



October 10, 2024

REGISTERED MAIL

Stephen Lee
Director
Faith & Action Mission Society
7577 Curtis Street
Burnaby BC V5A 4W7

BN: 87539 7028 RR0001
Case number: 11701541

Dear Stephen Lee:

**Subject: Notice of intention to revoke
Faith & Action Mission Society**

We are writing with respect to our letter dated January 4, 2023 (copy enclosed) in which Faith & Action Mission Society (the Organization) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from October 1, 2015, to September 30, 2017. Specifically, the Organization was asked to explain why its registration should not be revoked in accordance with subsection 168(1) of the *Income Tax Act* (Act). The issuance of penalties under subsections 188.1(4) and 188.1(5) of the Act and suspension of receiving privileges pursuant to paragraphs 188.2(2)(a) and (c) of the Act were also presented. As of this date, we have not received any response to our letter.

Conclusion

The audit by the CRA found that the Organization continues not to comply with the requirements set out in the Act. Specifically, the Organization failed to implement any of the agreed upon corrective measures of a compliance agreement that was signed by the Organization in 2013 following a previous audit. In particular, the current audit found repeat non-compliance in that the Organization failed to devote resources to charitable activities carried on by the Organization itself, failed to maintain adequate books and records, failed to file an information return as and when required by the Act and/or its Regulations, failed to file an information return as required for amounts paid. In addition to the repeat non-compliance, the Organization also failed to issue donation receipts in accordance with the Act and/or its Regulations.

Additionally, given the Organization's lack of response to our January 4, 2023 letter, along with its failure to address the non-compliance addressed in our previous audit, it is our view that the Organization has exhibited an unwillingness to become compliant with the requirements for its continued registration as a registered charity. In this regard, the

audit found that the Organization and its directors used the charity as a vehicle for their own private benefit and to offset expenses related to their for-profit companies.

This non-compliance constitutes a serious breach of the requirements for registration. 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: provided unacceptable private and undue benefits to non-qualified donees, which is sanctionable under subsections 188.1(4) and 188.1(5) of the Act; failed to maintain adequate books and records, which is subject to suspension of receiving privileges pursuant to paragraph 188.2(2)(a) of the Act; and failed to issue official donation receipts in accordance with the Act and/or its Regulations, which is subject to suspension of receiving privileges pursuant to paragraph 188.2(2)(c) of the Act, 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 January 4, 2023, 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), 168(1)(e), and subsection 149.1(2), of the *Income Tax Act*, of our intention to revoke the registration of the charity listed below and that by virtue of paragraph 168(2)(b) thereof, the revocation of registration will be effective on the date of publication of this notice in the *Canada Gazette*.

Business number	Name
875397028RR0001	Faith & Action Mission Society Burnaby BC

As noted in our letter dated January 4, 2023, we informed you that the CRA may revoke the charitable registration of the Organization. We further informed you, that the CRA may, after the expiration of 30 days from the date of the mailing of the notice, publish a copy of the notice in the *Canada Gazette*, and on the date of that publication, the Organization's registration would be revoked.

This letter is to inform you that the CRA has decided to issue a 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 egregious non-compliance, including failure to devote resources to charitable activities carried on by the Organization itself, failure to maintain adequate books and records, failure to file an information return as and when required by the Act and/or its Regulations, failure to file an

information return as required for amounts paid, and failure to issue donation receipts in accordance with the Act and/or its Regulations. Despite signing a compliance agreement with the CRA in a prior audit, the Organization has failed to implement any corrective measures. Furthermore, the Organization has not provided any representations to our letter dated January 4, 2023.

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

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

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 of revocation.¹

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

Consequences of revocation

As of the effective date of revocation:

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

¹ 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.

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

Enclosures

- CRA letter dated January 4, 2023
- Appendix A, Relevant provisions of the Act
- Compliance Agreement dated March 15, 2013 [prior audit]

c.c.: Sieu Vinh Chan



January 4, 2023

Stephen Lee
Director
Faith & Action Mission Society
7577 Curtis Street
Burnaby BC V5A 4W7

BN: 875397028RR0001
File number: 3008711
Case number: 11701541

Dear Stephen Lee:

Subject: Audit of Faith & Action Mission Society

This letter results from the audit of the Faith & Action Mission Society (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period of October 1, 2015 to September 30, 2017.

Background

The Organization was registered as a charitable organization on June 27, 2003. It's purposes at time of registration were:

1. To own and manage real property so as to provide housing and care for the needy and seniors and to provide a place of worship for adherents to the teachings of the Christian religion;
2. To operate as a charitable organization and to receive, acquire and hold gifts, donations, devises and bequests of every nature and description towards the purposes of the society; and
3. To do all such other things as are incidental and ancillary to the attainment of the foregoing purposes and the exercise of the powers of the society.

In 2000, the Organization built and operated Vancouver Grace Seniors Home to provide housing to low-income seniors.

Prior audit

The CRA conducted an audit of the Organization for its fiscal periods ending September 30, 2010 and September 30, 2011 that was concluded with a Compliance Agreement between the Organization and the CRA. The audit found the Organization to be non-compliant in the following areas:

1. Providing a personal benefit to a member of the charity

The Organization provided undue benefits by reimbursing all five directors for foreign travel expenses, paying all automobile expenses for the President's personal vehicle, and providing interest-free loans to the President and [REDACTED] (a non-profit organization with common directors.)

2. Failure to devote resources to charitable activities/payments to non-qualified donees

The Organization made payments to [REDACTED] and others, all of which are non-qualified donees.

3. Failure to maintain adequate books and records/lack of adequate internal controls

The Organization could not provide supporting documentation to substantiate the charitable purposes of identified payments. It also did not have an effective internal control system to provide reasonable assurance that its assets are safeguarded from loss and that accounting records are a reasonable basis for the preparations of financial statements.

It was also determined that there was a further lack of controls, as duties were not adequately segregated amongst staff members. The petty cash fund is used excessively and there is no secondary review of payment claims and issuance of payments, and the President's personal expenses are co-mingled with the expenses of the Organization.

4. Failure to file a registered charity information return as required by the Act and/or its Regulations

The Organization incorrectly reported or omitted the following items on its Charity Information Return:

- 1) Line 2000 was answered incorrectly.
- 2) Amounts receivable on Line 4120 should have been reported as amounts receivable from non-arm's length persons on Line 4110.
- 3) An amount for amounts owing to non-arm's length parties on Line 4320 was not reported.
- 4) An amount for gifts for which a tax receipt was not issued on Line 4530 was not reported.
- 5) Gifts to non-qualified donees were reported on Line 5050 as gifts to qualified donees or a gift to a registered charity was not included on Line 5050.
- 6) Lines 5900 and 5910 were left blank.
- 7) The T1235 Directors Worksheet was incomplete with not all fields completed.

5. Failure to prepare T4/T4A documentation for payments to employees and other individuals

Our review of the Organization's payroll determined that some of the full-time and part-time staff members were paid on a cash basis from the Organization's petty cash fund. As well, we found that the total amount for the 15 T4s issued by the Organization did not match to the amount that was reported for total compensation paid during the Organization's fiscal period. And, the Organization did not issue T4/T4A slips to report amounts paid for all salary/services which were provided by employees and self-employed individuals as required.

Corrective measures per prior audit compliance agreement:

1. Providing a personal benefit to a member of the charity

- (a) Effective immediately, the Organization will cease the payment of all personal expenses for its directors.
- (b) Effective immediately, the Organization will commence charging a fair market rate of interest on all existing loans. The Organization will discontinue its practice of providing interest-free loans to non-qualified donees.

2. Failure to devote resources to charitable activities/payments to non-qualified donees

The Organization will cease all payments to non-qualified donees

3. Failure to maintain adequate books and records/lack of adequate internal controls

- (a) In the future, the Organization will maintain adequate books and records at its registered address that is on file with the Canada Revenue Agency. The purpose of this requirement is to enable a charity to accurately provide CRA with the information required by the Act, as well as to enable CRA to verify the accuracy of reported information through the conducting of audits.
- (b) Effective immediately the Organization will establish written loan agreements where it has advanced funds to a non-qualified donee. The loan agreements will be properly structured as an investment, so that the Organization will be in a position to earn a return on its monies and not place its assets at risk. At a minimum, loan agreements will identify the amount of the loan, repayment period, security, and interest rate.
- (c) As soon as is practically possible, the Board of Directors/officers will review its internal controls, and establish adequate internal controls to address the matters as outlined above, in order to improve the reliability and integrity of its financial records.

4. Failure to file a registered charity information returns as required by the Act and/or its Regulations

The Organization will file all future returns in prescribed form to address the errors and omissions as noted above. Please refer to our guide for completing a registered charity's Annual Charity Information Return (T-4033) and other publications as noted above.

5. Failure to prepare T4/T4A documentation for payments to employees and other individuals

The Organization will issue T4/T4A forms as required commencing for the 2013 calendar year. For more information on T4 reporting requirements please refer to Guide RC4120, Employer's Guide - Filing the T4 Slip and Summary Form. For more information on T4A reporting requirements please refer to Guide RC4157, Deducting Income Tax on pension and Other Income, and Filing the T4A Slip and Summary Form.

Based on our current audit findings and the findings of the prior audit, we are concerned about the Organization's future compliance, particularly given its failure to remedy the areas of non-compliance in accordance with the corrective measures outlined in the agreement dated March 11, 2013.

Current audit

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	Reference
1.	Failed to devote resources to charitable activities carried on by the Organization itself: I. Lacked direction and control over its own resources II. Gifted to non-qualified donees III. Delivered non-incidental private benefits IV. Conferred an undue benefit on a person	149.1(1), 149.1(2)(c)(ii), 168(1)(b) 188.1(4), 188.1(5),
2.	Failed to maintain adequate books and records	149.1(2), 230(2), 168(1)(b), 168(1)(e), 188.2(2)(a)
3.	Failed to file an information return as and when required by the Act and/or its Regulations	149.1(2), 149.1(14) 168(1)(c)
4.	Failed to file an Information Return as required for Amounts Paid (T4, T4A, T4A-NR)	149.1(2), 149.1(14) 168(1)(b), 168(1)(c), 188.1(6)
5.	Failed to issue donation receipts in accordance with the Act and/or its Regulations	149.1(2), 168(1)(d), Regulation 3500 or 3501 188.2(2)(c)

As a registered charity, the Organization must comply with the law. If it fails to comply with the law, it may either be subject to sanctions under sections 188.1¹ and/or 188.2² of the Act, and/or have its registered charity status revoked in the manner described in section 168 of the Act.

This letter describes the areas of non-compliance identified by the CRA relating to the legislative and common law requirements that apply to registered charities, and offers the Organization an opportunity to provide representations to our findings to support why it believes that sanctions should not be assessed and/or why its registered status should not be revoked.

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

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.³ To be exclusively charitable, a purpose must fall within one or more of the following four categories (also known as “heads”) of charity⁴ and deliver a public benefit:

- (1) relief of poverty;
- (2) advancement of education;
- (3) advancement of religion; and
- (4) 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

¹ Financial sanctions are assessed under Section 188.1 of the Act.

² Suspensions of a registered charity’s authority to issue official donation receipt, and qualified donee status, are assessed under section 188.2 of the Act.

³ 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.

⁴ 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 Macnaughten 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).

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.⁵ In most cases, the benefit should be a necessary and reasonably direct result of how the purpose will be achieved.⁶ 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.⁷
- 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.⁸

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

⁵ 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).

⁶ 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 Pe mesel, [1891] AC 531 (PC) at 583.

⁷ 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.

⁸ For more information about public benefit, see CRA Policy statement CPS-024, Guidelines for registering a charity: Meeting the public benefit test.

requirements. Furthermore, the CRA may take a position that differs from that reached previously based on reconsideration of the pertinent facts and law.⁹

Identified areas of non-compliance

1. Failed to devote resources to charitable activities carried on by the Organization itself

A registered charity is required to devote all of its resources to its own charitable activities. In this regard, the Act allows a registered charity to use its resources (funds, personnel, and property) inside or outside Canada in only two ways:

- for its own charitable activities – undertaken by the charity itself under its continued supervision, direction and control;¹⁰ and
- for gifting to qualified donees as defined in the Act.

Our audit found that the Organization failed to demonstrate that it devoted its resources to its own charitable activities in the following four ways. It:

- I. lacked direction and control over its own resources;
- II. gifted to non-qualified donees;
- III. delivered non- incidental private benefits; and
- IV. conferred undue benefits on a person.

Legislation and jurisprudence

I. Lacked direction and control over its own resources

As stated above, the Act allows a registered charity to carry out its charitable purposes by making gifts to other organizations that are on the list of qualified donees set out in the Act; and, by carrying on its own charitable activities under its direction and control. In contrast to the relatively passive transfer of money or other resources involved in making gifts to qualified donees, carrying on one's own activities implies that the charity is an active and controlling participant in a program or project that directly achieves a charitable purpose.

A charity can carry on its own activities using its staff, including volunteers, directors, and employees, or through an intermediary (for example, a private contractor) acting on its behalf. Whether it uses its own staff or works through an intermediary, a charity must direct and control the use of its resources. Although it may delegate the responsibility for day-to-day operating decisions to an intermediary, it cannot act as a conduit that merely funnels resources to an organization that is not a qualified donee. A charity's resources include all its physical and financial resources as well as its staff and volunteers.¹¹

⁹ Canadian Magen David Adom for Israel v MNR, 2002 FCA 323 at para 69.

¹⁰ Canadian Committee for the Tel Aviv Foundation v. Canada, 2002 FCA 72 (CanLII) at para 31.

¹¹ For more information, see CRA Guidance CG-002, Canadian registered charities carrying out activities outside Canada and CRA Guidance CG-004, Using an intermediary to carry out a charity's activities within Canada.

A charitable organization must be careful about how it carries on its activities, and ensure that it keeps sufficient direction and control over its resources. The absence of appropriately structured arrangements, such as agency agreements, to establish the necessary direction and control over its funds and purported activities, indicates the charity is gifting its funds to non-qualified donees, which is not a charitable activity and is contrary to the provisions of the Act.

Used an intermediary

If unable to carry out its own activities through its staff, a charity typically uses an intermediary. An intermediary is an individual or non-qualified donee that the charity works with to carry out its own activities. The intermediary usually has resources that a charity needs, such as particular skills, resources, knowledge of a region, or specialized equipment. If a charity chooses to conduct its own activities through an intermediary, it must still direct and control the use of its resources, as the charity cannot merely contribute to or act as a financial conduit for the programs of another organization.

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. A charity must maintain, as part of its books and records, an account of steps taken to direct and control the use of its resources. The books and records should be sufficiently detailed to allow the Canada Revenue Agency (CRA) to verify that all of the charity's resources have been used for its own activities.¹²

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

Under the scheme of the Act, it is open to a charity to conduct its overseas activities either using its own personnel or through an agent. However, it cannot merely be a conduit to funnel donations overseas.¹³

And

Pursuant to subsection 149.1(1) of the Act, a charity must devote all its resources to charitable activities carried on by the organization itself. While a charity may carry on its charitable activities through an agent, the charity must be prepared to satisfy the Minister that it is

¹² For more information, see CRA Guidance CG-002, Canadian registered charities carrying out activities outside Canada and CRA Guidance CG-004, Using an intermediary to carry out a charity's activities within Canada.

¹³ *Canadian Committee for the Tel Aviv Foundation v Canada*, 2002 FCA 72 at para 30, Rothstein JA.

at all times both in control of the agent, and in a position to report on the agent's activities.¹⁴

As re-iterated by the Court in *Lepletot v MNR*,¹⁵ 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 v MNR* 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.¹⁶

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

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

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 a charity 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, real, ongoing, active relationship with the intermediary.¹⁷ 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 a charity is providing resources to a non-qualified donee which would be in contravention of the Act.

¹⁴ Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at para 40, Rothstein JA.

¹⁵ *Bayit Lepletot v Canada (MNR)*, 2006 FCA 128 at para 5.

¹⁶ *Canadian Magen David Adom for Israel v Canada (MNR)*, 2002 FCA 323 at para 66, Létourneau JA.

¹⁷ Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at para 30.

The documentation should include:

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

The basic elements of a written agreement can be found in CRA's guidance CG-002, Canadian registered charities carrying out activities outside Canada at Appendix F or CG-004, Using an intermediary to carry out a charity's activities within Canada at Appendix C.

II. Gifted to non-qualified donees

As indicated above, a registered charity is permitted to use its resources for making gifts to qualified donees. A **qualified donee** means a donee defined in subsection 149.1(1) of the Act, as follows:

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

III. Delivered non- incidental private benefits

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 benefit¹⁸ 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.¹⁹

(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

(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.

¹⁸ 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.

¹⁹ For more information, see CRA Policy statement CPS-024, Guidelines for registering a charity: Meeting the public benefit test.

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.

IV. Conferred an undue benefit on a person

As stated above, pursuant to subsection 149.1(1) of the Act, as a charitable organization, no part of the Organization's income can be payable to, or otherwise made available for, the personal benefit of any proprietor, member, shareholder, trustee or settler thereof. Any portion of a charitable organization's income that is received by such a person would be an unacceptable private benefit.

Typically, private benefits that are unacceptable under the common law will also be undue under subsection 188.1(5) of the Act²⁰. 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 RCAA 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 RCAA 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 RCAA;
- (b) has contributed or otherwise paid into the charity or RCAA more than 50% of the capital of the charity or RCAA; or
- (c) does not deal at arm's length with a person in (a) or (b), or with the charity or RCAA.

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 RCAA;

²⁰ Undue benefits sanctions are assessed under subsection 188.1(4) of the Act.

(c) a gift made, or a benefit provided, in the course of a charitable act²¹ in the ordinary course of the charitable activities carried on by the charity or RCAA, unless it can be reasonably considered that the beneficiary was eligible for the benefit solely due to the relationship of the beneficiary to the charity or RCAA.

Subsection 188.1 (4) of the Act provides for the levying of a penalty to registered charities under specific circumstances. Under the Act, a registered charity cannot confer on a person an undue benefit (for example, a transfer of property or other resources of the charity to a person who does not deal with the charity at arm's length or who is the beneficiary of a transfer because of a special relationship with a donor or charity.)

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

Audit findings

I. Lacked direction and control over its own resources

The audit revealed that, during the audit period, the Organization gifted its resources with several non-qualified donees²². The Organization did not provide the CRA with any documentation to support that it maintained direction and control over the manner in which the non-qualified donees used the funds they received from the Organization.

Accordingly, it is our view that the Organization does not exercise either 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. The following sections outline the basis for our concerns in greater detail.

II. Gifted to non-qualified donees

Our audit revealed that the Organization gave to non-qualified donees in the following instances:

Funds transferred to Van C.A.R.E At Home Senior Services

During the 2016 fiscal period the Organization gave Van C.A.R.E At Home Senior Services (VC), a for-profit business²³ \$15,520. There is no indication that VC provided

²¹ 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.

²² Details related to the specific gifts to non-qualified donees are discussed below, starting with the audit findings outlined under the sub-heading called "II. Gifted to non-qualified donees".

²³ That is, a non-qualified donee.

any services to the Organization, and the Organization listed some of the funds as “donations” on the income/expense monthly worksheet.

Funds transferred to pastor of Grace Christian Chapel for “Missionary expenses”

Each month during the audit period the Organization made regular payments of \$1,000, 1,500, \$1,700, and \$1,800 to one of Grace Christian Chapel’s (GCC) pastors²⁴. The payments totaled \$34,000.00 in the fiscal period ending September 30, 2016 and \$54,400.00 in the fiscal period ending September 30, 2017. Additionally we found that in the 2016 fiscal period, the Organization transferred funds to Grace Christian Chapel to pay for miscellaneous expenses totalling \$1,721.76

In the audit query questionnaire, the Organization stated that the regular payments were related to missionary work that the pastors conducted on behalf of the Organization. The Organization claims that the funds were related to expenses for travelling, worship work, organization of programs/activities, and entertainment expenses. However, the Organization provided no supporting documentation to the charitable purpose of the transfers to the pastors²⁵. Additionally, no supporting documents were provided to show a charitable purpose for the miscellaneous expenses the Organization paid on behalf of Grace Christian Chapel.

Funds transferred to [REDACTED] on behalf of [REDACTED]

The audit found that in both years of the audit period the Organization paid advertising expenses to [REDACTED]

[REDACTED] is not a qualified donee. The advertising expenses were paid on behalf of a non-profit²⁶ named [REDACTED] and amounted to \$992.25 in the fiscal period ending September 30, 2016 and \$1,323.00 in the fiscal period ending September 30, 2017. These expenses were not paid in exchange for services rendered to the Organization, but to [REDACTED]. Accordingly, each time the Organization paid these expenses it was making a gift [REDACTED] equal to the amount of the payments.

It is notable that [REDACTED] is affiliated with [REDACTED] one of the Organization’s directors, [REDACTED]

Funds transferred to [REDACTED] on behalf of [REDACTED]

The audit found that in both years of the audit period the Organization paid legal expenses to [REDACTED] a non-qualified donee. The legal fees amounted to \$338.97 in each of the fiscal periods ending September 30, 2016 and September 30, 2017. The legal expenses were paid on behalf of a for-profit corporation²⁷ named [REDACTED]

²⁴ During the audit period, [REDACTED]

²⁵ That is, the Organization’s claim that it was paying Grace Christian Chapel’s pastor for missionary work conducted on behalf of the Organization was not supported by any documentary evidence in the Organization’s books and records.

²⁶ That is, a non-qualified donee.

²⁷ That is, a non-qualified donee.

[REDACTED] These expenses were not paid in exchange for services rendered to the Organization, but rendered to [REDACTED]. Accordingly, each time the Organization paid these expenses it was making a gift to [REDACTED] equal to the amount of the payments.

It is notable that [REDACTED] is affiliated with [REDACTED] two of the Organization's directors.

Funds transferred to Grace Seniors Home Richmond BC:

The audit found that the Organization gave charitable resources to Grace Seniors Home (GSHR) in Richmond BC owned by [REDACTED]²⁸, during the audit period. The total amount gifted to GSHR in the fiscal period ending September 30, 2016 was \$16,000.00 and \$34,381.00 in the fiscal period ending September 30, 2017. While GSHR is not a qualified donee, in its books and records the Organization referred to most of the transfers to GSHR as donations.

Funds transferred to Home Mutual Aid Society:

The audit found that the Organization gave resources to Home Mutual Aid Society (HMAS); a non-profit that has directors in common with the Organization. The total amount gifted to HMAS in the fiscal period ending September 30, 2016 was \$18,000.00 and \$5,000.00 in the fiscal period ending September 30, 2017. HMAS was formerly a registered charity that had its registered charitable status revoked in 1999²⁹.

The Organization did not provide documentary evidence to support that it maintained direction and control over how HMAS used the funds it received from the Organization, and in the prior audit, we had advised the Organization that it should not continue to gift resources to HMAS.

Funds transferred to Ky Tran

The audit revealed that, during the audit period, the Organization made several payments to its director Ky Tran. In the fiscal period ending September 30, 2016, the payments totaled \$14,048.00 and in the fiscal period ending September 30, 2017, the payments totaled \$14,452.99. In some of the cases, the payments appear to be reimbursement of some of Ky Tran's personal expenses (for example, cell phone bills, and vehicle expenses), while in other cases the purpose of the payments was unclear.

The Organization has not provided the CRA with sufficient information and/or documentation to support that the payments to Ky Tran were reimbursements for services that they rendered to the Organization either in furtherance of the Organization's charitable purposes or for conducting charitable activities on behalf of the Organization. Accordingly, it is our view that the funds transferred to Ky Tran were gifts.

²⁸ [REDACTED]

²⁹ That is, HMAS is not a qualified donee.

Funds transferred to Stephen Lee

The audit revealed that, during the audit period, the Organization transferred a total of \$65,453.38 for the fiscal period ending September 30, 2016 and \$60,790.75 for the fiscal period ending September 30, 2017 to its director Stephen Lee. In some of the cases, the payments appear to be reimbursement of some of Stephen Lee's personal expenses (for example, cell phone bills, personal meals, hotel-related expenses and vehicular expenses), while in other cases the purpose of the payments is unclear.

The Organization has not provided the CRA with sufficient information and/or documentations to support that the payments to Stephen Lee were reimbursements for services rendered to the Organization either in furtherance of the Organization's charitable purposes or for conducting charitable activities on behalf of the Organization. Accordingly, it is our view that the funds transferred to Stephen Lee were gifts.

ii) Stephen Lee received various amounts from the Organization each month. We were unable to determine why he was receiving these funds as there was no supporting documentation provided. The Organization had listed the amounts paid to Stephen Lee/ [REDACTED] (employee) on the Income/Expense worksheet under "Salaries" and "Miscellaneous" remuneration expenses but no T4 or T4A was completed and filed with CRA for Stephen Lee.

Upon our review of these cheques it appeared that, in some of the months, a portion of the funds would go into Stephen Lee's account and in other months it would go into [REDACTED] bank account.

The Organization provided an undue benefit to Stephen Lee and Ky Tran through the payment of automobile expenses for their personal vehicles, meals, and telephone/cellphone usage. While a registered charity is permitted to reimburse its directors for any expenses the directors incur while performing their duties, the reimbursement of all expenses attributable to the vehicle, telephone/cellphone use is not fair and reasonable, as Mr. Lee and Mr. Tran also uses their vehicles, home phones/cellphones on a personal basis³⁰. As well, fuel expenses and meal expenses were reimbursed to the [REDACTED] of Stephen Lee. Ky Tran was also reimbursed cash for some of his expenses. There were no supporting documents for these expenditures to indicate how these were for charitable purposes.

Funds transferred to Stephen Lee related to Mission Trip to Thailand

The audit revealed that, during the audit period, the Organization made several payments to its director Stephen Lee to reimburse him for a Mission Trip he made on behalf of the Organization. While the books and records indicate that the purpose of the trip was to conduct a "Mission trip" to Thailand, due to a lack in supporting documentation the Organization has not supported the validity of this purpose.

³⁰ That is, Stephen Lee and Ky Tran used their vehicles and cellphones for personal reasons and not only for duties related to their responsibilities related to the operation of the Organization.

In response to a query sheet that was sent to Stephen Lee to explain the purpose of the trip to Thailand, the Organization responded that the cheques made out to Stephen Lee were for reimbursements of the expenses he incurred to conduct missionary work in Thailand. Despite this explanation, however, the Organization did not provide the CRA with any documentation to support the stated purpose of the mission trip to Thailand. For example, the Organization did not prepare a budget for the trip or maintain an itinerary for the trip, nor did the Organization's minute book contain any entries related to the mission trips that would demonstrate that these mission trips were taken and/or that the costs associated with the trips were discussed and approved by the Organization's board of directors. In short, the Organization's books and records were not adequate to support that any missionary work was conducted by Stephen Lee while he was in Thailand.

Additionally, upon review of the flights taken for this mission trip, our audit revealed that during one of the trips to Thailand, in October 2016, there was a two-week stop-over in Hong Kong before Stephen Lee went to Thailand. The Organization has not explained the charitable purpose for the stop-over in Hong Kong, nor has the Organization indicated that any missionary work was conducted in Hong Kong or Thailand during the audit period.

Our review of the governing documents, submitted and approved by the CRA, shows missionary work is not a purpose of the Organization. When an Organization changes its charitable purposes and activities it is required to request approval from the Charities Directorate for the change. While missionary work is a charitable activity, the Organization has not provided any supporting documentation to show that the trip Stephen Lee took was in fact for the purpose of missionary work. As a result, it is our position that the director has received an undue benefit from the Organization through the reimbursement of the personal expenses for the October 2016 trip and for unsupported expenses in the 2016 fiscal year.

The total undue benefits received by Stephen Lee in the fiscal period ending September 30, 2016 is \$28,000.00 and \$7,000.00 in the fiscal period ending September 30, 2017.

Funds transferred to [REDACTED] Joshua So

The audit revealed that, during the audit period, the Organization made a \$1,000 payment to [REDACTED] Joshua So in both fiscal periods ending September 30, 2016 and September 30, 2017.

The Organization has not provided the CRA with sufficient information and/or documentations to support that the payments to [REDACTED] So were reimbursements for services that they rendered to the Organization either in furtherance of the Organization's charitable purposes or for conducting charitable activities on behalf of the Organization. Accordingly, it is our view that the funds transferred to [REDACTED] Joshua So were gifts.

Funds transferred to Tam Hung Kwon

A payment was made to Tam Hung Kwon in the amount of \$2,700.00 [REDACTED] in July 2016. The Organization was unable to provide the CRA with sufficient information and/or documentations to support that the payment was for a reimbursement for services rendered to the Organization that either furthered the Organization's charitable purposes charitable activities. Accordingly, it is our view that the funds transferred to Tam Hung Kwon were gifts.

Unsubstantiated interest expenses – charitable purposes not determined

During the audit period, it was determined that the Organization made mortgage interest payments on behalf of non-qualified donee [REDACTED]

[REDACTED] It also paid interest expenses for unsubstantiated loans. The interest expense totaled \$131,350.07 in the 2016 fiscal year and \$184,435.38 in the 2017 fiscal year. Based on the information provided, we could not determine the charitable purpose for the Organization to have made the interest payments. Accordingly, we have considered these amounts to be gifts made to non-qualified donees.

III. Delivered non- incidental private benefits

In total, the Organization gifted \$329,124 of its resources in fiscal period ending September 30, 2016, and \$363,122 for fiscal period ending September 30, 2017, to non-qualified donees. As the Organization is unable to demonstrate how any of the above referenced gifts to non-qualified donees were made in furtherance of its own charitable purposes, it is our view that each of the non-qualified donees received non- incidental private benefits by receiving the gifted funds from the Organization.

While an argument could be made that the some of the amounts that the Organization transferred to non-qualified donees were not substantial compared to the Organization's total expenditures, **all** three of the above-noted conditions must be met in order for private benefits to be considered acceptable³¹. It is our view that the Organization failed to meet all three conditions, as the Organization has not demonstrated that any public and charitable benefit resulted from the expenditures. As such, incurring these expenses was not necessary to fulfill a charitable purpose, nor was there a public benefit for the expenditures to be proportional to.

Please see **Table 1** below for a calculation of the total non- incidental private benefits that the Organization provided during the fiscal period ending on September 30, 2016:

³¹ That is, necessary, reasonable and proportional.

Table 1: Non- incidental private benefits provided by the Organization during the fiscal period ending September 30, 2016

Non- incidental private benefit	Amount
VC	\$15,520
GCC	35,722
██████████	\$992
██████████	\$339
GSH	\$16,000
HMAS	\$18,000
Ky Tran	\$14,048
Stephen Lee	\$65,453
Stephen Lee (Mission Trip(s) to Thailand)	\$28,000
██████████ Joshua So	\$1,000
Tam Hung Kwon	\$2,700
Unsubstantiated interest expense	\$131,350
Total Non- incidental private benefits	\$329,124

Please see **Table 2** below for a calculation of the total non- incidental private benefits that the Organization provided during the fiscal period ending on September 30, 2017:

Table 2: Non- incidental private benefits provided by the Organization during the fiscal period ending September 30, 2017

Non- incidental private benefit	Amount
GCC	\$54,400
██████████	\$1,323
██████████	\$339
GSH	\$34,381
HMAS	\$5,000
Ky Tran	\$14,453
Stephen Lee	\$60,791
Stephen Lee (Unsupported missionary expenses)	\$7,000
██████████ Joshua So	\$1,000
Unsubstantiated interest expense	\$184,435
Total Non- incidental private benefits	\$363,122

Penalty proposed

IV. Conferred an undue benefit on a person

As outlined above, in each of the cases cited above in this letter, the Organization failed to demonstrate that it had direction and control over how the recipients of its resources used the funds. Accordingly, it is our view that the Organization has not demonstrated that any of the resources were used by the Organization to conduct its own charitable activities in furtherance of its charitable purposes. It is for these reasons that we consider each of the identified transfers to be gifts to non-qualified donees.

As also outlined above, it is our view that the Organization provided unacceptable private benefits when it transferred its resources to various non-qualified donees, including its directors. In our view, each of these unacceptable private benefits also meets the definition of undue benefits for the following reasons:

1. The gifted funds were not reasonable consideration for property acquired or services received by the Organization³².
2. The gifted funds were not made in the course of charitable acts³³.
3. The gifted funds were not given to qualified donee(s)³⁴.

As such, the gifted funds can be considered undue benefits per the definition of “undue benefits” provided in subsection 188.1(5) of the Act. Please see **Table 3** below for a calculation of the total undue benefit in this regard.

Table 3: Total undue benefits conferred by the Organization

Fiscal period ending	Amount
September 30, 2016	\$329,124
September 30, 2017	\$363,122
Total Undue Benefit	\$692,247

The table below details the calculation of the penalty we are proposing to assess:

Faith & Action Mission Society				
Fiscal period ending	Type of sanction	Sanction %	Sanctioned amount	Sanction
Sep. 30, 2016	Undue Benefit	105%	\$329,124	\$345,581
Sec. 30, 2017	Undue Benefit	105%	\$363,122	\$381,278

³² Paragraph 188.1(5)(a) of the Act.

³³ Paragraph 188.1(5)(b) of the Act.

³⁴ Paragraph 188.1(5)(c) of the Act.

In summary

Based on the above audit findings, we are considering revoking and/or penalizing the Organization for not devoting its resources to charitable activities carried on by the Organization itself.

It is our view that, by gifting funds to non-qualified donees, the Organization has provided unacceptable private benefits. As a result, the Organization has failed to meet the requirements of subsection 149.1(1) of the Act that it devote its resources to charitable activities carried on by the Organization itself. As such, there are grounds for the Minister to revoke the charitable status of the Organization in the manner as described under paragraph 168(1)(b) of the Act.

Financial sanction proposed

Additionally, it is our view that the above-mentioned unacceptable private benefits are also considered to be undue benefits as defined in subsection 188.1(5) of the Act. As such, there may also be grounds for the Minister to sanction the Organization under subsection 188.1(4) of the Act.

2. Failed to maintain adequate books and records

Legislation and jurisprudence

Subsection 230(2) of the Act requires that every registered charity shall maintain adequate records³⁵ 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 the revocation of its registration under this Act;
- (b) a duplicate of each receipt containing prescribed information for a donation received by it; and
- (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.

This provision is necessary to enable a charity to accurately provide the CRA with the information required by the Act, as well as ensuring the CRA can verify the accuracy of reported information through an audit and determine whether there are any grounds for revocation of the charity's registration.

³⁵ Subsection 248(1) of the Act defines a record in the following way: "record includes an account, an agreement, a book, a chart or table, a diagram, a form, an image, an invoice, a letter, a map, a memorandum, a plan, a return, a statement, a telegram, a voucher, and other thing containing information, whether in writing or in any other form."

Subsection 231.1(1) of the Act permits an authorized person to inspect, audit, or examine the books and records of a taxpayer, as well any document of the taxpayer, or of any other person that relates, or may relate, to the information that is, or should be, contained in the books and records of the taxpayer, or to any amount payable by the taxpayer under the Act.

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

Subsection 230(4) also states that 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 period as is prescribed; and
- (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.

Subsection 230(2) of the Act requires that registered charities maintain adequate books and records of account, at an address in Canada registered with the CRA, containing information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under the Act.

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:

- i. the onus is on the registered charity to prove that its charitable status should not be revoked;³⁶
- ii. a registered charity must maintain and make available to the CRA at the time of an audit, meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required books and records at some later date;³⁷

³⁶ See Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at paras 26-27, [2002] 2 CTC 93.

³⁷ Canadian Committee for the Tel Aviv Foundation, 2002 FCA 72 at para 39, [2002] 2 CTC 93. Furthermore, failing to comply with the requirements of section 230 of the Act by refusing to make documents available can lead to a fine and imprisonment, in addition to the penalty otherwise provided. See subsection 238(1) of the Act. See also The Lord's Evangelical Church of Deliverance and Prayer of Toronto v. Canada 2004 FCA 397.

- iii. paragraph 168(1)(e) of the Act provides that the Minister may propose to revoke registration of a charitable organization if it fails to comply with, or contravenes, any of sections 230 to 231.5 of the Act, and the Federal Court of Appeal has determined that non-compliance with section 230(2) of the Act is a proper basis upon which the Minister may issue such a notice;³⁸ and
- iv. The requirement to keep proper books and records is foundational and non-compliance with the requirement is serious and justifies revocation.³⁹

While paragraph 230(2)(a) of the Act does not explicitly set out the types of books and records that a registered charity is required to maintain, which could therefore lead to a technical failure to comply with the Act,⁴⁰ given the significant privileges that flow from registration as a charitable organization under the Act, the Minister must be able to monitor the continuing entitlement of charitable organizations to those privileges. In that regard, the Federal Court of Appeal has held that there exists a serious obligation for registered charities to maintain adequate books and records,⁴¹ and that material or significant, and/or repeated, non-compliance with the requirements of subsection 230(2) of the Act constitutes sufficient grounds for revocation.⁴²

Additionally, if a registered charity has not complied with paragraph 230(2)(a) of the Act, it may be subject to a suspension of its qualified donee status for one year under paragraph 188.2(2)(a), which states that:

188.2(2) – Notice of Suspension – General

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

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

Audit findings

The audit found the following deficiencies with regard to the Organization's books and records:

³⁸ Opportunities for the Disabled Foundation v. Canada (National Revenue) 2016 FCA 94; and Ark Angel Foundation v. Canada (National Revenue) 2019 FCA 21

³⁹ Jaamiah Al Uloom Al Islamiyah 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.

⁴⁰ Prescient Foundation v. Canada (National Revenue) 2013 FCA 120; and Ark Angel Foundation v. Canada (National Revenue) 2019 FCA 21, paragraph 37

⁴¹ Humane Society of Canada for the Protection of Animals and the Environment v. Canada (National Revenue) 2015 FCA 178, paragraph 80

⁴² Ark Angel Foundation v. Canada (National Revenue) 2019 FCA 21, paragraph 43

- a) Invoices/receipts to support expenditures including missionary trips to Thailand were not all available.
- b) Invoices/receipts to support reimbursement of expenses to Stephen Lee and Ky Tran were not all available.
- c) No documentation was provided to support the calculation of non-tax receipted revenues received [REDACTED]
- d) Fuel expenses were reported based on receipts. In order to claim fuel expenses, an Organization's staff/volunteers are required to maintain mileage logbooks to record mileage used while engaged in charitable activities. Fuel expenses are then calculated by multiplying the mileage, per logbooks, by the prescribed fuel expense rate. As the Organization did not supply receipts or logbooks to support fuel expenses claimed, the expenses have not been properly supported.
- e) The Organization did not maintain sufficient documentation to show that it was engaged in missionary work during the audit period.
- f) Meals were claimed by Stephen Lee on his personal [REDACTED], but no documentation was provided and no notes to indicate what these meals were for, who the meals were with, or what the charitable purpose was.
- g) Qualified donee amounts on the T1236 did not match the amounts in the General Ledger, which did not match the donations listed under Miscellaneous Expenses in the revenue and expense monthly summaries.
- h) Term deposit statements were not made available. No supporting documentation was received for the term deposits. As such, we were unable accurately verify assets.
- i) Bank statements and other documents were under the name Home Mutual Aid Society and/or Grace Seniors Home and not Faith & Action Mission Society.
- j) The original meeting minutes were not maintained in one of Canada's official languages (French/English), as required. Although the Organization translated the minutes to English upon our request, the information provided in the meeting minutes was limited and did not provide details of the Organization's operations and activities during the audit period.
- k) Revenues reported on the financial statements did not match to the amounts deposited to the Organization's bank accounts. For example, there were significant discrepancies between the amounts deposited in the Organization's bank accounts and revenue the Organization reported in its financial statements.
- l) Petty cash worksheets were not maintained in one of Canada's official languages.
- m) Not all of the supporting documentation for the accounts receivable was received to enable a thorough review of this account.
- n) Money was transferred between Grace Christian Chapel and the Organization with no agreement in place between the parties. The following are examples of transactions between the two entities:
 - i) The Organization paid the mortgage of the Grace Christian Chapel. When CRA asked why the Faith & Action paid the mortgage for Grace Christian Chapel – "it was to setup the Seniors Home". This explanation does not provide sufficient detail to determine a charitable purpose for the mortgage payments to be made.

- ii) The Organization paid the wages and food expenses for the Grace Christian Chapel. The Organization explained that some of the residents of the senior home attend the Organization's religious services and that the Organization was providing food to its parishioners. However, providing food to parishioners is not a charitable activity. Furthermore, the Organization did not address why wages for the church staff were paid.
- o) No documentation or explanation was provided to support many of the miscellaneous expenses listed on the Vancouver Grace Seniors Home Income/Expense worksheet, which included donations, cash and petty cash identifiers.
- p) No documentation was provided that supported the loan receivable [REDACTED] [REDACTED] As such, we were unable to properly verify receivables.
- q) There were no minutes of board meetings or board approvals for the funds sent to GCC, the wages for the pastors of the Chapel, the missionary work or the mission trips to Thailand.

The Organization also displayed a lack of internal controls in the following areas:

- a) Duties are not adequately segregated amongst staff members to ensure that proper controls are in place to protect income. It was disclosed that [REDACTED] [REDACTED] [REDACTED] are the only individuals in charge of all of the income generated by the seniors' home. This includes rental income and rent deposits, underground parking income, admission fees from new tenants and covers any damage, and non-tax received income from guests and families of the residents.
- b) The Petty Cash account is being used to pay casual labour, various food expenses, maintenance fees, locksmiths, and parking. Ideally, a petty cash fund is used on a limited basis to reimburse small out of pocket expenses an employee/volunteer incurs on behalf of the Organization. Using the petty cash on a regular basis bypasses an important element of the expense review process as a secondary person is not involved in the review of cash payments. As well, sufficient record keeping such as expense receipts and payroll documentation are not adequately maintained and there are no assurances that all petty cash transactions have been recorded in the ledger.
- c) There is a lack of separation of the personal expenditures of the President and the Treasurer from the charitable expenditures of the Organization. Personal credit cards are used for charitable expenditures and there is no system in place to ensure that these expenditures are related to the charity and approved to be reimbursed. The President is also reimbursed by cheque for numerous missionary trips taken to Thailand, without submission of proper receipts and documentation kept to support the expenses incurred by the President. It appears he is simply written a cheque out to the nearest thousand dollars to cover trip expenses incurred.

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 have, in the above three

examples, had a negative effect on the Organization's ability to demonstrate that its books and records were sufficient to support that its activities were: a) charitable in nature, and b) fulfilling the Organization's charitable purposes.

In summary

It is our view that the Organization failed to either 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, there are grounds for revocation of the Organization's charitable status.

Suspension Proposed

In addition, as it is our view that the Organization has failed to comply with subsection 230(2) of the Act, under paragraph 188.2(2)(a) of the Act, the Minister may suspend the Organization's authority to issue official donation receipts for one year.

3. Failed to complete an accurate charity information return

- **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 the Organization to ensure that the information provided in its T3010 returns, schedules and statements, is factual and complete in every respect. A charity is not meeting its requirements to file an information return in prescribed form if it fails to exercise due care with respect to ensuring the accuracy thereof. The Federal Court of Appeal has confirmed that major inaccuracies in a T3010 are a sufficient basis for revocation.⁴³

Audit findings

The following were deficiencies noted during the audit for the Form T3010 in both fiscal years:

⁴³ Opportunities for the Disabled Foundation v MNR, 2016 FCA 94 at paras 48-51.

Fiscal period ending September 30, 2016:

- a) The general ledger did not reconcile to the amounts reported on Form T3010.
- b) Section E: No date was entered.
- c) Schedule 3: 22 full- and part-time positions were entered when CRA records show that 21 T4 slips were issued (and 2 of these slips were amended to zero).
- d) Line 4655: No description of Other Revenue from Line 4650 was entered.
- e) The amount from Line 4950 was not allocated between lines 5000 to 5040.
- f) Lines 5900 and 5910 were left blank.
- g) T1235: Telephone numbers for all directors were missing, arm's length details were wrong for most directors, the address and birth date for one director were incomplete, one of the director's last name was spelt incorrectly, and two directors had out-of-date addresses.
- h) T1236: Money was donated to IVCF Canada (a qualified donee) but not included on the Qualified Donee Worksheet.

Fiscal period ending September 30, 2017:

- a) The general ledger did not reconcile to the amounts reported on Form T3010.
- b) Schedule 3: 23 full- and part-time positions were entered when CRA records show that 19 T4 slips were issued.
- c) Line 4655: No description of Other Revenue from Line 4650 was entered.
- d) No amount was reported on line 5010 for Management and administration expenses.
- e) Lines 5900 and 5910 were left blank.
- f) Line 5050 was missing \$5,000.00 of donations to qualified donees.
- g) T1235: Telephone numbers for all directors were missing, arm's length details were wrong for most directors, one of the director's last name is spelt incorrectly, the birth date of one director was missing, and two directors had out-of-date addresses.
- h) T1236: Money was donated to Acacia Spring Society (qualified donees) and IVCF Canada but were not included on the Qualified Donees Worksheet.

Finally, the Organization was late in filing three of its Form T3010s for the following three fiscal years:

<u>The Organization's fiscal year end</u>	<u>Due Date</u>	<u>Date received</u>
September 30, 2017	March 31, 2018	April 19, 2018
September 30, 2016	March 31, 2017	June 20, 2017
September 30, 2013	March 31, 2014	April 7, 2014

In summary

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

4. Failed to issue an information return for amounts paid (Form T4/T4A/T4A-NR)

Legislation and jurisprudence

Generally, in accordance with Regulation 200(1) of the Act, a Form T4, Statement of Remuneration Paid (slip), must be completed if you are an employer (resident or non-resident) and you paid your employees employment income, commissions, taxable allowances and benefits, fishing income, or any other remuneration. Most amounts paid to an individual by an employer are referred to as remuneration. The Form T4 must be completed to report the following:

- salary, wages (including pay in lieu of termination notice), tips or gratuities, bonuses, vacation pay, employment commissions, gross and insurable earnings of self-employed fishers, and all other remuneration you paid to employees during the year;
- taxable benefits or allowances;
- retiring allowances;
- deductions you withheld during the year; and
- pension adjustment (PA) amounts for employees who accrued a benefit for the year under your registered pension plan (RPP) or deferred profit sharing plan (DPSP).

In addition, a Form T4 must be completed for all individuals who received remuneration during the year if:

- amounts were deducted for Canada Pension Plan/Quebec Pension Plan contributions, Employment Insurance premiums, Provincial parental insurance plan premiums, or income tax from the remuneration; or
- the remuneration was more than \$500.

Regulation 200(2) of the Act states that a Form T4A, Statement of Pension, Annuity and Other Income, must be issued if you are a payer, such as an employer, a trustee, an estate executor (or liquidator), an administrator, or a corporate director, and you paid other types of income related to an employment, such as lump-sum payments or self-employed commissions. Further, Regulation 200(2) of the Act requires that Form T4A slips, and

summaries be prepared for contract payments to individuals exceeding \$500 in the calendar year.

As such, when a charity pays remuneration to its employees, it must comply with the CRA's payroll requirements, such as issuing T4 or T4A slips to those employees. More information on these requirements can be found in Guide T4001, Employers' Guide – Payroll Deductions and Remittances, available on the CRA's website at Canada.ca/taxes.

Audit findings

The Organization reported expenses for compensation of \$417,195 for 2016 and \$410,999 for 2017 on its Registered Charity Information Return (Line 4880). Of this amount, \$26,877.80 and \$19,130.57 were paid to staff members on a cash basis from the Organization's petty cash fund in 2016 and 2017, respectively.

For the period of January 1, 2016 to December 31, 2017, the Organization issued T4s to 21 individuals which totaled \$250,084 for 2016, and T4s to 19 individuals which totaled \$242,727 for 2017. The Organization did not issue any T4As. While we recognize that the year end for the Charity's financial reporting and T4/T4A reporting (i.e. the calendar year) are different, it is reasonable to assume that the total compensation paid for the period January 1, 2016 to December 31, 2017, would approximate the amount reported for compensation (\$417,195 for 2016, and \$410,999 for 2017) for the Organization's fiscal period from October 1, 2015 to September 30, 2017.

We found that the Organization did not issue T4As to individuals who had been paid over \$500 cash from the petty cash fund during the fiscal periods under audit.

Wages and salaries do not appear to have been paid correctly and not all T4 slips were issued correctly. Our review of the monthly income/expense worksheets indicated that 36 employees received salaries; however, only 21 T4 slips were issued in 2016 and 19 were issued in 2017. This discrepancy could not be reconciled.

The Organization also failed to issue T4s to two of the directors of the charity who had received remuneration.

In summary

Under paragraph 168(1)(b) of the Act, the Minister may, by registered mail, give notice to the charity that the Minister proposes to revoke its registration because it fails to comply with or contravenes Regulation 200(1) and 200(2) in respect of filing an Information Return (T4 supplementary and summary forms) in prescribed form.

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

Legislation and jurisprudence

Pursuant to subsection 118.1(2) of the Act, a registered charity can issue tax receipts for income tax purposes for donations that legally qualify as gifts. The Act requires the registered charity to ensure that the information on its Official Donation Receipts (ODR) is accurate and that the ODRs contain the required information listed in Regulation 3501 of the Act. A registered charity could have its registered status revoked under paragraph 168(1)(d) of the Act for issuing tax receipts that contain false information.

Additionally, if a registered charity has issued official donation receipts that were not in accordance with the Act and its Regulations, it may be subject to a suspension of its qualified donee status for one year under paragraph 188.2(2)(c), which states that:

188.2(2) – Notice of Suspension – General

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

(c) in the case of a person referred to in paragraph (a) of the definition "qualified donee" in subsection 149.1(1), if the person has issued a receipt for a gift otherwise than in accordance with this Act and the regulations;

Our findings as they pertain to the Organization's ODRs are outlined below.

Audit findings

The audit revealed that the donation receipts issued by the Organization do not comply with the requirements of Regulations 3500 and 3501 of the Act, as described in the Income Tax Folio S7-F1-C1, Split Receipting and Deemed Fair Market Value.

The following items were missing from the donation receipts:

- a. a statement that it is an "official receipt for income tax purposes";
- b. the name Canada Revenue Agency and the Agency Web site; canada.ca/charities-giving have to appear on all receipts;
- c. the charity's registration number as recorded with CRA;
- d. the charity's name as recorded with CRA;
- e. the charity's address in Canada as recorded with CRA;
- f. the date or year the donation was received;
- g. the date the receipt was issued;
- h. amount of the gift;

- i. if cash gift and advantage provided to the donor, the total amount received, value of the advantage (cash or FMV) and eligible amount of the gift for tax purposes;
- j. a unique serial number;
- k. the full name and middle initial of the donor;
- l. the full address of the donor;
- m. the signature of an authorized person;
- n. The place or locality where the receipt was issued;

In addition, the Organization failed to meet the following requirements:

- The charity must retain at least one exact copy of the official income tax receipt.
- Blank pre-printed official donation receipts must be afforded appropriate physical security with due regard to the content of the pre-printed information contained on those receipts.
- Official donation receipts must be kept locked up during off hours and be inaccessible to anyone not issuing receipts.

In summary

Under paragraph 168(1)(d), the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and its Regulations. It is our position, as outlined above, that the Organization has not issued receipts in accordance with the Act and/or its Regulations. For this reason, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(d) of the Act.

Suspension Proposed

In addition, as it is our view that the Organization has issued official donation receipts not in accordance with the Act and the regulations, under paragraph 188.2(2)(c) of the Act the Minister may suspend the Organization's authority to issue official donation receipts for one year.

The Organization's options:

a) Respond

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

- no compliance action necessary;
- the issuance of an educational letter;
- resolving these issues through the implementation of a Compliance Agreement;
- the application of penalties and/or suspensions provided for in sections 188.1 and/or 188.2 of the Act; or
- giving notice of its intention to revoke the registration of the Organization by issuing a notice of intention to revoke in the manner described in subsection 168(1) of the Act.

b) Do not respond

You may choose not to respond. In that case, the Director General of the Charities Directorate may proceed with the application of penalties and/or suspensions described in sections F188.1 and/or 188.2 of the Act or give notice of its intention to revoke the registration of the Organization by issuing a notice of intention to revoke in the manner described in subsection 168(1) of the Act.

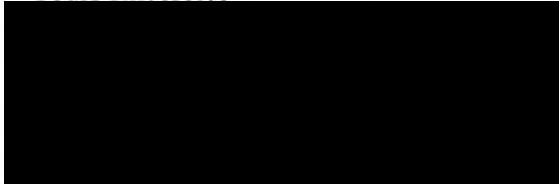
The Act provides the Minister the discretion to revoke a charity's registration. Section 168 of the Act describes the manner in which the Minister may revoke a charity's registration. In accordance with subsection 168(1) of the Act, when proposing to revoke, the charity is given notice by registered mail of the Minister's intention to revoke the charity's registration. The charity's registration is not revoked until a copy of the notice is published in the *Canada Gazette*. Paragraph 168(2)(b) of the Act allows the Minister to publish the notice in the *Canada Gazette* any time after the expiration of 30 days from the date of the mailing of the notice.

After considering the Organization's response to this letter, the Minister may decide to exercise her authority to revoke its charitable registration. If so, the Minister will issue a notice of intention to revoke the Organization's registration and will indicate in the notice whether the Minister intends to publish the notice in the *Canada Gazette* immediately after the expiration of 30 days from the date of the mailing of the notice.

If you appoint a third party to represent you in this matter, please send us a written authorization with the party's name, contact information, and clearly specify the appropriate access granted to the party to discuss the file with us. For more information on how to authorize a representative, go on our website at canada.ca/en/revenue-agency/services/forms-publications/forms/aut-01.

If you have any questions or require further information or clarification, please do not hesitate to contact me at the numbers indicated below. My team leader, Crystal Scott, may also be reached at 587-335-1670.

Yours sincerely,



Bronwyn MacKinnon
Audit Division
Alberta TSO

Telephone: 587-334-2182
Facsimile: 780-495-6908
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Enclosure

- Compliance agreement dated March 11, 2013
- Appendix 1

c.c.: Sieu Vinh Chan

Qualified Donees

149.1 (1) Definitions

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

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

(a) constituted and operated exclusively for charitable purposes,

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

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

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

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

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

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

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

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

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

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

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

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

(a) registered by the Minister and that is

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

(ii) a municipality in Canada,

- (iii) a municipal or public body performing a function of government in Canada that has applied for registration,
- (iv) a university outside Canada, the student body of which ordinarily includes students from Canada, that has applied for registration, or
- (v) a foreign charity that has applied to the Minister for registration under subsection (26),

- (b) a registered charity,
- (b.1) a registered journalism organization,
- (c) a registered Canadian amateur athletic association, or
- (d) Her Majesty in right of Canada or a province, the United Nations or an agency of the United Nations.

149.1 (2) Revocation of registration of charitable organization

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

- (a) carries on a business that is not a related business of that charity;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the organization's disbursement quota for that year; or
- (c) makes a disbursement by way of a gift, other than a gift made
 - (i) in the course of charitable activities carried on by it, or
 - (ii) to a donee that is a qualified donee at the time of the gift.

149.1 (3) Revocation of registration of public foundation

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

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

149.1 (4) Revocation of registration of private foundation

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

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

149.1 (4.1) Revocation of registration of registered charity

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

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

Revocation of Registration of Certain Organizations and Associations

168 (1) Notice of intention to revoke registration

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

- (a) applies to the Minister in writing for revocation of its registration;

- (b) ceases to comply with the requirements of this Act for its registration;
- (c) in the case of a registered charity or registered Canadian amateur athletic association, fails to file an information return as and when required under this Act or a regulation;
- (d) issues a receipt for a gift otherwise than in accordance with this Act and the regulations or that contains false information;
- (e) fails to comply with or contravenes any of sections 230 to 231.5; or
- (f) in the case of a registered Canadian amateur athletic association, accepts a gift the granting of which was expressly or implicitly conditional on the association making a gift to another person, club, society or association.

168 (2) Revocation of Registration

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

- (a) if the charity or association has applied to the Minister in writing for the revocation of its registration, the Minister shall, forthwith after the mailing of the notice, publish a copy of the notice in the Canada Gazette, and
- (b) in any other case, the Minister may, after the expiration of 30 days from the day of mailing of the notice, or after the expiration of such extended period from the day of mailing of the notice as the Federal Court of Appeal or a judge of that Court, on application made at any time before the determination of any appeal pursuant to subsection 172(3) from the giving of the notice, may fix or allow, publish a copy of the notice in the Canada Gazette,

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

168 (4) Objection to proposal or designation

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

- (a) in the case of a person that is or was registered as a registered charity or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(2) to (4.1), (6.3), (22) and (23);
- (b) in the case of a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.2) and (22); or
- (c) in the case of a person described in any of subparagraphs (a)(i) to (v) of the definition "qualified donee" in subsection 149.1(1), that is or was registered by the Minister as a qualified donee or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.3) and (22).

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

Where the Minister

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

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

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

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

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

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

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

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

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

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

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

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

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

the person described in paragraph (a), (a.1) or (a.2), the applicant in a case described in paragraph (b), (e) or (g), a trustee under the plan or an employer of employees who are beneficiaries under the plan, in a case described in paragraph (c), the promoter in a case described in paragraph (e.1), the administrator of the plan or an employer who participates in the plan, in a case described in paragraph (f) or (f.1), or the administrator of the plan in a case described in paragraph (h) or (i), may appeal from the Minister's decision, or from the giving of the notice by the Minister, to the Federal Court of Appeal.

180 (1) Appeals to Federal Court of Appeal

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

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

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

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

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

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

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

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

Tax and Penalties in Respect of Qualified Donees

188 (1) Deemed year-end on notice of revocation

If on a particular day the Minister issues a notice of intention to revoke the registration of a taxpayer as a registered charity under any of subsections 149.1(2) to (4.1) and 168(1) or it is determined, under subsection 7(1) of the Charities Registration (Security Information) Act, that a certificate served in respect of the charity under subsection 5(1) of that Act is reasonable on the basis of information and evidence available,

- (a) the taxation year of the charity that would otherwise have included that day is deemed to end at the end of that day;
- (b) a new taxation year of the charity is deemed to begin immediately after that day; and
- (c) for the purpose of determining the charity's fiscal period after that day, the charity is deemed not to have established a fiscal period before that day.

188 (1.1) Revocation tax

A charity referred to in subsection (1) is liable to a tax, for its taxation year that is deemed to have ended, equal to the amount determined by the formula

A - B

where

A is the total of all amounts, each of which is

- (a) the fair market value of a property of the charity at the end of that taxation year,
- (b) the amount of an appropriation (within the meaning assigned by subsection (2)) in respect of a property transferred to another person in the 120-day period that ended at the end of that taxation year, or
- (c) the income of the charity for its winding-up period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 as if that period were a taxation year; and

B is the total of all amounts (other than the amount of an expenditure in respect of which a deduction has been made in computing income for the winding-up period under paragraph (c) of the description of A), each of which is

- (a) a debt of the charity that is outstanding at the end of that taxation year,
- (b) an expenditure made by the charity during the winding-up period on charitable activities carried on by it, or
- (c) an amount in respect of a property transferred by the charity during the winding-up period and not later than the latter of one year from the end of the taxation year and the day, if any, referred to in paragraph

(1.2)(c), to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

188 (1.2) Winding-up period

In this Part, the winding-up period of a charity is the period that begins immediately after the day on which the Minister issues a notice of intention to revoke the registration of a taxpayer as a registered charity under any of subsections 149.1(2) to (4.1) and 168(1) (or, if earlier, immediately after the day on which it is determined, under subsection 7(1) of the Charities Registration (Security Information) Act, that a certificate served in respect of the charity under subsection 5(1) of that Act is reasonable on the basis of information and evidence available), and that ends on the day that is the latest of

- (a) the day, if any, on which the charity files a return under subsection 189(6.1) for the taxation year deemed by subsection (1) to have ended, but not later than the day on which the charity is required to file that return,
- (b) the day on which the Minister last issues a notice of assessment of tax payable under subsection (1.1) for that taxation year by the charity, and
- (c) if the charity has filed a notice of objection or appeal in respect of that assessment, the day on which the Minister may take a collection action under section 225.1 in respect of that tax payable.

188 (1.3) Eligible donee

In this Part, an eligible donee in respect of a particular charity is

- (a) a registered charity
 - (i) of which more than 50% of the members of the board of directors or trustees of the registered charity deal at arm's length with each member of the board of directors or trustees of the particular charity,
 - (ii) that is not the subject of a suspension under subsection 188.2(1),
 - (iii) that has no unpaid liabilities under this Act or under the Excise Tax Act,
 - (iv) that has filed all information returns required by subsection 149.1(14), and
 - (v) that is not the subject of a certificate under subsection 5(1) of the Charities Registration (Security Information) Act or, if it is the subject of such a certificate, the certificate has been determined under subsection 7(1) of that Act not to be reasonable; or
- (b) a municipality in Canada that is approved by the Minister in respect of a transfer of property from the particular charity.

188 (2) Shared liability – revocation tax

A person who, after the time that is 120 days before the end of the taxation year of a charity that is deemed by subsection (1) to have ended, receives property from the charity, is jointly and severally, or solidarily, liable with the charity for the tax payable under subsection (1.1) by the charity for that taxation year for an amount not exceeding the total of all appropriations, each of which is the amount by which the fair market value of such a property at the time it was so received by the person exceeds the consideration given by the person in respect of the property.

188 (2.1) Non-application of revocation tax

Subsections (1) and (1.1) do not apply to a charity in respect of a notice of intention to revoke given under any of subsections 149.1(2) to (4.1) and 168(1) if the Minister abandons the intention and so notifies the charity or if

- (a) within the one-year period that begins immediately after the taxation year of the charity otherwise deemed by subsection (1) to have ended, the Minister has registered the charity as a charitable organization, private foundation or public foundation; and
- (b) the charity has, before the time that the Minister has so registered the charity,
 - (i) paid all amounts, each of which is an amount for which the charity is liable under this Act (other than subsection (1.1)) or the Excise Tax Act in respect of taxes, penalties and interest, and
 - (ii) filed all information returns required by or under this Act to be filed on or before that time.

188 (3) Transfer of property tax

Where, as a result of a transaction or series of transactions, property owned by a registered charity that is a charitable foundation and having a net value greater than 50% of the net asset amount of the charitable foundation immediately before the transaction or series of transactions, as the case may be, is transferred before the end of a taxation year, directly or indirectly, to one or more charitable organizations and it may reasonably be considered that the main purpose of the transfer is to effect a reduction in the disbursement quota of the foundation, the foundation shall pay a tax under this Part for the year equal to the amount by which 25% of the net value of that property determined as of the day of its transfer exceeds the total of all amounts each of which is its tax payable under this subsection for a preceding taxation year in respect of the transaction or series of transactions.

188 (3.1) Non-application of subsection (3)

Subsection (3) does not apply to a transfer that is a gift to which subsection 188.1(11) or (12) applies.

188 (4) Joint and several, or solidary, liability – tax transfer

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

188 (5) Definitions – In this section,

net asset amount of a charitable foundation at any time means the amount determined by the formula

$$\mathbf{A - B}$$

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

where

A is the fair market value of the property on that day, and

B is the amount of any consideration given to the foundation for the transfer.

189 (6) Taxpayer to file return and pay tax

Every taxpayer who is liable to pay tax under this Part (except a charity that is liable to pay tax under section 188(1)) for a taxation year shall, on or before the day on or before which the taxpayer is, or would be if tax were payable by the taxpayer under Part I for the year, required to file a return of income or an information return under Part I for the year,

- (a) file with the Minister a return for the year in prescribed form and containing prescribed information, without notice or demand therefor;
- (b) estimate in the return the amount of tax payable by the taxpayer under this Part for the year; and
- (c) pay to the Receiver General the amount of tax payable by the taxpayer under this Part for the year.

189 (6.1) Revoked charity to file returns

Every taxpayer who is liable to pay tax under subsection 188(1.1) for a taxation year shall, on or before the day that is one year from the end of the taxation year, and without notice or demand,

- (a) file with the Minister
 - (i) a return for the taxation year, in prescribed form and containing prescribed information, and
 - (ii) both an information return and a public information return for the taxation year, each in the form prescribed for the purpose of subsection 149.1(14); and
- (b) estimate in the return referred to in subparagraph (a)(i) the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year; and
- (c) pay to the Receiver General the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year.

189 (6.2) Reduction of revocation tax liability

If the Minister has, during the one-year period beginning immediately after the end of a taxation year of a person, assessed the person in respect of the person's liability for tax under subsection 188(1.1) for that taxation year, has not after that period reassessed the tax liability of the person, and that liability exceeds \$1,000, that liability is, at any particular time, reduced by the total of

- (a) the amount, if any, by which
 - (i) the total of all amounts, each of which is an expenditure made by the charity, on charitable activities carried on by it, before the particular time and during the period (referred to in this subsection as the "post-assessment period") that begins immediately after a notice of the latest such assessment was sent and ends at the end of the one-year period

exceeds

- (ii) the income of the charity for the post-assessment period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 if that period were a taxation year, and

(b) all amounts, each of which is an amount, in respect of a property transferred by the charity before the particular time and during the post-assessment period to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

189 (6.3) Reduction of liability for penalties

If the Minister has assessed a particular person in respect of the particular person's liability for penalties under section 188.1 for a taxation year, and that liability exceeds \$1,000, that liability is, at any particular time, reduced by the total of all amounts, each of which is an amount, in respect of a property transferred by the particular person after the day on which the Minister first assessed that liability and before the particular time to another person that was at the time of the transfer an eligible donee described in paragraph 188(1.3)(a) in respect of the particular person, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the total of

- (a) the consideration given by the other person for the transfer, and
- (b) the part of the amount in respect of the transfer that has resulted in a reduction of an amount otherwise payable under subsection 188(1.1).

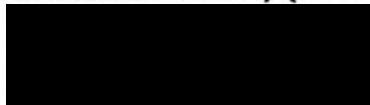
189 (7) Minister may assess

Without limiting the authority of the Minister to revoke the registration of a registered charity or registered Canadian amateur athletic association, the Minister may also at any time assess a taxpayer in respect of any amount that a taxpayer is liable to pay under this Part.

Compliance Agreement

Between:

Faith and Action Mission Society (the Organization)



BN 875397028 RR0001

and

Canada Revenue Agency (the CRA)

During an audit of the Organization's books and records conducted by the CRA on April 23, 24 and 25, 2012, the following areas of non-compliance with the provisions of the *Income Tax Act* (the Act) and/or its Regulations were identified:

Areas of Non-Compliance:

1. Providing a personal benefit to a member of the charity -

At common law, and by statute, a registered charity cannot be established to confer a private benefit on non-charitable beneficiaries or non-qualified donees. There is a fundamental tenet of common law that stipulates that a registered charity shall operate exclusively for charitable purposes and meet the public benefit test, and, no assets shall be used for the private benefit of any individual other than the intended charitable beneficiaries. The public benefit requirement means a charity cannot provide an unacceptable private benefit. As a general rule, private benefit is a benefit or advantage (charitable or non-charitable) provided to a person, entity, or organization that is not a charitable beneficiary, or to a charitable beneficiary that goes beyond what is considered to be charitable.

Private benefits are acceptable provided that:

- (a) The benefit was conferred in the ordinary course of the charitable activity carried on by the charity and was unavoidable and necessary to the achievement of the charity's purposes;
- (b) All disbursements made by the charity are reasonable consideration for the property or services acquired by or rendered to the charity, and the amount is not disproportionate compared to the public benefit

achieved in all circumstances. (A private benefit should be proportionate to the resulting public benefit.); and

(c) The amount of the benefit was incidental and ancillary to the achievement of the charity's purposes.

If the activities that a registered charity conducts confer a private benefit, and the benefit does not meet the above criteria, the benefit will be considered to be "undue". Subsection 188.1(5) of the Act defines "undue benefits" to include a disbursement by way of gift or the amount of any part of the income, rights, property or resources of the charity 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;
- (b) has contributed or otherwise paid into the charity more than 50% of the capital of the charity; or
- (c) deals not at arm's length with the charity.

Under the Act, a registered charity cannot confer on a person an undue benefit (e.g., a transfer of property or other resources of the charity to a person who does not deal with the charity at arm's length or who is the beneficiary of a transfer because of a special relationship with a donor or charity.) A registered charity that confers on a person an undue benefit is liable to a penalty equal to 105% of the amount of the benefit. This penalty increases to 110% and the suspension of tax-receipting privileges for a repeat infraction within 5 years.

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

Audit Findings/Issues:

- (1) The Organization has provided an undue benefit to its five directors (Stephen Lee, Sally Lee, Sieu Vinh Chan; Vihn Hon Chau, Ky Tran) through the reimbursement of foreign travel expenses for these individuals. The Organization has reported expenses of \$39,975 for travel expenses related to a trip the directors made to Australia, Singapore and Thailand in the year ending September 30, 2011. Supporting documentation was requested to support all trip expenditures, however this information was not provided in its entirety. (Note: Partial information was provided for this request. For example, invoice [REDACTED] in the amount of \$4,975 from [REDACTED] re: air travel was provided. Copies of two cheques (cheque # [REDACTED] - \$5,000; cheque [REDACTED] - \$5,000) which were issued to Mr. Lee were provided, however, no supporting documentation was

provided which indicated the nature of the payments for which these funds were used.)

We are unclear as to the exact purpose of the trip in which the directors participated. Our review of the books and records of the Organization indicates that the purpose of the trip was to "promote the planning and development of Chinese senior homes" in these countries. We do not consider this to be a charitable activity in and of itself.

We also obtained conflicting information in subsequent meetings with Mr. Stephen Lee, a director, and [REDACTED] the accounting representative, as to the purpose of the trip. At these meetings it was indicated that the purpose of the trip was related to "Christian missionary work". While a missionary program may be charitable, the Organization's books and records did not support the fact that missionary work was actually carried out during this trip. Furthermore, the Organization did not identify missionary work as an activity in its registration documents which were provided to CRA at the time of its registration, nor has the Organization demonstrated any on-going missionary program since its inception in 2003. It is unreasonable to assume that the directors were carrying out missionary work on behalf of the Organization, on a one-time basis.

It is our position that the directors have received an undue benefit from the Organization through the reimbursement of their personal expenses for this trip. We do not consider this activity (i.e. the trip itself) to fall within the mandate for which the Organization exists, which is to operate a congregate special care facility for low income seniors in Vancouver, British Columbia.

(2) The Organization has provided an undue benefit to Stephen Lee through the payment of automobile expenses for his personal vehicle (\$8,024). We understand that Mr. Lee uses his personal vehicle on a regular basis to make food and other purchases from various suppliers. While tax legislation does permit a registered charity to reimburse its directors for any expenses they incur while performing their duties, the reimbursement of *all* expenses attributable to the vehicle is not fair and reasonable, as Mr. Lee also uses his vehicle on a personal basis. (Note: A determination of the food and entertainment expenses which were reimbursed to Mr. Lee was not determinable from the books and records.)

(3) The organization has provided loans to related parties.

(a) The Organization has provided an undue benefit to Stephen Lee, a director, through the provision of an interest-free loan. For the year ending September 30, 2011, the Organization has reported an amount due from

Mr. Lee in the amount of \$570,000. The Organization has not reported any interest income or accrued interest related to the loan in its books and records, nor has it entered into a written agreement with Mr. Lee.

(b) The Organization has provided an undue benefit to [REDACTED]
[REDACTED] a non-profit organization, with common directors. For the year ending September 30, 2011, the Organization has reported an amount due from this entity in the amount of \$151,860. The Organization has not reported any interest income or accrued interest related to the loan in its books and records, nor has it entered into a written agreement [REDACTED]
[REDACTED]

The use of a charity's resources to make interest-free loans and/or payments to or on behalf of individuals for their personal benefit, is in contravention of the Common Law and the Income Tax Act. The above-noted payments for personal expenses and interest-free loans confer a private benefit to the individuals and the non-profit organization. An additional concern is that the recipients of these benefits have a non-arm's length relationship with the Organization. The courts do not accept acts of private benevolence as charitable, and furthermore, such payments do not serve to achieve the Organization's stated purposes. The payments and loans in question were not paid in the ordinary course of the charitable activities carried on by the Organization.

2. Failure to devote resources to charitable activities/Payments to non-qualified donees -

In order for an organization to be recognized as a charity, it must be constituted and operated exclusively for charitable purposes and it must devote all of its resources to charitable activities. Under the Act, a registered charity may only use its resources (financial, material, human) in two ways, both inside and outside Canada:

(1) The first way is by disbursements made on activities undertaken by the organization itself, that is to say, on its own activities. (those which are directly under the charity's continued supervision, direction and control and for which it is able to render itself fully accountable for the funds expended).

(2) It can make gifts to other organizations that are on the list of qualified donees as defined in 149.1(1) of the Act.

Should a registered charity wish to loan or advance funds to a non-qualified donee, an acceptable agreement should be signed between the two parties. The transaction would have to be properly structured as

an investment, and the charity should be in a position to earn a return on its monies. Any such investment should be adequately secured and made on terms similar to an arm's length transaction (the income received by the charity would be similar to that which would be received in the open market between two entities acting independently of each other). The investment must also be for a reasonable term.

Audit Findings/Issues:

(1) The Organization made the following payments to non-qualified donees for the year ending September 30, 2011:

	(\$100,040)
	(\$6,778.40)
	(\$2,000)
- Other	(\$270)

(2) The Organization has reported the following interest-free loans to non-qualified donees which are in a non-arm's length relationship with the Organization, for the year ending September 30, 2011:

- Stephen Lee, a director	(\$570,000)
	a related non-profit organization
	(\$151,860)

The Organization does not have written loan agreements with this individual and the non-profit organization to which it has loaned funds. In the absence of a written agreement, the Organization does not have any guarantee to recover its monies if the loan falls into default. Furthermore, all loans are non-interest bearing, therefore, they cannot be considered as investments.

Trust law imposes on a registered charity's trustees (or directors) the obligation to properly manage the assets of a registered charity. By providing loans to related individuals and other related entities, the Organization's directors did not follow the rules of prudent administration which requires that all reasonable steps be taken to ensure that a registered charity's assets are protected from potential loss.

Extending loans on an interest-free basis (or at an interest rate which is less than fair market value) to a non-qualified donee, implies that the Organization is not using its resources for charitable purposes, as required under the Act.

3. Failure to maintain adequate books and records/Lack of adequate internal controls -

Subsection 230(2) of the Act states that: "Every registered charity and registered Canadian amateur athletic association shall keep records and books of account at an address in Canada recorded with the Minister or designated by the Minister".

A registered charity must also implement adequate internal controls which provide reasonable assurance that the financial records are accurate and reliable, the assets are safeguarded, and, all applicable legislative and administrative policies are being adhered to.

Audit Findings/Issues:

(1) A registered charity is not meeting its requirement to maintain adequate books and records if it fails to exercise due care with respect to ensuring the accuracy thereof. The Organization failed to provide adequate explanations and supporting documentation in all cases (e.g. invoices, credit card statements) as requested in our correspondence dated February 18, 2013. This information was required to confirm that the identified payments were incurred for charitable purposes.

(2) The Organization does not have written agreements in place with individuals and organizations to whom it has advanced funds (i.e. loans).

Any such investment should be adequately secured and made on terms similar to an arm's length transaction (the income received by the charity would be similar to that which would be received in the open market between two entities acting independently of each other). The investment must also be for a reasonable term. The terms and conditions of any loan should be documented in a written loan agreement which is signed by both parties.

(3) The Organization does not maintain an effective system of internal controls designed to provide reasonable assurance that its assets are safeguarded from loss and that the accounting records are a reliable basis for the preparation of the financial statements. The Organization displays a lack of controls in the following areas:

(a) The Organization does not adequately segregate its duties amongst staff members to ensure that proper controls are in place to protect income (e.g. handling of cash and cheques, preparing bank deposits, entry of data into the accounting records). It is our understanding that a single individual is responsible for the majority of these responsibilities.

(b) The Organization uses its petty cash fund to pay an inordinate number of expenses (\$24,491). Ideally, a petty cash fund should be used on a limited basis where the value of the individual expenditure is not material in its amount. Our concern is that the use of petty cash to make payments on a regular basis, bypasses an important element of the review process, which is the review of the expenditure and issuance of the cheque by an authorized signer(s) of the Organization. Under the current situation, no secondary review exists as a single individual reviews the payment claim (i.e. invoice) and also issues the payment.

(c) There exists a co-mingling of the personal expenditures of a director (Stephen Lee) and the charitable expenditures of the Organization. Mr. Lee uses his personal credit card [REDACTED] on a personal basis as well as using the card to make purchases on behalf of the Organization. The Organization either reimburses Mr. Lee for all purchases which have been made on the Organization's behalf, or pays the credit card companies directly. In 2011, Mr. Lee received reimbursement for \$10,024 in expenditures which were charged against his personal credit card [REDACTED]. The Organization also paid [REDACTED] directly for other expenses in the amount of \$56,691, which were charged against Mr. Lee's personal card.

As a result, the Organization's internal controls supporting the books and records are considered to be inadequate. Accordingly, we are of the view that the Organization is not able to confirm with reasonable assurance the accuracy of its books and records.

4. Failure to file a Registered Charity Information Return as required by the Act or its Regulations -

It is the responsibility of a charity to ensure that the information that is provided in its Charity Information Return (T3010), schedules and statements, is factual and complete in every respect. A charity is not meeting its requirement to file an Information Return if it fails to exercise due care with respect to ensuring the accuracy thereof.

The information that must be included annually in the return may differ substantially from that available in the books and records. Here are some items of information that must be provided on the return:

- a breakdown of gifts including those for which official tax receipts have been issued, and those from other registered charities;
- disbursements, including amounts spent on fundraising, administrative expenditures, political activities, and those spent specifically on charitable programs;

- a breakdown of remuneration to directors, executive officers, employees engaged in charitable activities, and to employees engaged in other activities.

Audit Findings/Issues:

The Organization has incorrectly reported or omitted the following items on its 2011 Charity Information Return:

- (1) Line 2000 - answered incorrectly
- (2) Line 4110 (Nil) - "Amounts receivable from non-arm's length parties" - not reported. The following loans were incorrectly reported:
 - Stephen Lee (\$570,000) - reported on Line 4120
 - Grace Christian Chapel (\$100,000) - reported on line 4120
 - ██████████ (\$151,860) - reported on Line 4120
- (3) Line 4320 (Nil) - "Amounts owing to non-arm's length parties" - not reported (amount due to members (\$13,481) not reported)
- (4) Line 4530 - "Gifts for which a tax receipt was not issued" (Nil) - not reported
- (5) Line 5050 - "Gifts to qualified donees" (\$109,088) - reported incorrectly (payees were not qualified donees)
(Note: Although a gift of \$800 to World Vision, a registered charity, was not included in the above amount, this amount should have been reported on this line.)
- (6) Lines 5900/5910 - "Average value of property" - not reported
- the average value of property was not reported for the 24 months before the beginning of the fiscal period and the 24 months before the end of the fiscal period

Note: Recent federal budget changes introduced disbursement quota changes for all registered charities for fiscal periods ending on or after March 4, 2010. Under the new legislation, all registered charities, including charitable organizations, spending requirement is calculated based on 3.5% of all property not being used directly in charitable activities or administration, if this value exceeds \$100,000 for charitable organizations and \$25,000 for public and private foundations. (This rule formerly applied only to those charities that were "foundations".) This would include cash on hand and in bank accounts, stocks, bonds, GIC's, mutual funds, etc.

However, it would not include the capital assets of the Organization (\$2,314,759) such as land, buildings, equipment and vehicle etc., as we consider these assets being used directly in its charitable activity.

(7) Checklist not completed

(8) "Directors Worksheet" - incomplete (not all fields completed)
- Directors as per T3010 for YE Sep. 30, 2011, does not agree with Society Annual Report filed on Feb. 9, 2011.

5. Failure to prepare T4/T4A documentation for payments to employees and other individuals -

Generally, an amount paid to an individual as consideration for services rendered will be taxable either as income from employment or as income from a business depending on the particular circumstances. The determination of whether a person performing services is an employee (earning employment income) or self-employed (earning business income) is primarily based on the facts and circumstances surrounding the work that the individual performs. For information on determining whether someone is considered to be an employee or self-employed, please refer to Guide RC4110 - Employee or Self-employed.

(a) T4's - Salary or wages/Taxable benefits

Where the amounts paid are considered to be income from an office or employment, the employer would be required to withhold the appropriate amounts and report such amounts on a T4 slip. The Act requires T4 Statements of Remuneration be prepared by an employer [Regulation 200(1)] for making a payment described in subsection 153(1) of the Act. T4 slips must be completed whenever the Charity has deducted CPP, EI premiums, PPIP premiums, or income tax from the remuneration, or, the remuneration was more than \$500.

Regulation 200(2) of the Act states that an information return be prepared in prescribed form with respect to a payment for any amount of benefit as a result of a person's employment. These payments include any contracts, invoices, bursaries, bonuses, grants or other taxable benefits to employees or contracted individuals. In addition to salaries and wages, T4's must also include the value of all taxable benefits conferred on employees in the year [paragraph 6(1)(a)].

For more information on T4 reporting requirements please refer to Guide RC4120, Employer's Guide - Filing the T4 Slip and Summary Form.

(b) T4A's - Fees or other amounts for services -

A charity making a payment of fees, commissions or other amounts for services is required under subsection 200(1) of the Income Tax Regulations to make an information return in prescribed form (i.e. T4A and T4A Summary Form) even if no amount of income tax has been withheld at source. If the amount of payment is less than \$500, CRA generally waives the T4A reporting requirement unless income tax was withheld at source, in which case a T4A must be issued.

For more information on T4A reporting requirements please refer to Guide RC4157, Deducting Income Tax on pension and Other Income, and Filing the T4A Slip and Summary Form.

Audit Findings/Issues:

The Organization utilizes full-time and part-time staff members to provide services to its residents. It reported expenses for compensation of \$378,685 for the YE September 30, 2011 on its Registered Charity Information Return (Line 4880). Of this amount, \$13,020 was paid to staff members on a cash basis from the Organization's petty cash fund.

For the period January 1, 2011 to December 31, 2011, the Organization issued T-4's to 15 individuals which totaled \$203,696. The Organization did not issue any T4A's.

While we recognize that the year-end for the Charity's financial reporting and T4/T4A reporting (i.e. the calendar year) are different, it is reasonable to assume that the total compensation paid for the period January 1, 2011 to December 31, 2011, would approximate the amount reported for compensation (\$378,685) for the Organization's fiscal period from October 1, 2010 to September 30, 2011.

In addition, the Organization did not issue T4/T4A's to report amounts paid for all salary/services which were being provided by employees and self-employed individuals (i.e. part-time staff), as required. As noted above, if the amount of payment is less than \$500, CRA generally waives the T4A reporting requirement unless income tax was withheld at source, in which case a T4A must be issued.

The Organization wishes to rectify all identified areas of non-compliance on a voluntary basis. The CRA is prepared to provide the Organization with an opportunity to do so. For this purpose, the parties agree that the Organization shall implement the following corrective measures:

Corrective Measures**1. Undue benefit -**

(a) Effective immediately, the Organization will cease the payment of all personal expenses for its directors.

(b) Effective immediately, the Organization will commence charging a fair market rate of interest on all existing loans. The Organization will discontinue its practice of providing interest-free loans to non-qualified donees.

2. Devotion of resources for charitable purposes -

(a) Effective immediately, the Organization will cease all payments to non-qualified donees.

(b) Effective immediately, the Organization will commence charging a fair market rate of interest on all existing loans. The Organization will discontinue its practice of providing interest-free loans to non-qualified donees.

3. Books and records -

(a) In future, the Organization will maintain adequate books and records at its registered address that is on file with the Canada Revenue Agency. The purpose of this requirement is to enable a charity to accurately provide CRA with the information required by the Act, as well as to enable CRA to verify the accuracy of reported information through the conducting of audits.

(b) Effective immediately the Organization will establish written loan agreements where it has advanced funds to a non-qualified donee. The loan agreements will be properly structured as an investment, so that the Organization will be in a position to earn a return on its monies and not place its assets at risk. At a minimum, loan agreements will identify the amount of the loan, repayment period, security, and interest rate.

(c) As soon as is practically possible, the Board of Directors/officers will review its internal controls, and establish adequate internal controls to address the matters as outlined above, in order to improve the reliability and integrity of its financial records.

4. Registered Charity Information Return -

The Organization will file all future returns in prescribed form to address the errors and omissions as noted above. Please refer to our guide for

completing a registered charity's Annual Charity Information Return (T-4033) and other publications as noted above.

5. T4/T4A's -

The Organization will issue T4/T4A forms as required commencing for the 2013 calendar year. For more information on T4 reporting requirements please refer to Guide RC4120, Employer's Guide - Filing the T4 Slip and Summary Form. For more information on T4A reporting requirements please refer to Guide RC4157, Deducting Income Tax on pension and Other Income, and Filing the T4A Slip and Summary Form.

Date of Implementation of all Corrective Measures

The Organization shall implement all corrective measures as noted by the above due dates.

By signing below, the parties certify that they have read, understood, and agree to, the terms of this Compliance Agreement. The Organization further acknowledges that should it fail to implement all corrective measures in accordance with the terms of this Compliance Agreement, the Minister of National Revenue (the Minister) may apply the penalties and suspensions provided for in sections 188.1 and/or 188.2 of the Act, which include suspension of the Organization's authority to issue official receipts and suspension of its status as a "qualified donee". The Minister may, by registered mail, also give notice that the Minister proposes to revoke the registration of the Organization by issuing a Notice of Intention to Revoke in the manner described in subsection 168(1) of the Act.

Director

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Organization per: Authorized Signatory
with the authority to bind the Organization

Witness

STEPHEN S. F. LEE

Name and position of signatory
(please print)

DIRECTOR

Name of witness
(please print)

FAITH & ACTION MISSION SOCIETY

Full name and address of Organization

Date of signing: MARCH 11, 2013

~~CRA~~ per:

Charity Auditor

Name and position of signatory (please print)

Date of signing: March 15, 2013

Attention: Mr. John Dumalski

CCRA

Fax (250) 363-3862

Re:

Compliance Agreement
Faith & Action Mission Society (875397028)

Please find enclosed my signed Compliance Agreement
For your information, I also enclose herewith my Society's Constitution Form 1

Stephen S. F. Lee