;
- unjustified/unnecessary or excessive payments for services, facilities, supplies, or equipment;
- promoting the work, talent, services, or businesses of certain persons or entities, without justification.

Typically, private benefits that are unacceptable under the common law will also be undue under subsection 188.1(5) of the Act<sup>14</sup>. An **undue benefit** means a benefit provided by a registered charity, a registered Canadian amateur athletic association (RCAAA), or a third party at the direction, or with the consent, of a charity or RCAAA that would otherwise have had a right to that amount. An undue benefit 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 RCAAA that is paid, payable, assigned or otherwise made available for the personal benefit of any person who:

- (a) is a proprietor, member, shareholder, trustee or settlor of the charity or RCAAA;
- (b) has contributed or otherwise paid into the charity or RCAAA more than 50% of the capital of the charity or RCAAA; or
- (c) does not deal at arm's length with a person in (a) or (b), or with the charity or RCAAA.

Undue benefit does not include

- (a) a gift to a qualified donee;
- (b) reasonable consideration or remuneration for property acquired or services received by the charity or RCAAA;
- (c) a gift made, or a benefit provided, in the course of a charitable act<sup>15</sup> in the ordinary course of the charitable activities carried on by the charity or RCAAA, unless it can be reasonably

<sup>14</sup> Undue benefits are sanctioned under subsection 188.1(4) of the Act.

<sup>15</sup> While charitable act is not defined in the Act, it is considered to refer to an activity that itself provides a charitable benefit to an eligible beneficiary.



considered that the beneficiary was eligible for the benefit solely due to the relationship of the beneficiary to the charity or RCAA.

### **Audit findings**

Chaim Katz is the founder, president, treasurer and has sole bank signing authority for the Organization. This individual is also the [REDACTED] owner and administrator of Chaim Services and Support, a for-profit corporation, located in Israel. Neither Chaim Katz or Chaim Services and Support are qualified donees. The Organization appears to have engaged in a business relationship with Chaim Services and Support, as it hired the corporation to maintain its books and records and to operate its programs. The Organization failed to provide any documentation describing its relationship with the corporation, such as a contract detailing the terms of the agreement between itself and the corporation, meeting minutes to show how the Organization did its due diligence when hiring this corporation, policies and procedures developed by the Organization for the corporation to follow, or a description of the relationship demonstrating that the corporation is under the direction and control of the Organization. Furthermore, this appears to be a sole source contract due to the direct relationship between the Organization and the corporation through Chaim Katz. Based on this relationship, the Organization appears to have conferred an unacceptable private benefit to Chaim Services and Support and Chaim Katz.

For fiscal 2017, we found invoices from Chaim Services and Support totalling \$200,482 CAD (Canadian Dollar)<sup>16</sup>. No invoices were provided for fiscal 2016. The invoices were in Hebrew with "salary" and "bank transfer" hand written on the receipts. During the audit we did not receive any other documentation such as job descriptions, contracts, timesheets, etc. in support of these expenses. Further, we were unable to determine if and where this expense was recorded in the Organization's books and records as there was no lead sheet, reconciliation or explanation provided. As such, we were unable to verify the nature of the payments and how these expenditures furthered the Organization's purposes.

Our review of the Organization's Canadian bank accounts show regular transfers between [REDACTED] chequing account [REDACTED] to account [REDACTED] totalling \$27,500 over the two year audit period<sup>17</sup>. During our interview with Chaim Katz on July 10, 2019, he confirmed that these transfers were made to him. We asked for source documents to support these payments, however, as of the date of this letter, we have not received any documents. As such, we were unable to verify the nature of the payments and how these expenditures furthered the Organization's purposes.

Further, according to the "Agency Agreement" list filed with the Organization's 2017 Form T3010, Chaim Katz was also paid \$3,206. However, no agency agreement or source invoice was provided to support this payment.

<sup>16</sup> The invoices totalled \$556,278 NIS (New Israeli Shekel), and we applied a foreign exchange rate of 0.36 (2017 average exchange rate from Bank of Canada and Bank of Israel).

<sup>17</sup> \$23,500 in 2017, and \$4,000 in 2016 (bank statement for June 2016 is missing).

Therefore, it is our view that the Organization was not able to demonstrate that these funds were used to conduct the Organization's own charitable activities. As such, and in the absence of additional information, it is reasonable to consider these disbursements as gifts to non qualified donees.

As the recipients of the payments (Chaim Services and Support and Chaim Katz) are not qualified donees, we can consider assessing an undue benefit penalty against the payments<sup>18</sup>. As stated above, the Organization has not demonstrated with its books and records that the payments were either for goods and/or services that it received<sup>19</sup> nor has it demonstrated that the payments were made in the course of a charitable act to a charitable beneficiary<sup>20</sup>.

Based on the above information, it appears that the Organization has provided an undue benefit to a Director, Chaim Katz as an individual, and to his own for-profit corporation, Chaim Services and Support. According to subsection 188.1(4) of the Act, a registered charity that confers an undue benefit to a person is liable to a penalty equal to 105% of the amount of the benefit. Therefore, the Organization could be liable to a penalty in the amount of \$242,748.02<sup>21</sup> for the audit period as calculated below:

Calculations of the Undue Benefit  
For the fiscal period ended December 31, 2017

Undue benefit conferred – Gift to non qualified donee	Penalized Amount	Sanction % <sup>22</sup>	Penalty Amount
Chaim Katz	\$ 26,706.00 <sup>23</sup>	105%	28,041.30
Chaim Services and Support	\$200,482.59	105%	\$210,506.72
Total ss. 188.1(4) Penalty			\$238,548.02

Calculations of the Undue Benefit  
For the fiscal period ended December 31, 2016

Undue benefit conferred – Gift to non qualified donee	Penalized Amount	Sanction % <sup>24</sup>	Penalty Amount
Chaim Katz	\$ 4,000.00	105%	\$ 4,200.00
Total ss. 188.1(4) Penalty			\$ 4,200.00

Furthermore, an organization that provides an unacceptable private benefit is not using all of its resources for charitable purposes, and fails to meet the requirements of subsection 149.1(1) of the Act that it devote its resources to exclusively charitable purposes.

<sup>18</sup> Paragraph 188.1(5)(a) of the Act.

<sup>19</sup> Paragraph 188.1(5)(b) of the Act.

<sup>20</sup> Paragraph 188.1(5)(c) of the Act.

<sup>21</sup> From chart: \$238,548.02 (2017 total) + \$4,200 (2016 total).

<sup>22</sup> Paragraph 188.1(4)(a) of the Act.

<sup>23</sup> \$23,500 (Canadian bank transfer) + \$3,206 (as an agent).

<sup>24</sup> Paragraph 188.1(4)(a) of the Act.

## Summary

To summarize, it is our view that the Organization is not constituted and operated exclusively for charitable purposes due to the:

- a) unstated collateral non-charitable purpose, and
- b) delivery of non-incidental private benefits/conferring an undue benefit to a person.

For the reasons stated above, it appears there may be grounds for revocation of the Organization's charitable status under paragraph 168(1)(b) of the Act, and there may also be grounds to sanction the Organization under subsection 188.1(4) of the Act for conferring undue benefits.

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

- a) Lack of direction and control over the use of resources / failure to carry out its own activities

## Legislation and jurisprudence

To comply with the requirement that a registered charity 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;<sup>25</sup> and
- for gifting to “qualified donees” as defined in the Act.<sup>26</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>27</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 it established an actual,

<sup>25</sup> Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 (CanLII) at para 31.

<sup>26</sup> A “qualified donee” means a donee described in any of paragraphs 110.1(1)(a) and (b) and the definitions “total charitable gifts” and “total Crown gifts” in subsection 118.1. As per subsection 149.1(6)(b), a charitable organization shall be considered to be devoting its resources to charitable activities carried on by it to the extent that, in any taxation year, it disburses not more than 50% of its income for that year to qualified donees.

<sup>27</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.

real, ongoing, active relationship with the intermediary.<sup>28</sup> 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 providing resources to a non-qualified donee, which would be in contravention of the Act.

We refer to the comments of the Federal Court of Appeal in *Canadian Committee for the Tel Aviv Foundation v Canada*:

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>29</sup>

And

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

As re-iterated by the Court in *Lepletot v MNR*,<sup>31</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 law 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>32</sup>

### **Audit findings**

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

<sup>28</sup> See *Canadian Committee for the Tel Aviv Foundation v Canada*, 2002 FCA 72 at para. 30.

<sup>29</sup> *Canadian Committee for the Tel Aviv Foundation v Canada*, 2002 FCA 72 at para 40, Rothstein JA.

<sup>30</sup> *Canadian Committee for the Tel Aviv Foundation v Canada*, 2002 FCA 72 at para 30, Rothstein JA.

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

#### *Organization's website*

A recent review of the Organization's website, under the heading "Did you know"<sup>33</sup>, we found:

Canadian support has generously increased in response to the growing needs of the Israeli community. Now there is a Canadian organization dedicated to providing a secure financial link between the two countries in addition to helping Israeli non-profit organization [sic] build a new donor base in Canada or strengthen an existing one.

In addition, under the heading "Who we are", we found:

The Ne'eman Foundation provides timely transfers of funds to Israel, thus enabling Israeli non-profit organizations to implement their projects expeditiously.

#### *Agency Agreements*

During the audit we requested information on how the Organization conducted its programs and selected the agents. On December 19, 2019, the Organization provided a write up entitled "Vetting Process", detailing its process for selecting potential agents prior to signing an agency agreement. The Organization also provided 791 files for our review. However, the files provided did not show that the Organization followed its own process for selecting agents. As such, we were unable to verify if any assessment of the agents occurred.

For the period under audit, the Organization provided general agency agreements with multiple agents. The Organization, as Principal, appointed the agents to assist it in carrying out its charitable activities. Our review of the agency agreements disclosed the following deficiencies:

1. Provision 1, Terms of Engagements, requires that the agent carry out projects set in Schedule B of the agreement. However, in all of the agreements provided by the Organization, this schedule was blank. Schedule B forms an essential part of the written agreement, the absence of which fails to evidence key details of the activities purportedly undertaken, such as:
  - a clear, complete, and detailed description of the activities to be carried out by the Organization, and an explanation of how the activities further the Organization's purposes;

<sup>33</sup> <http://www.neemanfoundation.com/about-us/>, accessed on January 4, 2021.

- the location(s) where the activity will be carried on;
  - time frames and deadlines; and
  - detailed budget with respect to amounts, expenditure items, timing, and method and conditions governing the transfer of funds.
2. Provision 2.1 requires that the Organization and agent "shall maintain full and complete books and records of all receipts and disbursements of any funds received from the Principal. A complete record of all agreements, deeds, vouchers, receipts and invoices with respect to each Project shall be maintained by the Principal and the Agent shall ensure that the relevant documents are forwarded to the Principal on a quarterly basis". The only decipherable disbursement records provided by the Organization were screen shots of its bank statements with hand-written notes of the agent's name beside the "tfr to another" descriptor. We were not provided with sufficient documentation to enable us to verify if this requirement was met.
  3. Provision 2.2 requires funds of the Organization be segregated from any other funds that the agent receives. No documentation was submitted by the Organization to enable us to verify if this requirement was met.
  4. Provision 2.3 states the Organization will "not be obligated to provide any funds for any of the purposes set out herein other than amounts required to reimburse the Agent for costs incurred on behalf of the Principal. The Principal shall only make payment for a Project to the Agent by instalments and only upon confirmation (by means of the reports provided for in article 3 hereof) that funds previously provided for such Project have been applied in accordance with this Agreement by the Agent". No documentation was provided to allow us to verify if this requirement was met.
  5. Provision 2.4 requires budgets for each project, including capital and operating costs, and indication of how funds are to be spent. We identified some limited budgets that were included with applications made by agents; however, the budgets lacked detail and often were not specific to the request for funds. We were unable to link the budgets to purported activities, agency agreements, bank records, general ledger, or source invoices.
  6. Provision 2.5 covers agent's reimbursement for services in general terms (i.e., percentage of funds and direct reimbursement). However, the agreement and documents provided did not specify the services provided, which method was used, how the calculation was made and whether reimbursements were actually made.
  7. Provision 3 requires quarterly reporting from the agents to include the administration and application of funds for each project as well as period reports to show receipt and disbursement, and comparison of budgeted versus actual expenditures. Reports were to also include specific details such as photos, meeting minutes, and other relevant records. While some reports were provided, we were unable to match these reports to the agents' activities and expenditures.



8. The agreements are dated but some of them are not signed.

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

*Scholarships/Stipends/Awards*

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

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

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

During our interview, and in our query letters dated July 16, 2019, and November 20, 2019, we asked the Organization to provide the following information/documentation:

- identify which programs award scholarships and bursaries;
- the eligibility and selection criteria used in distributing such prizes;
- the composition of the selection committee;
- how and where the award was advertised;
- the amounts awarded and how the funds were distributed; and
- supporting source documents, include copies of the completed application forms, copies of cancelled cheques, and any other information completed during this process.

On December 19, 2019, the Organization provided the following write-up entitled "Religious Tuition Aid and Stipends":

"The process of selecting candidates for religious tuition bursaries (education) or stipends (financial need, non-education) is managed by the office staff of Ne'eman Foundation. We

request that the Agent organization submit to us a list with the candidates, including the amount requested. The list must contain the name, I.D. Number (Israeli citizens) or passport number of non Israelis. All requests must contain the reason that each individual requires financial aid. In some cases, we do request verification from local social service offices associated with the individuals. The formal requests must be signed by the signing authorities of the agency."

As noted above, schedule B of the agency agreements was blank. Therefore, we were unable to verify which agents provided bursaries or stipends to eligible candidates on behalf of the Organization.

Based on our review of the source documents submitted, it does not appear that the Organization adheres to its own selection process described above. For example, the Organization stated that it transferred \$24,578 and \$185,986 to its agent, Shapell Darche Noam, in 2016 and 2017, respectively. The only documentation provided to support these expenditures was a student listing for 2016, which included the student's name, birthdate, city, and amount of \$215,710 CAD or \$161,250 USD (which does not match the \$24,578 CAD reported on the agent list). Notes on the documentation provided state that "all been accepted to school" and "have completed our financial aid progress". No student listing was provided for 2017, even though the Organization reported an expenditure of \$185,986 for that fiscal year. As such, it appears that this is the activity of the agent, Shapell Darche Noam, and not the Organization's own activity.

#### *Human Resources*

During our interview, Chaim Katz stated that the Organization hired his own company, Chaim Services and Support to operate the Organization's program and conduct administrative services. Approximately 2.5 employees (two full-time and one part-time) were employed by the Organization to carry out its operations during the audit period and were collectively paid \$103,815 as reported on the compensation line 4880 of its Form T3010 for the 2016 and 2017 fiscal years. The Organization has reported three directors; however, in the absence of board meeting minutes, it appears that there is only one active director, Chaim Katz. During the audit period, the Organization reported approximately 210 agents, with a total of \$11,108,925 in foreign expenditures (\$5,214,994 in 2016 and \$5,893,931 in 2017), as per line 4920 - other expenditures on its Form T3010.

Given the minimal staff available to monitor the purported projects being carried out by the agents on behalf of the Organization, it is difficult to accept that any real supervision could be exercised on a regular and on-going basis by the Organization through these positions, even should their involvement extend to the substantive charitable activities. Absent supporting documentation, it is not clear that the Organization maintains communication with any of its agents beyond the initial application process and subsequent disbursement of funds.



*Gifting to non-qualified donees*

We were unable to identify agency agreements for disbursements made to the following foreign entities:

2017	Alut	\$5,000.00
	Amana	\$4,020.00
	Amutat Elem	\$1,352.00
	Chaim Katz	\$3,206.00
	Elad Ir David	\$710,159.00
	Hatzi Israel	\$6,000.00
	Inner Circle	\$1,937.00
	Katef Kekatef	\$25,633.00
	Matnas Modiin Illit	\$9,776.00
	Ohr Etzion	\$121,660.00
	Ramat Shmuel Synagoge	\$3,428.00
	Urim Publications	\$4,401.00
	Yeshivat Hitzim	\$5,014.00
2016	Chessed Neurim	\$45,516.11
	Gush Etzion	\$30,191.18
	Maarava	\$19,545.72

Given the absence of appropriately structured arrangements, such as agency agreements, to establish the necessary direction and control over the Organization's funds and purported activities, it appears the Organization was gifting funds to non-qualified donees, which is contrary to the provisions of the Act.

b) Conduct of non-charitable activities / activities do not further a charitable purpose

Based on the audit findings, it is our view that should the Organization be able to establish that the activities conducted through its agents to be its own, not all of the Organization's activities would be considered charitable in law.

### **Audit findings**

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

While the Organization's Vetting Process write-up states "our office verifies that no funds will be used for, or diverted to, military projects, or any terror-related activities", our review found that the Organization provides funds to a number of agents that provide support to the Israel Defense Forces (IDF) (see table below). In all cases, the lack of documentation makes it difficult to determine the specific activities that were carried out by these agents using the resources of the Organization.

Agents	Payments to Agent		Activity Description
	2016	2017	
Benji Hillman Foundation	0	\$40,886.00	<p>From agent's website</p> <p>[REDACTED]</p> <p>"the Foundation's aims are to help lone combat soldiers and soldiers from deprived backgrounds in the Israel Defense Forces, both during and after their army service".<sup>34</sup></p> <p>From the Organization's website (<a href="http://www.neemanfoundation.com/projects/benji-hillman-foundation/">http://www.neemanfoundation.com/projects/benji-hillman-foundation/</a>):</p> <p>"HaBayit shel Benji's Guidance and Resource Center, staffed by professional staff and dedicated volunteers, provides guidance on vocation, education and housing after IDF service to ALL lone soldiers to ease their integration into Israeli society."<sup>35</sup></p>
Lone Soldier	0	\$25,536.00	<p>As per <a href="https://lonesoldiercenter.com/about-us-3/">https://lonesoldiercenter.com/about-us-3/</a>, which states: "Our mission is to assist lone soldiers before, during and after their army service. We provide them with food, laundry, basic necessities, equipment, advice, seminars, social events, Shabbat meals and more. By giving soldiers physical and emotional support, we help them through the difficulties that serving in the army presents. Our vision is to enable every lone soldier to succeed in his or her army service, successfully integrate into Israeli society and become part of the lone soldier family."<sup>36</sup></p>

### *Other Support*

According to the listing of agents provided by the Organization, one program/agent by the name of Noam Israel/Panim el Panim received \$972,475 and \$917,158, representing 19% and 16% of total foreign program expenditures, during the 2016 and 2017 fiscal years, respectively. However, the Organization's website does not list "Noam Israel" as one of its programs/agents. We did, however, find a program titled "Panim el Panim/Lahav", which states its activities to be "activities in high schools in the state secular school system to strengthen Jewish identity and values and motivation to serve in Israel Defense Forces". Further, we viewed the Panim el Panim's website and found under the heading "Our Programs" that the IDF is listed as one of its programs which confirms a

<sup>34</sup> Accessed on May 25, 2020.

<sup>35</sup> Accessed on Jan 28, 2020.

<sup>36</sup> Accessed on January 20, 2020.

relationship between Panim el Panim and the IDF<sup>37</sup>. A lack of documentation makes it difficult to determine the specific activities that were purportedly carried out by Noam Israel/Panim el Panim using the resources of the Organization.

### **Summary**

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

- a. absence of direction and control over the use of resources / failure to carry out its own activities; and
- b. conduct of non-charitable activities / activities do not further a charitable purpose.

Accordingly, it is our view 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 Organization's charitable status under paragraph 168(1)(b) of the Act.

### **3. Failed to maintain adequate books and records**

#### **Legislation and jurisprudence**

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

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

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

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

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<sup>37</sup> From <http://www.panimelpanim.org/programs/idf/>, accessed on September 25, 2020.

The requirement relating to the maintenance of books and records, and books of account, is based on several court decisions, which have held, among other things, that:

- the onus is on the registered charity to prove that its charitable status should not be revoked.<sup>38</sup>
- 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 books and records at some later date.<sup>39</sup>
- paragraph 168(1)(e) of the Act provides that the Minister may propose to evoke registration of a charitable organization if it fails to comply with, or contravenes, any of sections 230 to 231.5 of the Act. The Federal Court of Appeal has affirmed this, determining that non-compliance with subsection 230(2) of the Act is a proper basis upon which the Minister may issue such a notice.<sup>40</sup>
- the requirement to keep proper books and records is foundational and non-compliance with the requirement is sufficient to justify revocation.<sup>41</sup>

A registered charity is responsible not only for keeping books and records, but for maintaining, retaining, and safeguarding these records. If the charity hires a third party to maintain its records, the charity is still responsible for meeting all requirements. Third parties include bookkeepers, accountants, internet transaction managers, and application service providers. The charity is responsible for making its books and records available to the CRA to inspect, audit, or examine its records.

#### **Audit findings**

The audit found that the Organization failed to maintain adequate books and records with respect to the following facets of its operations:

- a) While the Organization has a Canadian address, it appears that its sole purpose is to receive donations and make deposits into the Canadian bank accounts. Further, the Organization does not keep its books and records in Canada: all source documents, agency agreements, banking records, general journal, emails, etc. are kept in Jerusalem, Israel.
- b) The Organization provided many of its records in Hebrew including excel spreadsheets, reports, and invoices. While the Act does not explicitly require records to be kept in one of the two official languages of Canada (English or French), charities are strongly

<sup>38</sup> Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at paras 26-27.

<sup>39</sup> Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at 39; See also Lord's Evangelical Church of Deliverance and Prayer of Toronto v Canada, 2004 FCA 397.

<sup>40</sup> Opportunities for the Disabled Foundation v Canada (National Revenue), 2016 FCA 94 at para 39; and Ark Angel Foundation v Canada (National Revenue), 2019 FCA 21 at para 43.

<sup>41</sup> Jaamiah Al Uloom Al Islamiyyah Ontario v Canada (National Revenue), 2016 FCA 49 at para 15; and Ark Angel Foundation v Canada (National Revenue), 2019 FCA 21 at para 43.

advised to do so. Records in other languages cannot be interpreted by the CRA and therefore, are not effective in meeting the requirements of the Act at paragraph 230(2)(a), which states that information must be kept "in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under this Act."

- c) During our audit, the Organization provided the meeting minutes for the Annual General Meeting. However, these minutes were generic and provided little to no details regarding the Organization's operations. Further, the Organization does not maintain minute books of its board of directors or officers' meetings. As such, there are no records of discussions of the Organization's operations, such as approval of projects or details of charitable activities.
- d) The official donation receipt (ODR) listings provided for the 2016 and 2017 fiscal years did not reconcile to the revenue field of the Organization's Form T3010. Specifically,

	2016	2017
total per ODR listing	5,399,299.00	6,485,293.99
reported line 4530, unreceipted gifts	-	30,828.00
reported line 4510, from other charities	4,690,510.00	4,891,653.77
reported line 4500, receipted gifts	942,299.00	1,570,303.07
variance	(233,510.00)	(7,490.85)

While we recognize and accept the Organization's explanation that the variance may be because of the foreign exchange for 2017, we note that in 2016 the variance of \$233,510 is too large to be solely due to foreign exchange.

- e) The general ledger lacked detail, which prevented us from verifying the purpose of the Organization's expenditures and tracing these expenditures to source documents. For example, general ledger account numbers 5020, 5021, and 5022 entitled "charitable disbursement" states "charitable disbursement/activities" as a description, but does not provide any detail as to whom the amounts were paid to and/or for what activity.
- f) We were unable to match withdrawals and/or transfers from the Organization's Canadian bank accounts into the [REDACTED] accounts. The Organization did not provide any reconciliation or worksheets to match the Canadian withdrawals to the [REDACTED] deposits, and explain any variances. Bank statements provided from [REDACTED] simply showed "tfr to another" in the description column with handwritten notes of the agent's name beside the amount. In some cases, these totals reconciled to an excel spreadsheet under the agent's name that listed the total amounts presumably paid to the agent. However, the entries in the excel files did not specify the date of the payments or the purposes of the payments, nor do any of the entries link to the general ledger, bank transfers, or source documents.

- g) During our interview on July 10, 2019, we were advised that the Organization has three bank accounts in Israel. However, the bank statements provided appear to be from only one bank account in Israel. Further, the bank statements provided appear to be screen shots and do not show the name and address of the owner.
- h) The files and documents provided could not be vouched to the general ledger and/or the bank statement ledger. Source receipts could not be matched, traced, or reconciled to any ledger or journal.
- i) The agency agreements we reviewed are inadequate to establish that any activities that purport to be those of the Organization are effectively authorized, controlled and monitored by the Organization.
- j) The Organization has poor internal controls with respect to segregation of duties and safeguarding of the Organization's assets. For example, Chaim Katz is the founder, president, and treasurer of the Organization and appears to be the only person with signing authority. The Organization hired Chaim Katz's for-profit corporation in Israel to maintain its books and records, as well as operate its programs. No contract was provided detailing the terms of the agreement between the Organization and the for-profit corporation. Further, no formal written policies or procedures were provided nor was there documentation identifying Chaim Katz's roles and responsibilities in the Organization. Finally, no supporting documentation was provided for us to verify the Organization's expenditures.

Under paragraph 188.2(2)(a) of the Act, an organization may receive a notice of suspension of issuing official receipts if it contravenes subsection 230(2) of the Act. It is our view the Organization has failed to comply with the Act by failing to maintain adequate books and records. For this reason, there may be grounds to suspend the Organization's authority to issue official receipts under paragraph 188.2(2)(a) of the Act.

It is our view that the Organization failed to maintain adequate books and records or to make records available to the CRA during our audit. 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. For these reasons, it appears there may be grounds for revocation of the Organization's charitable status.

#### **4. Failed to issue donation receipts in accordance with the Act and/or its Regulations**

##### **Legislation and jurisprudence**

The law provides various requirements with respect to issuing official donation receipts (ODRs) by registered charities. These requirements are contained in Regulation 3500 and 3501 of the Act and are described in detail in Income Tax Folio S7-F1-C1, Split-receipting and Deemed Fair Market Value.



Further, a registered charity should not issue official donation receipts for gifts (cash or non-cash gifts) it receives from other registered charities nor should other registered charities insist on receiving official donation receipts.<sup>42</sup> Official donation receipts that bear a charity's registration number and other information are required for tax deduction or credit purposes only.

### **Audit findings**

#### *Missing elements*

The ODRs issued by the Organization did not contain the following required elements:

- The place or locality where the receipt was issued.
- The full address of the donor (in some cases, only the email address is noted).
- For non-cash gifts, a brief description of the donated property.

#### *Control of ODRs*

As the Organization does not keep its books and records in Canada and its record-keeping software system was not made available during the audit, we were unable to test the system used to track the Organization's ODRs. Based on the ODR spreadsheets provided by the Organization, we noted the following deficiencies relating to the receipting practices:

- Not all serially numbered ODRs are accounted for. There are numerous gaps in the sequence of ODRs issued for both 2016 and 2017 fiscal years.
- The summary listing of ODRs issued does not include the type of gift (cash or non-cash).

#### *Issuing ODRs to other registered charities*

Our review of the donor listing and copies of receipts showed that the Organization issued ODRs to other registered charities.

Based on the above, it is our view that the Organization issued official donation receipts otherwise than in accordance with the Act and its Regulations. For this reason, it appears there may be grounds for revocation of the Organization's charitable status under paragraph 168(1)(d) of the Act.

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<sup>42</sup> See CRA website Charities and Giving: Operating a registered charity – receiving gifts.

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

**Legislation and jurisprudence**

Subsection 149.1(14) of the Act states that:

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

It is the responsibility of a charity to ensure that the information provided in its Form T3010, schedules and statements, is factual and complete in every respect. A charity is not meeting its requirements to file an information return in prescribed form if it fails to exercise due care with respect to ensuring the accuracy thereof. The Federal Court of Appeal has confirmed that a significant number of inaccuracies, or beyond what might reasonably be viewed as minor, in a Form T3010 are a sufficient basis for revocation.<sup>43</sup>

**Audit findings**

The Organization reported the majority of its disbursements on line 4920 "All other expenditures not included in the amounts above". This amount represents all of the disbursements made to agents outside of Canada. However, line 4920 is intended to include expenses that do not fit into any of the expense lines between lines 4800 and 4910. Where an organization funds its activities through an agent, it should be receiving sufficiently detailed financial reports to allow it to allocate the expenses among the appropriate expense lines to accurately report the breakdown of its expenses. For example, if the agent spends the Organization's funds on travel or vehicle expenses, these disbursements should be reported on line 4810 – Travel and vehicle expenses. By reporting all disbursements to the Organization's agents on line 4920, its expenditures are not accurately reported which further substantiates our concerns with respect to the Organization not maintaining adequate direction and control over its resources and over the conduct of its purported activities.

Further, the resolution of the directors "appointment of officers" and "Officers' register" provided by the Organization identify [REDACTED] as the treasurer since November 27, 2013, and who resigned on March 19, 2019. However, the Organization did not record [REDACTED] as the treasurer and board member on the T1235 Directors/Trustees and Like Officials Worksheet for the 2016 and 2017 fiscal years.

Under subsection 188.2(2.1), an organization may receive a notice of suspension of issuing official receipts if it fails to report information that is required to be included in a return filed under subsection 149.1(14). It is our view the Organization has failed to comply with the Act by failing to file an accurate Form T3010. For this reason, it appears there may be grounds to suspend the Organization's authority to issue official receipts under subsection 188.2(2.1) of the Act.

<sup>43</sup> Opportunities for the Disabled Foundation v MNR, 2016 FCA 94 at paras 50-51.



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

**The Organization's options**

**a) Respond**

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

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


**b) Do not respond**

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

If the Organization appoints a third party to represent it in this matter, send us a written request with the individual's name, the individual's contact information, and explicit authorization that the individual can discuss the file with us.

If you have any questions or require further information or clarification, please contact me at the numbers indicated below. My team leader, Julianne Myska may also be reached at 905-706-7713.

Sincerely,

  
Katie Spoelstra  
Audit Division  
Kitchener Tax Services Office

Cc: 

## ITR APPENDIX "A"

NE'EMAN FOUNDATION CANADA  
Comments on Representations

The audit conducted by the Canada Revenue Agency (CRA) for the period from January 1, 2016, to December 31, 2017, identified that the Ne'eman Foundation Canada (the Organization) is not operating in compliance with the provisions of the *Income Tax Act* (Act) in the following areas:

1. It is not constituted and operated exclusively for charitable purposes:
  - a) Unstated collateral non-charitable purpose
  - b) Delivery of non-incidental private benefits/conferring an undue benefit to a person
2. Failed to devote resources to charitable activities carried on by the Organization itself:
  - a) Lack of direction and control over the use of resources
  - b) Conduct of non-charitable activities / activities do not further a charitable purpose
3. Failed to maintain adequate books and records
4. Failed to issue donation receipts in accordance with the Act and/or its Regulations
5. Failed to file an information return as and when required by the Act and/or its Regulations

We have reviewed the Organization's representations dated August 10, 2021, and we maintain our position that the non-compliance issues identified during the audit represent a serious breach of the requirements of the Act and that, as a result of this non-compliance, the Organization's registration should be revoked.

The basis for our position is described below, including our response to the Organization's representations. We will address the Organization's representations as they relate to the non-compliance issues addressed in the AFL, with the addition of amendments to the Act, and procedural fairness.

**Amendments to the Act**

The Act was amended on June 23, 2022, to include new rules on "qualifying disbursements". Registered charities continue to be permitted to make disbursements to qualified donees. They can now also make gifts or transfer their resources to non-qualified donees in one of two ways:

- by having the non-qualified donee carry out the charity's own activity and by exercising direction and control over the non-qualified donees use of the charity's resources; or
- by making a qualifying disbursement to the non-qualified donee.

It is important to note that the legislative change is not retroactive. Prior to June 2022, registered charities that wanted to work through a non-qualified donee could only do this in one way. Charities had to demonstrate that the activities were their own, demonstrated by maintaining ongoing direction and control over the use of their resources. Nevertheless, at section 2 below we considered whether the non-compliance outlined in our AFL would now qualify under the new granting legislation.

## **Procedural fairness**

### **The Organization's representations**

The Organization represented that it is entitled to the benefits of procedural fairness and that legal conclusions should be drawn on the basis of evidence. The Organization further stated that the responsibility of the auditor is to engage in appropriate audit procedures.

### **CRA's response**

As noted in subsection 149.1(1), in order to maintain charitable registration, the Act requires an organization to demonstrate that it is constituted and operated exclusively for charitable purposes (or objects) and that it devotes its resources to charitable activities carried on by the organization itself or to making qualifying disbursements in furtherance thereof.<sup>1</sup>

The process to review an organization's continued eligibility for charitable registration does not require the CRA to provide undisputable evidence of wrongdoing as a basis for revocation. Rather, the revocation of a charitable organization's registered status under the Act is an administrative decision.

In making an administrative decision as to whether a charity continues to qualify for registered status, we take into account, and draw reasonable inferences from, all relevant information that is generally available to the public. We also review and weigh all of the information collected during the audit to determine whether the charity has demonstrated that it continues to meet the common law and statutory requirements for registration.

When the CRA has finished its audit, it will send the registered charity a letter outlining the results. When the CRA finds a serious case of non-compliance, it will propose revoking the charity's registered status. In this case, it will issue an administrative fairness letter (AFL).

The purpose of the AFL is two-fold:

1. to describe, and fully disclose, our findings related to the identified areas of non-compliance; and,
2. to provide the charity with an opportunity to respond to our concerns, to make available to the CRA any additional information, and to submit written representations and any relevant documentation as to why its charitable status should not be revoked.

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<sup>1</sup> See subsection 149.1(1) of the Act, which requires that a charitable organization devote all of its resources to "charitable activities carried on by the organization itself" and *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10, 1999 CanLII 704 (SCC) at paras 156-159. A registered charity may also devote resources to activities that, while not charitable in and of themselves, are necessary to accomplish their charitable purposes (such as expenditures on fundraising and administration). However, any resources so devoted must be within acceptable legal parameters and the associated activities must not become ends in and of themselves.

The Courts have confirmed that the onus is on the charity to demonstrate that the CRA has erred or that the audit should not result in revocation.<sup>2</sup>

Procedural fairness was respected and documented throughout this audit process. Specifically, during our audit review, we made numerous requests to the Organization for documentation required by the CRA to confirm its compliance with the requirements of charitable registration. The CRA granted all three of the Organization's requests for extensions, and made multiple field visits to the accountant's office to pick up and review books and records. In addition, the auditor offered to visit the Organization's Canadian address [REDACTED] to pick up documents. The CRA also sent query letters on numerous occasions and provided the Organization with ample time to respond. These steps were followed to enable the CRA to develop a complete understanding of the Organization's operations, expenditures and decision making during the audit period, while providing the Organization with ample time and opportunities to provide the information required to verify its compliance with the rules of registration.

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

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

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

Our AFL detailed that the Organization had not provided the CRA with sufficient information to demonstrate that it was carrying out activities in furtherance of its charitable purposes. We also advised that in addition to reviewing the documents the Organization provided, we reviewed publicly available information on its purported activities. Based on this information, it was our view that the Organization's activities demonstrated that it was furthering unstated non-charitable purposes, including providing support to a foreign military and gifting to non-qualified donees.

Our AFL also included an analysis of three agents, all non-qualified donees, who were carrying out their own activities using the Organization's resources. Other than an expense sheet for Elad Ir David, no documentation had been provided for these agents. The funds transferred within the audit period to these three agents alone totaled \$965,598.

We advised that the purposes demonstrated by agents are not purposes that the courts have found to be charitable. We further stated that increasing the efficiency and effectiveness of the Israel Defense Forces (IDF), which is further discussed in section 2.b), is not a charitable purpose.

In addition, we advised it was our position that, based on the Organization's lack of direction and control over all of its purported activities and lack of documentation, the Organization was established to gift funds to non-qualified donees, which is not a charitable purpose.

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<sup>2</sup> Public Television Association of Quebec v. Canada (National Revenue), 2015 FCA 170 and Canadian Committee for the Tel Aviv Foundation v Canada 2002 FCA 72.

### **The Organization's representations**

The Organization provided copies of the agency agreements for the three agents we had noted in our AFL, as well as some email correspondence between itself and the agents. The Organization also agreed that some activities are not acceptable under Canadian law.

The Organization denied that funds provided to its agents were used to support the Israeli army (further representations are detailed below at section 2.b)).

### **CRA's response**

The Organization's response has not addressed the concerns set out in our AFL. The agency agreements provided are missing the description of projects that the agent is purportedly carrying out on the Organization's behalf, and the emails did not clarify any of the issues in the AFL. The Organization has not provided sufficient information to demonstrate that it devoted its resources to charitable activities. Rather, the Organization is transferring funds to non-qualified donees with no direction, control, or accountability. Additionally, as outlined below, some of the funds are being used to support the Israeli Defense Fund (IDF).

#### **b) Delivery of non-incidental private benefits/conferring an undue benefit to a person**

Our AFL outlined our concern regarding an unacceptable private benefit to Chaim Katz. Chaim Katz is the founder, president, and treasurer of the Organization, and has sole bank signing authority. Chaim Katz is also the [REDACTED] owner, and administrator of Chaim Services and Support (CSS), a for-profit corporation located in Israel. Neither Chaim Katz nor CSS are qualified donees. For 2017, we found invoices from CSS to the Organization for \$200,482. No invoices were provided for 2016. The invoices were in Hebrew, with "salary" and "bank transfer" hand written on the receipts. No corroborating documentation was provided.

We also stated that the Organization's bank accounts show regular transfers to Chaim Katz totalling \$27,500. These transfers were confirmed in an interview. Though we asked for documentation regarding the transfers, none were provided. Additionally, according to the "Agency Agreement" for the 2017 Form T3010, Chaim Katz was also paid \$3,206. However, no agency agreement or source invoice was provided to support this payment.

In addition to providing private benefits, we stated our consideration that the Organization provided an undue benefit to Chaim Katz and CSS. We provided calculations and advised that, based on funds transferred to Chaim Katz during the audit period, the Organization could be liable for a penalty of \$242,748.02.

### **The Organization's representations**

The Organization acknowledged that Chaim Katz is a member of the Organization, but stated that undue benefit rules do not apply where the charity is paying reasonable amounts relating for goods or services it needs. It further stated that in order to operate, it requires "significant internal administration". The Organization provided an email from the corporation's accountant and

invoices from CSS for 2017 and acknowledges they do not detail the work done in each case because there would be an enormous amount of paperwork. The Organization asserts that the work done is "self evident" and "had to be done by somebody", and provided the CRA with a copy of invoices.

### **CRA's response**

The Organization's response failed to alleviate our concerns relating to both private benefits and undue benefits to CSS and Chaim Katz. The Organization did not address our concerns of Chaim Katz having the sole bank signing authority and owning the corporation that conducts the Organization's operations. It appears that Chaim Katz, president and treasurer of the Organization, paid himself to carry out the Organization's operations through CSS.

An organization which delivers an unacceptable private benefit is not using all of its resources for charitable purposes, and may have its registered status revoked. Consequently, it remains CRA's position that there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act. While we maintain our previous position that the Organization's non-compliance is subject to sanctioning, as we are revoking the Organization, we are no longer considering sanctioning the Organization.

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

### **a) Lack of direction and control over the use of resources**

As detailed in our AFL, the audit revealed that the Organization is conducting its activities in Israel through agents, all of whom are non-qualified donees, that are pre-existing entities. In addition, most, if not all, of the purported activities were already being conducted by those pre-existing entities. Based on the information reviewed, it was our view that the Organization did not exercise direction and control over its funds or the activities conducted with those funds to establish that it was carrying out its own activities in accordance with the Act. Rather, the Organization appeared to be acting as a conduit.

### **Organization's website**

We noted that the Organization's website contained the following statement<sup>3</sup>:

Now there is a Canadian organization dedicated to providing a secure financial link between the two countries [Canada and Israel] in addition to helping Israeli non-profit organization build a new donor base in Canada or strengthen an existing one.

The Ne'eman Foundation provides timely transfers of funds to Israel, thus enabling Israeli non-profit organizations to implement their projects expeditiously.

<sup>3</sup> <http://www.neemanfoundation.com/about-us> originally accessed on January 4, 2021.



Agency agreements

The Organization provided general agreements with multiple agents. There was no indication that agents went through a vetting process. Our review of the agreements revealed the following deficiencies:

- No details of any projects purportedly carried out on behalf of the Organization;
- Incomplete books and records;
- Unable to determine segregation of funds;
- Unable to verify payment instalments;
- No details of budget;
- No agent reporting; and
- Unsigned agreements.

Scholarships/stipends/awards

Although we had made numerous requests for information and documentation relating to the purported activities of tuition bursaries and stipends, the Organization failed to provide these records.

Based on our review of the limited information provided, it appeared that the Organization did not adhere to the selection criteria it had previously represented. Documentation showed that funds had been transferred to its agent Shapell Darche Noam for scholarships: \$24,578 (2016) and \$185,986 (2017). For the 2016 year, the Organization provided only a list of names and a total amount of \$215,710 CAD or \$161,250 USD. This demonstrated a material variance of \$191,132 between the amount on the 2016 agent listing and the amount reported on the spreadsheet. No student list was provided for 2017.

Human resources

In our letter dated March 3, 2021, we expressed concern about how minimal staff (one active director and two full-time and one part-time employees) were able to actively direct and control funds totalling \$11,108,925 to 210 foreign agents during the audit period. Given the minimal staff available to monitor the purported projects being carried out by the agents on behalf of the Organization, it is difficult to reconcile that any real supervision could be exercised on a regular and on-going basis by the Organization through these positions, even should their involvement extend to substantive charitable activities. Based on the lack of supporting documentation, it is not clear that the Organization maintained communication with any of its agents beyond the initial application process and subsequent disbursement of funds.

Gifting to non-qualified donees

During the audit period under review, disbursements in the amount of \$996,838 were made to 16 foreign entities, all of which are non-qualified donees, without any documentation outlining attempts at direction and control. It appears the Organization was simply gifting funds to non-qualified donees, which is contrary to the provisions of the Act.

**The Organization's representations**Organization's website

The Organization did not provide representations pertaining to content on its website.

Agency agreements

The Organization acknowledged that its books and records were not adequate in 2017, and stated that "much of the direction and control took place by ways of email discussions and personal visits". The Organization offered to provide samples, though it did not provide any further documentation. It also stated that beginning in 2018, the Organization revamped its documentation process, but did not provide any examples.

Scholarships/stipends/awards

The Organization represented that students would attend these institutions full-time as religious duty; no individuals are denied a religious education. The Organization stated that tuition is paid not based on merit but rather on poverty. Aid is restricted to those individuals engaged in study who are poor.

The Organization states that in relation to Shapell Darche Noam, all that was required was a list of individuals registered in the program. The funds disbursed through Shapell Darche Noam as the agent was not for the benefit of the school, but rather to the student who required such relief. The role of Shapell Darche Noam was to collect the appropriate information of the various applicants to forward this to the Organization, along with their recommendation on which individuals deserved aid. The Organization provided the student list for 2017.

Human resources

The Organization represented that it is beyond the jurisdiction of the CRA to comment on the work abilities of any staff necessary to oversee the operations of the Organization.

The Organization also stated that for legal reasons related to employees in Israel, CSS was incorporated and payments for all employees was made to it. For this reason, the Organization actually had a number of staff available to deal with the governance and administration of the Organization.

Gifting to non-qualified donees

The Organization asserted that it does not make gifts to non-qualified donees, and states that every transfer made is to an agent of the Organization who works on their behalf. It further stated the groups named did have agency agreements with the exception of Chaim Katz, who is not an agent. The Organization asked us to review our records and confirm the project for Hatzi Israel. It also states that Inner Circle is a program conducted entirely by the Organization directly, rather than through an agent.

**CRA's response**

The Organization's response to our AFL has not addressed our concerns with respect to the failure to devote resources to charitable activities.

Agency agreements

The Organization did not provide any documentation to alleviate our concerns. As a result, in the absence of documentation demonstrating accountability over its charitable resources, or how these resources were used to further its stated charitable purposes, it appears that the Organization acted as a conduit to transfer funds to entities carrying out their own activities.



Scholarships/stipends/awards

The Organization failed to provide supporting documentation to demonstrate how the Organization or its agent(s) conducted the activities described in its response letter, including an accounting of funds. This includes not receiving any documentation to verify that an agent conducted an assessment interview for each beneficiary of a scholarship issued by the Organization.

The Organization did not provide an explanation for the material variance of \$191,132 between the amount reported on the spreadsheet, \$215,710, and the amount listed on the 2016 agent listing totalling \$24,578. The response letter stated that the student listing for 2017 is attached; however, we are unable to locate the listing in the attachments provided.

Human resources

The Organization did not provide additional information such as employment contracts or job descriptions to alleviate the concerns addressed in the letter dated March 3, 2021. We were not able to determine that any supervision of activities occurred.

Gifting to non-qualified donees

The Organization has failed to demonstrate that it had any meaningful direction and control over resources provided to these agents. The Organization failed to provide copies of all of the agency agreements for the entities listed in our letter dated March 3, 2021. However, based on the limited agreements that had been provided to us, the agreements themselves also failed to demonstrate accountability over the charitable resources.

Regarding the project for "Hatzi Israel", our secondary review confirms that this agent's name was taken from the "Agency Agreements" listing provided by the Organization's accountant at [REDACTED] and filed with the Form T3010 Registered Charity Information Return (T3010) for 2017. No agency agreement was provided.

Finally, if Inner Circle is a program conducted by the Organization rather than by an agent, it should not have been included in the "Agency Agreements" listing provided by [REDACTED] and filed with the T3010 for 2017. Instead, we should have been provided with sufficient information to demonstrate that the Organization carried out this activity on its own. This information has not been provided to us.

Based on the audit findings and the representations provided, the Organization has not demonstrated that it maintained direction and control over its resources that were provided to non-qualified donees outside of Canada. The Organization has also not demonstrated that it has any direction, control, or accountability over the activities conducted with those resources. While we have considered the Organization's non-compliance under the lens of the new granting legislation, the Organization would not meet the qualifying disbursements requirements as it appears to be acting as a conduit by simply transferring charitable resources to other parties.<sup>4</sup>

<sup>4</sup> The *Income Tax Act* was amended in June 2022 to provide another way for charities to work with non-qualified donees: by making grants. With this change, charities can support the activities of non-qualified donees (grantees), provided the charity can demonstrate that they meet certain accountability requirements. It is important to note that the legislative change is not retroactive. Prior to June 2022, registered charities that wanted to work through a non-

It therefore remains our position that the Organization has failed to devote all of its resources to its own charitable activities or to gifting to qualified donees. As such, the Organization has failed to meet the definitional requirements of subsections 149.1(1) and 149.1(2) of the Act and its charitable registration should be revoked in accordance with paragraph 168(1)(b) of the Act.

**b) Conduct of non-charitable activities / activities do not further a charitable purpose**

In our AFL, we advised that it is non-charitable to support a foreign army and noted that the Organization's own vetting process stated that it verifies that no funds will be used for, or diverted to, military projects, or any terror-related activities. However, during the audit period under review, it appeared that the Organization had provided \$1,956,005 to agents supporting the IDF.

These agents included:

Benji Hillman Foundation

As noted on the Organization's website, this non-qualified donee established and runs a home built for lone combat soldiers.

Lone Soldier

This non-qualified donee aimed to "assist lone soldiers before, during and after their army service".<sup>5</sup>

Noam Israel/Panim el Panim

This non-qualified donee was undertaking activities in high schools in the state secular school system to strengthen Jewish identity and values and motivation to serve in Israel Defense Forces.

**The Organization's representations**

Benji Hillman Foundation

The Organization stated that "if they have finished their service then surely the CRA's position cannot be that is supporting the IDF," and provided a description of the activities conducted by this agent.

Lone Soldier

The Organization stated that there's no evidence that the agent supports military activities, and individuals are lone soldiers because they are immigrants without a family. The Organization stated that it has nothing to do with military activities, but rather assists in the providing shelter, food and religious instruction for immigrants without family in Israel.

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qualified donee could only do this in one way. Charities had to demonstrate that the activities were their own, demonstrated by maintaining ongoing direction and control over the use of their resources.

<sup>5</sup> <https://lonesoldiercenter.com/about-us-3/> accessed on May 25, 2020.

Noam Israel/Panim el Panim

The Organization stated this is a program for children in high school and the program intends to strengthen their Jewish identity and values. The Organization also stated that Israel is a country that closely identifies religion with the land, and there may be ancillary effects of strengthening one's desire to serve their country as a proxy for religious belief. The Organization stated that it is teaching religion to kids in high school and if there is an effect on the child's interest in military service it is an unavoidable side effect.

**CRA's response**

The Organization's representations did not alleviate our concerns. Our position remains that the Organization had provided funds to agents supporting the IDF.

Benji Hillman Foundation

The Organization's own website currently has the following information pertaining to this agent:

The Benji Hillman Foundation <http://www.benjihillman.org> established and runs "HaBayit shel Benji", Israel's only purpose built home for lone combat soldiers. "Lone soldiers" are defined by the IDF as soldiers disconnected from their families for various reasons - orphans, immigrant soldiers with families overseas, soldiers estranged from their families and those from difficult family situations – low income and underprivileged families, broken homes etc – who cannot live at home.<sup>6</sup>

In addition, we note that the following was displayed on Benji Hillman Foundation's website during the audit years:

Please help us provide our lone combat soldiers with the love and care they deserve. Your donation enables us to keep the Bayit (Home) and Guidance Center running, so we can continue to give our soldiers the best care possible. We provide support to help the soldiers complete their service with comfort and dignity, and to help prepare them for civilian life.

The Benji Hilman Foundation's "About us" page on its website states: "Our vision is that all lone combat soldiers will have a real home to call their own for the duration of their army service, and should be able to stay in Israel and prosper thereafter."<sup>7</sup> Its website states that donations are tax deductible in the Israel, United States, Canada, and the U.K.<sup>8</sup> The link for donations from Canada is for the Organization's website. This information is still on the agent's and Organization's website.<sup>9</sup>

The Organization has continued its partnership with the Benji Hillman Foundation and the websites for both the Benji Hillman Foundation and the Organization contain clear messaging to

<sup>6</sup> <http://www.neemanfoundation.com/projects/benji-hillman-foundation> accessed on March 14, 2024.

<sup>7</sup> <http://benjihillman.org/about-us/> accessed on March 13, 2024.

<sup>8</sup> <https://web.archive.org/web/20170830045245/https://www.benjihillman.org/donate> accessed on November 24, 2023.

<sup>9</sup> <https://benjihillman.org/donate/> accessed on November 24, 2023.

the general public that tax receipts will be issued by the Organization for donations intended to support IDF soldiers.<sup>10</sup>

### Lone Soldier

Contrary to the Organization's representations, this agent's website clearly states its mission is:

.. To Assist Lone Soldiers Before, During And After Their Army Service. We Provide Them With Food, Laundry, Basic Necessities, Equipment, Advice, Seminars, Social Events, Shabbat Meals And More. By Giving Soldiers Physical And Emotional Support, We Help Them Through The Difficulties That Serving In The Army Presents.<sup>11</sup>

The Lone Solider Centre's website also clearly defines the term lone solider as "an IDF solider with no family in Israel to support him or her..."<sup>12</sup> As such, we are unable to accept the Organization's representations that this agent does not support the IDF and that lone soldiers are simply immigrants without a family in Israel.

While the Organization appears to have ceased funding to the Lone Solider Center, information contained on its website indicates that it has entered into new partnerships with other lone solider centers including, The Michael Levin Base (The Base for Lone Soldiers), Osey Chail, and Keren Merpurgo-Sde Eliyahu, Habayta Campus for lone soldiers.

### Noam Israel/Panim el Panim

This agent received payments of \$972,475 in 2016 and \$917,158 in 2017 from the Organization. The Organization failed to provide any documentation to demonstrate that it had any direction and control over the substantial funds provided to this agent. As noted in the AFL, this agent carries out various activities in Israel, including support to the IDF.

The onus is on the charity to demonstrate that we have erred or that the audit should not result in revocation.<sup>13</sup> As such, it is the position of the CRA that the Organization failed to demonstrate that it maintained the required degree of direction and control over the use of its funds, or over the activities conducted with those funds, to establish that it is carrying out its own charitable activities in accordance with the provisions of the Act.

We also maintain our position that the Organization has dedicated significant resources towards activities that support the armed forces of another country. As outlined in our AFL, the courts have stated that some activities that are charitable in Canada may not be charitable when carried on in a different country. For example, increasing the effectiveness and efficiency of Canada's armed forces is charitable, but supporting the armed forces of another country is not.<sup>14</sup>

<sup>10</sup> <https://www.neemanfoundation.com/projects/benji-hillman-foundation> accessed May 6, 2024.  
<https://benjihillman.org/donate/> accessed May 6, 2024.

<sup>11</sup> <https://lonesoldiercenter.com/about-us-3/> accessed on March 14, 2024.

<sup>12</sup> <https://lonesoldiercenter.com/about-us-3/#soldiers> accessed on March 14, 2024.

<sup>13</sup> Public Television Association of Quebec v. Canada (National Revenue), 2015 FCA 170 and Canadian Committee for the Tel Aviv Foundation v Canada 2002 FCA 72.

<sup>14</sup> Canadian registered charities carrying on activities outside Canada - Canada.ca  
 (<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidance-002-canadian-registered-charities-carrying-activities-outside-canada>)

The Organization's website indicates that it has continued its partnership with Panim el Panim (Noam Israel).<sup>15</sup>

It therefore remains our position that the Organization has failed to devote all of its resources to its own charitable activities or to gifting to qualified donees. As such, the Organization has failed to meet the definitional requirements of subsections 149.1(1) and 149.1(2) of the Act and its charitable registration should be revoked in accordance with paragraph 168(1)(b) of the Act.

### **3. Failed to maintain adequate books and records**

As outlined in our AFL, the Organization failed to maintain and provide adequate books and records to allow the CRA to verify the Organization's assets, liabilities, revenue, expenses, donations, and overall use of resources.

Specifically, the Organization was deficient in the following 10 issues:

- a) The Organization does not maintain its books and records in Canada. They are kept in Israel. It appears the sole purpose of having a Canadian address is to receive donations and make deposits into the Canadian bank accounts.
- b) The Organization does not maintain all of its book and records in English or French, but rather in Hebrew, and many of the documents provided were not translated.
- c) The Organization did not maintain meeting minutes detailing its activities, including approval of projects and large expenditures.
- d) The official donation receipt listing provided by the Organization did not reconcile to lines 4500, 4510 and 4530 of the Return. Specifically, in 2016 there was a material variance of \$233,510.
- e) The Organization's general ledger accounts lacked detailed information, such as the agent's name and purpose of payment, which prevented verification of expenses.
- f) The Organization did not provide documentation, including source documents and reconciliation worksheets, to enable the tracing of payments out of its Canadian bank accounts to its foreign bank accounts. These amounts represent a large portion of its total expenditures.
- g) The Organization provided statements from only one of three of its bank accounts in Israel. The statements provided in the audit were screenshots which lacked significant identifying information such as the recipient's name.
- h) Source receipts could not be matched, traced, or reconciled to any ledger or journal and/or bank statements.

<sup>15</sup> [https://www.neemanfoundation.com/projects/panim-el-panim-\(noam-israel\)](https://www.neemanfoundation.com/projects/panim-el-panim-(noam-israel)) accessed May 5, 2024.

- i) The agency agreements and supporting documentation provided were inadequate to establish that any activities purported to be those of the Organization are effectively authorized, controlled and monitored by the Organization.
- j) The Organization failed to produce any records to demonstrate that it had implemented internal controls measures as it relates to its relationship with Chaim Katz (the Organization's founder, president, treasurer, and only person with signing authority), and his for-profit corporation.

### **The Organization's representations**

The Organization made the following representation to the above issues:

- a) The Organization states that electronic records are available on Canadian servers and that its "intention is not to keep the entirety of the paper records in Israel, but rather to bring them to Canada for storage periodically."
- b) The Organization translated some, but not all, documents into English, and noted that the CRA must have a translation mechanism of its own if some of the agent's websites were translated into English.
- c) The Organization states that its understanding of the law is that a charity must have control and direction over its resources, and there is no statutory obligation on the Board of Directors or any particular officer. The Organization states that its authorized representative signed off on the Agency Agreements. And that should be sufficient for purposes of the Act.
- d) The Organization states that although the variance for 2016 is a large amount, it is in fact due to foreign exchange volatility.
- e) The Organization offered to provide the outstanding information, but did not include it as part of its representations.
- f) The Organization offered to provide the information, but did not include it as part of its representations.
- g) The Organization provided some bank statements from [REDACTED] but they are in Hebrew.
- h) The Organization stated that it has an enormous amount of receipts and that there must have been miscommunication as they did not understand that they needed to be provided. The Organization stated that it is prepared to show whatever sources of receipts the CRA requests.



i) The Organization replied that in its own internal review, it agreed that its Agency Agreements were deficient and took steps to ensure that the agreements in place were properly adhered to ensure the control and direction of its resources. "It is unfortunate that the audit took place prior to the charity's greater vigilance in this respect."

j) The Organization stated that there is no statutory authority that gives the CRA jurisdiction to question the internal controls of the Organization. It also stated that while the lack of internal controls may suggest other problems, their existence in and of themselves, is not required by the Act. The Organization further stated that the amounts paid to Mr. Katz and the administrative team are adequate given its size. The Organization believes that it is outside the CRA's jurisdiction to comment on this point and but that there is no basis for commenting on its internal controls.

The Organization also stated that in regard to the missing supporting documentation to verify the Organization's expenditures, there was misunderstanding about the documentation required. It states that it has significant supporting documentation for its expenses and is prepared to provide it to the CRA.

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

The response provided by the Organization did not alleviate our concerns relating to inadequate books and records. The following addresses the specific concerns in reference to our AFL:

a) In its representation, the Organization did not refute our assertion that most of the books and records relating to its purported activities are not kept in Canada. The Organization has not alleviated our concern that its books and records are not being maintained and retained in Canada in accordance with the Act. It also did not refute its sole purpose of having a Canadian address.

b) While the Act does not explicitly state that records must be in either of Canada's two official languages, paragraph 230(2)(a) states books and records must contain "information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registrations under this Act". While the Organization has provided us with records, they have not translated the records or provided a summary of the content so that we can adequately review them. Accordingly, the Organization has failed to meet the requirement of paragraph 230(2)(a).

c) The Organization did not address the lack of meeting minutes. It also did not provide evidence that it kept records detailing the board's operations and decision-making process, including how it approves projects.

d) The Organization provided donor listings in [REDACTED] worksheets for 2016 and 2017. The worksheets appear to be a more comprehensive list than what was originally provided in the audit, but it did not explain the material variance, and as such, our concerns have not been alleviated.

e) Our AFL stated that the accounts lack basic details about the expenditures themselves, such as vendor, date, amount, payment type. The Organization failed to provide the necessary working papers and accounting files that contained this information.

f) Tracing payments from one bank account to another is a basic accounting requirement. It is important for charities that operate outside Canada to keep good books and records and be able to account for transfers of payments outside of Canada. Our AFL clearly stated that we were unable to match the transfers from the Canadian bank accounts to the foreign account. The Organization failed to provide this information in its response.

g) The Organization provided bank statements on pages 106 to 492 of its response letter.

- Pages 264 to 275 and 481 to 492 appear to be bank statements from [REDACTED] account number [REDACTED] but they are in Hebrew.
- Pages 239 to 263 (covering fiscal 2016) and 445 to 480 (covering fiscal 2017), are also from [REDACTED]. The statements also showed the Canadian and USD accounts appeared to have the same account number [REDACTED]. No explanations were provided as to why two accounts have the same number, nor was the purpose of these accounts explained.
- Bank statements were only provided for one foreign bank account; however, in our meeting on July 10, 2019, the Organization stated it had three foreign bank accounts. The Organization also did not provide source documentation linking the payments from the bank account(s) to its agents.

h) The Organization failed to provide additional books and records to match, trace, or reconcile source documents to any ledger, journal, or bank statements. As such, we still cannot validate the corresponding reports on its T3010.

i) We note that the Organization agreed "that its agency agreements were deficient"; however, it failed to provide any details of the steps it took "to ensure control and direction of its resources" during the audit period and in fiscal 2018 (as in the earlier paragraphs). The Organization also did not specify when and how it took "greater vigilance in this respect".

j) The Organization did not disagree with the fact that it lacked internal control and conceded "lack of internal controls may suggest other problems". This supports our finding that the Organization is not meeting its obligations as a registered charitable organization in Canada. It is also noted that the Organization's response did not explain or detail any policies or procedures it has relating to its internal controls. The Organization also does not refute the fact that Chaim Katz, and not the board of directors, is in control of the Organization and its operations.

The response letter also stated that it had "supporting documentation" to convey its relationship with Chaim Katz and/or his corporation; however, they were not provided when requested during the audit. As previously noted, and as evidenced in our review, the Organization has not provided sufficient documentation to verify its expenditures. While

maintaining adequate internal controls is not a specified requirement of the Act, it is our view that the Organization's lack of internal controls has had a negative effect on the Organization's ability to demonstrate that its books and records were sufficient to support that its activities were charitable in nature, and fulfilling the Organization's charitable purposes.

The Organization stated in its representations that the books and records for the audit period are inadequate; however, it stated that "the [Organization] was still getting on its feet organizationally." We note that the Organization was registered effective March 16, 2011, and at that time, the CRA stated its concerns regarding the Organization's lack of information on its activities, including how it planned on maintaining direction and control over its activities. The Organization had been registered for more than four years before the audit period, and had been registered for more than eight years before the our audit commenced in May 2019. We do not accept the Organization's statement as a reason for lack of information. The Organization had time to resolve any books and records and operational issues that may have been associated with starting up.

The Organization has not provided any information regarding this "more robust document and collection and retention system" in its representation of 492 pages. The Organization did not provide examples of records it reviewed in order to approve the agent's purpose and/or its activity prior to advancing funds. The Organization claims it "retains control and direction over all of its funds"; however, it did not provide any documentation to substantiate this claim. In addition, the CRA was not provided with records to support its agents' spending.

Based on the above, the Organization failed to alleviate the concerns set out in our AFL. As such, our position remains that the Organization has failed to fulfill its requirement to maintain and provide adequate books and records<sup>16</sup> in accordance with the Act. For this reason, there are grounds for the Minister to revoke the Organization's charitable status in accordance with paragraph 168(1)(e) of the Act.

#### **4. Failed to issue donation receipts in accordance with the Act and/or its Regulations**

Our AFL noted the following concerns as it relates to the issuance of donations receipts:

- Receipts were missing required elements;
- Not all of the serially numbered receipts were accounted for;
- Summary sheet did not include the type of gift; and
- The Organization issued official donations receipts to other registered charities.

#### **The Organization's representations**

The Organization stated that it has a method for ensuring that all of its donation receipts are properly issued; however, since we did not request access to its record-keeping software system, access was not provided.

<sup>16</sup> Ark Angel Foundation v Canada (National Revenue), 2019 FCA 21 at para 43.

The Organization provided a list of all the receipts it issued, and stated that since it does not receive non-cash gifts, it did not list a distinction.

The Organization also stated that it had issued receipts to other registered charities, but contends since this is not in contravention of the Act, it should not be sanctioned.

### **CRA's response**

The Organization failed to alleviate the concerns presented in our AFL with respect to its donation receipting practices.

While the CRA did not specifically request access to the Organization's record-keeping software, information pertaining to the Organization's donation receipting system was requested on multiple occasions.<sup>17</sup> The representations and the two [REDACTED] spreadsheets submitted do not explain the gaps in the sequence of donation receipts nor do the spreadsheets provide any explanations (e.g. cancelled, lost, duplicate receipts, etc.) as to why the gaps exist.

It remains our position that the Organization failed to issue receipts in accordance with the Act and its Regulations, and as a result, we hereby intend to revoke the registration of the Organization under subsection 168(1)(d) of the Act.

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

As detailed in our AFL, it is the responsibility of a charity to ensure that the information provided in its T3010, schedules and statements, is factual and complete in every respect.

The audit found that the Organization grouped all of its disbursements to agents outside of Canada on line 4920 (all other expenditures not included in the amounts above) instead of allocating the expenses among the appropriate lines to accurately report the breakdown of the funds spent. The Organization also did not accurately report its officers on the T1235 Directors/Trustees and Like Officials Worksheet for the 2016 and 2017 fiscal years.

### **The Organization's representations**

The Organization's response acknowledged and apologized for the deficiencies in filing its returns. It stated it hired professional accountants to file its T3010 and the errors were unintentional and made by the professional accountants. It further stated that all of the reporting was made; the error was that it was in the wrong category. The Organization suggested dealing with these deficiencies by way of a compliance agreement.

The Organization did not provide representations on the accuracy of the Directors/Trustees and Like Officials Worksheet.

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<sup>17</sup> Information pertaining to the Organization's donation receipts was requested in our initial contact letter of May 22, 2019, our query note of July 3, 2019, and in our follow-up request letters dated July 16, 2019, and November 20, 2019.

**CRA's response**

As previously stated, it is the Organization's responsibility to ensure that T3010s filed are complete and accurate even when it has been completed by a third party. The Organization failed to provide representation relating to the director's worksheet. In addition, despite acknowledging the Line 4290 reporting deficiency in its response, the Organization repeated the same error on its 2021 and 2022 T3010 returns.

Accordingly, the Organization was not compliant with its obligation to file an accurate information return as prescribed at subsection 149.1(14) of the Act. For this reason, it is the CRA's view that there are grounds for the Minister to revoke the charitable status of the Organization under paragraph 168(1)(c) of the Act.

**6. Other – Request for a compliance agreement**

We acknowledge the Organization's representations in its August 10, 2021 response that a compliance agreement is a suitable audit outcome. Given the serious non-compliance identified as a result of our audit and the Organization's continued failure to bring itself into compliance with the fundamental requirements of charitable registration, a compliance agreement is not a suitable outcome. As such, the Organization will be revoked for cause.

**Conclusion**

For the reasons explained above and in our letter dated March 3, 2021, it is the CRA's position that the Organization has failed to meet the requirements for registration as a charitable organization as outlined in subsections 168(1), 149.1(1) and 149.1(2) of the Act. As such, the Organization should have its registration as a charity revoked pursuant to subsection 168(1) of the Act.

**Qualified Donees**

**149.1 (1) Definitions**

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

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

(a) constituted and operated exclusively for charitable purposes,

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

(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)(I)) 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)(I)),

(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 that are qualifying disbursements, amounts the total of which is at least equal to the organization's disbursement quota for that year; or

(c) makes a disbursement, other than

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

(ii) a qualifying disbursement.

#### **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 that are qualifying disbursements, amounts the total of which is at least equal to the foundation's disbursement quota for that year;

(b.1) makes a disbursement, other than

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

(ii) a qualifying disbursement;

(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 that are qualifying disbursements, amounts the total of which is at least equal to the foundation's disbursement quota for that year;

(b.1) makes a disbursement, other than

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

(ii) a qualifying disbursement;

(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 (as defined in subsection 163.2(1)) was made in circumstances amounting to culpable conduct (as defined in subsection 163.2(1)) 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 are qualifying disbursements to qualified donees or grantee organizations, 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.

#### **149.1(4.2) Revocation of registration of Canadian amateur athletic association**

The Minister may, in the manner described in section 168, revoke the registration of a registered Canadian amateur athletic association

(a) for any reason described in subsection 168(1);

(b) if the association carries on a business that is not a related business of that association;

(c) if an ineligible individual is a director, trustee, officer or like official of the association, or controls or manages the association, directly or indirectly, in any manner whatever; or

(d) if the association 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, registered Canadian amateur athletic association or registered journalism organization, 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 charity, registered Canadian amateur athletic association or registered journalism organization, accepts a gift the granting of which was expressly or implicitly conditional on the charity, association or organization making a gift to another person, club, society, association or organization other than a qualified donee.

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

If the Minister gives notice under subsection (1) to a registered charity, to a registered Canadian amateur athletic association or to a registered journalism organization,

(a) if it 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 on that publication of a copy of the notice, the registration is revoked; 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 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), it becomes a listed terrorist entity 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

- (a) that begins immediately after the earliest of the days on which
  - (i) the Minister issues a notice of intention to revoke the registration of the charity under any of subsections 149.1(2) to (4.1) and 168(1),
  - (ii) the charity becomes a listed terrorist entity, and
  - (iii) 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 the Act is reasonable on the basis of information and evidence available, and
- (b) that ends on the day that is the latest of
  - (i) 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,
  - (ii) 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

- (iii) 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**

If the registration of a taxpayer as a registered charity has been revoked (and subsection 188(2.1) does not apply to the taxpayer), the taxpayer shall, on or before the day that is one year from the end of the taxation year referred to in paragraph 188(1)(a), 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.