

JUN 18 2014

**REGISTERED MAIL**

The League for Human Rights of B'nai Brith  
15 Hove Street  
North York ON M3H 4Y8

BN: 119241776RR0001

Attention: Attention [REDACTED] Frank Dimant

File #:0374009

**Subject:    Notice of Intention to Revoke  
              The League for Human Rights of B'nai Brith**

Dear [REDACTED] Dimant:

I am writing further to our letter dated November 28, 2013 (copy enclosed), in which you were invited to submit representations as to why the registration of The League for Human Rights of B'nai Brith (the Organization) should not be revoked in accordance with subsection 168(1) of the *Income Tax Act* (Act).

We have now reviewed and considered your written response dated February 11, 2014. However, notwithstanding your reply, our concerns with respect to the Organization's non-compliance with the requirements of the Act for registration as a charity have not been alleviated. Our position is fully described in Appendix "A" attached.

### **Conclusion**

The audit by the Canada Revenue Agency (CRA) has revealed that the Organization is not complying with the requirements set out in the Act. In particular, it was found that the Organization did not devote its resources to charitable activities that it carried on itself, gifted to non-qualified donees, failed to be constituted for exclusively charitable purposes, did not maintain adequate books and records, and issued donation receipts for directed donations. For all of these reasons, and for each reason alone, it is the position of the CRA that the Organization no longer meets the requirements necessary for charitable registration and should be revoked in the manner described in subsection 168(1) of the Act.

Consequently, for each of the reasons mentioned in our letter dated November 28, 2013, I wish to advise you that, pursuant to subsection 168(1) of the Act, I propose to revoke the registration of the Organization. By virtue of subsection 168(2)

of the Act, 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)(d), 168(1)(e), and subsection 149.1(2) of the Income Tax Act, that I propose to revoke the registration of the organization listed below and that the revocation of registration is effective on the date of publication of this notice.*

**Business Number**

119241776 RR0001

**Name**

The League for Human Rights of B'nai Brith  
North York, ON

Should you wish to object to this notice of intention to revoke the Organization's registration in accordance with subsection 168(4) of the Act, a written Notice of Objection, which includes 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:

Tax and Charities Appeals Directorate  
Appeals Branch  
Canada Revenue Agency  
250 Albert Street  
Ottawa ON K1A 0L5

A copy of the revocation notice, described above, will be published in the *Canada Gazette* after the expiration of 90 days from the date this letter was mailed. The Organization's registration will be revoked on the date of publication, unless the Canada Revenue Agency (CRA) receives an objection to this Notice of Intention to Revoke within this timeframe.

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

**Consequences of Revocation**

As of the effective date of revocation:

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

- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the Notice of Intention to Revoke. This revocation tax is calculated on prescribed form T-2046, *Tax Return Where Registration of a Charity is Revoked* (the Return). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the Notice of Intention to Revoke. The relevant provisions of the Act concerning the tax applicable to revoked charities can also be found in Appendix "B". Form T-2046 and the related Guide RC-4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, are available on our Web site at [www.cra-arc.gc.ca/charities](http://www.cra-arc.gc.ca/charities);
- 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 organizations other than charities. If you have any questions about your Goods and services tax/harmonized sales tax (GST/HST) obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

Finally, I wish to 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,

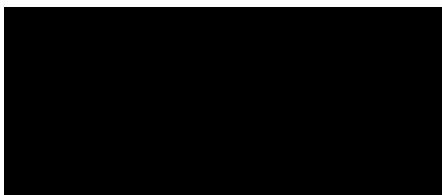


Cathy Hawara  
Director General  
Charities Directorate

Attachments:

- CRA letter dated November 28, 2013
- Organization's Response dated February 11, 2014
- Appendix "A", CRA's position
- Appendix "B", Relevant provisions of the Act

c.c.:





**REGISTERED MAIL**

The League for Human Rights of B'nai Brith  
15 Hove Street  
North York, Ontario M3H 4Y8

Attention [REDACTED] Frank Dimant

BN. 119241776 RR0001  
File #:0374009

November 28, 2013

**Subject: Audit of The League for Human Rights of B'nai Brith**

Dear [REDACTED] Dimant:

This letter is further to the audit of the books and records of The League for Human Rights of B'nai Brith (the Organization) conducted by the Canada Revenue Agency (CRA). Our audit related to the operations of the Organization for the period from January 1, 2010, to December 31, 2011.

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

<b>AREAS OF NON-COMPLIANCE:</b>		
	<b>Issue</b>	<b>Reference</b>
1.	Failure to Devote Resources to Charitable Activities Carried on by the Organization itself: a. Gifts to non-qualified donees b. Lack of direction and control over the use of resources / resourcing non-qualified donees c. Conduct of non-charitable activities / devotion of resources to non-charitable activities	149.1(1) and (6.2), 168(1)(b)
2.	Failure to be Constituted for Exclusively Charitable Purposes: a. Broad and vague purpose	149.1(1) and (6.2), 168(1)(b)

	b. Collateral political purpose	
	c. Delivery of unacceptable non-incident private benefits	
3.	Failure to Maintain Adequate Books and Records	149.1(2), 168(1)(e), 230
4.	Donation Receipts:	168(1)(d),
	a. Inappropriate issuance of donation receipts – Directed donations	Regulation 3501, IT110R3
	b. Issuing receipts not in accordance with the Act and/or its Regulations	

This letter describes the specific identified areas of non-compliance as they relate to the legislative and common law requirements applicable to registered charities, and provides the Organization with the opportunity to make additional representations or present additional information. As a registered charity, the Organization must comply with all legislative and common law requirements on an ongoing basis, failing which its registered status may be revoked in the manner described in section 168 of the Act. Each separate area of non-compliance outlined in this letter would provide grounds for revocation.

#### General legal principles

In order to maintain charitable registration under the Act, Canadian law requires that an organization demonstrate it is constituted exclusively for charitable purposes (or objects), and it devotes its resources to charitable activities it carried on itself in furtherance thereof.<sup>1</sup>

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

---

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

<sup>2</sup> The Act does not define charity or what is charitable, except in subs. 149.1(1), where charitable purposes/objects are defined as including "the disbursement of funds to qualified donees." The CRA must therefore rely on the common law definition, which sets out four broad categories of charity. The four broad charitable purpose/object categories, also known as the four heads of charity, were outlined by Lord Macnaghten in *Commissioners for Special Purposes of the Income Tax v. Pemsel*, [1891] A.C. 531 (P.C.) (*Pemsel*). 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] S.C.R. 133, and confirmed in *Vancouver Society*, supra note 2.

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

The public benefit requirement involves a two-part test as follows:

- The first part of the test requires the delivery of a benefit that is recognizable and capable of being proved, and socially useful. To be recognizable and capable of being proved, a benefit must generally be tangible or objectively measurable. Benefits that are not tangible or objectively measurable must be shown to be valuable or approved by "the common understanding of enlightened opinion for the time being."<sup>3</sup> To be socially useful, a benefit must have public value and a demonstrable impact on the public.<sup>4</sup> In most cases, the benefit should be a necessary and reasonably direct result of how the purpose will be achieved, and of the activities that will be conducted to further the purpose, and reasonably achievable in the circumstances.<sup>5</sup> An "assumed prospect or possibility of gain" that is vague, indescribable, or uncertain, or incapable of proof, cannot be said to provide a charitable benefit.<sup>6</sup>
- The second part of the test requires the benefit be directed to the public or a sufficient section of the public. This means a charity cannot:
  - o 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
  - o 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, where it is

---

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

<sup>3</sup> See, for example, *National Antivivisection Society*, supra note 4 per Lord Wright at p. 49. "The law may well say that quite apart from any question of balancing values, an assumed prospect, or possibility of gain so vague, intangible and remote cannot justly be treated as a benefit to humanity, and that the appellant cannot get into the class of charities at all unless it can establish that benefit."

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

<sup>5</sup> *National Anti-Vivisection Society*, supra note 4 per Lord Wright at p. 49. See also, for example, *In re Shaw decd.* [1957] 1 W.L.R. 729; and *Gilmour*, supra note 4 per Lord Simonds at pp. 446-447.

necessary, reasonable, and not disproportionate to the resulting public benefit.<sup>7</sup>

The question of whether an organization is constituted exclusively for charitable purposes cannot be determined solely by reference to its stated purposes, but must take into account the activities in which the organization currently engages. In *Vancouver Society of Immigrant and Visible Minority Women v. Minister of National Revenue*,<sup>8</sup> the Supreme Court of Canada stated as follows:

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

A charitable activity is one that directly furthers a charitable purpose<sup>9</sup> – which requires a clear relationship and link between the activity and the purpose it purports to further. If an activity is, or becomes, a substantial focus of the organization, it may no longer be in furtherance of a stated purpose. Instead, the activity may further, or even itself form, a separate or collateral purpose.<sup>10</sup> An organization with a collateral non-charitable purpose is ineligible for registration under the Act.

To comply with the requirement that it is constituted and operated exclusively for charitable purposes, and/or that it devote all of its resources to charitable activities carried on by the organization itself,<sup>11</sup> a registered charity may only use its resources (funds, personnel, and/or property) in two ways:

- for its *own charitable activities* – undertaken by the charity itself under its continued supervision, direction, and control; and
- for gifting to “qualified donees” as defined in the Act.<sup>12</sup>

---

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

<sup>8</sup> *Vancouver Society*, *supra* note 2 at para. 194. See also *A.Y.S.A. Amateur Youth Soccer Association v. Canada (Revenue Agency)* [2007] 3 S.C.R. 217 (A.Y.S.A.) at para. 42.

<sup>9</sup> See *Vancouver Society*, *supra* note 2 per Iacobucci J. at para. 154.

<sup>10</sup> See *Alliance for Life v. MNR*, [1999] 1 F.T.R. 658 at para. 64, 3 FC 504.

<sup>11</sup> *Income Tax Act*, R.S.C. 1985, c. 1 (5th sup.), art. 149.1(1).

<sup>12</sup> *Income Tax Act*, R.S.C. 1985 (5th sup.) c. 1, para. 110.1(1)(a), subs. 118.1(1) and 149.1(1) and 149.1(6.4), 188.1(5). As per subs. 149.1(6)(b), a charitable organization shall be considered to be devoting its resources to

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

Although there is no legal requirement to do so, and the same result might be achieved through other arrangements or means, entering into a written agreement can be an effective way to help meet the own activities test. However, the existence of an agreement is not enough to prove that a charity meets the own activities test. The charity must be able to show that the terms establish a real, ongoing, active relationship with the intermediary,<sup>14</sup> and are actually implemented. A charity must record all steps taken to exercise direction and control as part of its books and records, to allow the CRA to verify that the charity's funds have been spent on its own activities. While the nature and extent of the required direction and control may vary based on the particular activity and circumstances, the absence of appropriate direction and control indicates that an organization is resourcing a non-qualified donee in contravention of the Act.

Political activities are not charitable activities, regardless of how they are conducted. An organization is not eligible for registration where it engages in:

- partisan political activities, which are defined as activities that include the direct or indirect support of, or opposition to, any political party or candidate for public office, and are prohibited by the Act; or
- non-partisan political activities, except where an organization devotes substantially all of its resources to charitable purposes/activities carried on by it, and the non-partisan political activities are ancillary and incidental to its charitable activities/purposes.<sup>15</sup> A registered charity cannot exceed these parameters and/or be constituted for an unstated collateral non-charitable purpose.

To summarize, the CRA must be satisfied that the Organization's purposes are exclusively charitable in law, and that its activities directly further these charitable

---

charitable activities carried on by it to the extent that, in any taxation year, it disburses not more than 50% of its income for that year to qualified donees.

<sup>13</sup> For more information, see Guidance CG-002, *Canadian Registered Charities Carrying Out Activities Outside Canada* and Guidance CG-004, *Using an Intermediary to Carry Out Activities Within Canada*.

<sup>14</sup> See, for example, *The Canadian Committee for the Tel Aviv Foundation v. Her Majesty the Queen*, 2002 FCA 72 (*Canadian Committee for the Tel Aviv Foundation*) at para. 30.

<sup>15</sup> See subsections 149.1(6.1) and (6.2) of the Act.

purposes in a manner permitted under the Act. In making a determination, we are obliged to take into account all relevant information.

#### Background of the Organization

The Organization was incorporated under the Canada Corporations Act on February 16, 1970, and was registered as a charitable organization under the Act on February 16, 1970. On December 31, 1983, the Organization's registration as a charity was revoked because it failed to file its annual information return. Upon addressing this issue, the Organization's charitable status was reinstated effective January 1, 1984. The Organization's objects, pursuant to its letters patent dated February 16, 1970, are as follows.

*To solicit, request, receive and maintain a fund or funds and apply from time to time such fund or funds and/or the income derived therefrom from carrying on charitable activities and, without limiting the generality of the foregoing:*

- a) *To educate the public as to the practices of the Jewish religion;*
- b) *To disseminate information to the public concerning the Jewish religion through programmes of inter-religious conferences, seminars, dialogues and publications, so as to promote a better understanding of this religion in the community as a whole;*
- c) *To encourage study and education in the field of human relations.*

While we did not receive specific details about the Organization's activities at the time of its registration, it appears that several of its programs and activities represent a longstanding focus on upholding human rights and promoting racial equality. For example, according to the Organization's Appendix A to its December 31, 1983, information return, the Organization described its activities as follows:

- Conducted research on various aspects of intercultural communication and human relations in Canada.
- Prepared briefs to various agencies on such topics as religion in schools, human rights codes, and religious broadcasting.
- Informed corporations across Canada of the particular needs of Jewish workers to observe certain religious holidays.
- Distributed 'Confrontation Games' program, an audio-visual presentation to help teachers, students, parents and others dealing with the public in schools, hospitals, etc. recognize developing problems of racism.
- Presented workshops for the general public on such topics as bigotry, racism, and related issues.
- Sponsored program of human rights awards for the media

- Participated in interfaith discussion and high level meetings with Protestant and Catholic clergy and lay leaders to improve understanding among Christian and Jewish communities.
- Maintained a resource centre dealing with human rights, comparative religions, and education.
- Distributed two human relations video workshop programs: 'Role Call,' oriented towards student groups, and 'Reservations,' directed towards an industrial or adult audience.
- Distributed the 'Treatment of the Holocaust in Canadian History and Social Science Textbooks.' This book, the first published by the League, provided insights into the study of this most important historical tragedy.

According to its website,<sup>16</sup> the Organization "is dedicated to combatting antisemitism, racism, and bigotry, providing an Anti-Hate Hotline, and resources such as the *Taking Action Against Hate* community education program." The Organization's current activities, as provided in response to our audit questionnaire, are described as follows:

- i. Anti-hate hotline services to the community,
- ii. Services to victims of anti-Semitism and racism,
- iii. Annual audit of anti-Semitic incidents,
- iv. Educational programs and publications,
- v. Holocaust education,
- vi. Interfaith/community dialogues,
- vii. Court interventions, and
- viii. Briefs on human rights issues.

During our audit interview, ██████████ Frank Dimant, Chief Executive Officer (CEO) of the Organization, also explained to us that the Organization is part of the B'nai Brith Canada group of related organizations, which includes B'nai Brith Canada District No. 22 (BBC),<sup>17</sup> and that funds transferred from the Organization to BBC are used for various charitable activities carried out by the group.

---

<sup>16</sup> <http://www.bnaibrith.ca/advocacy/> (accessed 21-10-2013)  
A non-profit organization

**Identified Areas of Non-Compliance**

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

a. Gifts to non-qualified donees

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

A "qualified donee" means a donee defined in subsection 149.1(1), and described in any of paragraphs 110.1(1)(a) and (b), and the definitions "total charitable gifts" and "total Crown gifts" in subs. 118.1. Qualified donees are as follows:

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

During the audit period, the Organization did not transfer any funds to any qualified donees, as defined above. It did, however, disburse funds to the following organizations, which are non-qualified donees:

- \$270,000 in 2011 and \$162,079 in 2010 to B'nai Brith Canada District No. 22 (BBC) (a non-profit organization), representing 28% and 17% of its total expenditures.

- \$95,000 in 2011 to [REDACTED] for a documentary film, representing 10% of its total expenditures.<sup>16</sup>

Therefore, the Organization's gifts transferred to non-qualified donees amounted to \$365,000 in 2011 and \$162,079 in 2010, representing 38% and 17% of the Organization's total expenditures for its 2011 and 2010 fiscal periods. The Organization is therefore providing resources to non-qualified donees in contravention of the Act.

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

Although we are of the opinion that the Organization's above noted expenditures are gifts of funds to non-qualified donees, we nonetheless considered whether the Organization could be undertaking its own activities through non-qualified donees as intermediaries.

During our audit interview, the Organization's CEO, [REDACTED] Dimant, stated that some of the Organization's resources are applied only to the various charitable activities carried out by other organizations within the B'nai Brith Canada group. However, the Organization did not provide, nor did we find any evidence of structured arrangements with BBC or any other group within the B'nai Brith Canada group to conduct any specific activities on the Organization's behalf. We further note that we were not provided with clear details about the specific activities towards which the Organization's resources were applied by third parties.

The CRA sent queries to the Organization requesting additional details about its operations on May 17, 2012, September 24, 2012, November 6, 2012, November 26, 2012, December 17, 2012, January 21, 2013, and January 29, 2013, but most of our questions remain unanswered. To date we have received no documented evidence that the Organization maintained continued direction and control over resources provided to BBC or any other group within the B'nai Brith Canada group, so as to make activities undertaken by these third parties the Organization's own under the Act. The Organization does not apparently exercise the degree of direction and control over the use of its resources required to establish that it has carried out its own charitable activities in accordance with the provisions of the Act. Rather, it appears that the Organization is acting as a conduit for non-qualified donees.

In particular, regarding funding the Organization provided to [REDACTED] we note that during our audit, we were provided with a copy of a "Letter of Agreement and

---

<sup>16</sup> According to [REDACTED] statement of expenses, provided to us during the audit, as of September 14, 2012, a total of \$190,000 has been transferred [REDACTED] for [REDACTED] documentary film

Indemnity" between ██████████ and BBC, dated July 13, 2011. According to this agreement, BBC:

- Agrees to provide ongoing consultation services to ██████████ on a documentary exploring the topic of anti-Semitism in Canada, Europe, the United States, and the Middle East;
- Will be noted as the lead Jewish consultant group on the final product and related documents of the documentary, and will be given predominate time over any other advocacy group that deals with the subject in Canada or elsewhere in the final film product and related documents;
- Will contribute to the funding of the project through donations as received and earmarked specifically for the documentary; and
- Will be entitled to getting 5% of its own contributions back as a fee for its consultation services.

According to the agreement, ██████████

- Has controlling interest in the production company that will produce the documentary;
- Will regularly meet with BBC as the documentary proceeds and will provide timely updates about the documentary;
- Warrants that the agreement is binding on himself and on his production company, and authorizes that his production company shall indemnify BBC and save it harmless to the fullest extent permitted by law.

In our opinion, this is strictly a funding arrangement between BBC and ██████████. The Organization itself is not even party to the agreement, nor does it appear to exercise any direction and control over the use of its funds, and/or over the activities being conducted with those funds, as required to establish that it is carrying out its own charitable activities in accordance with the provisions of the Act. Rather, it appears that the Organization is acting as a conduit, generally funding the film production of a third party non-qualified donee.

Though made in reference to an agency relationship, the underlying principles enunciated by the Federal Court of Appeal in *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*<sup>19</sup> 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." (para. 30)

---

<sup>19</sup> *Canadian Committee for the Tel Aviv Foundation*, supra note 11.

And

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

As re-iterated by the Court in *Bayit Lepletot v. Minister of National Revenue*,<sup>20</sup> it is not enough for an organization to fund an intermediary that carries on certain activities. The Act requires that the intermediary actually conduct those activities on the organization's behalf.

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

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

A registered charity cannot merely contribute to, or act as a financial conduit for, the program of another that is not a qualified donee.

Concerning the Organization, we note the following:

- No structured arrangements appear to be in place surrounding funds transferred from the Organization to the non-qualified donees.
- We have not received clear details about the specific programs and activities to which the Organization's funds and staff resources were applied by the non-qualified donees. For example, we have not been provided with details about [REDACTED] documentary film, other than its topic.
- We were not provided with clear information about the B'nai Brith Canada group's charitable activities, therefore we cannot ascertain that charitable activities exist.

---

<sup>20</sup> 2006 FCA 128.

- BBC's primary responsibility is administering the payroll for the various entities comprising the B'nai Brith Canada group, and it does not directly carry out the group's programs and activities. Based on the BBC's draft financial statements, provided to us during the audit, it appears that BBC holds an administrative function for the B'nai Brith Canada group.
- There is a single website, [www.bnaibrith.ca](http://www.bnaibrith.ca), which represents the B'nai Brith Canada group generally. The term "BBC" is used interchangeably to represent B'nai Brith Canada District No. 22 and the B'nai Brith Canada group as a whole. The Organization appears to share its governing board with the rest of the B'nai Brith Canada group. The meeting minutes provided by the Organization concern the group as a whole and do not isolate decisions taken about applying funds transferred from the Organization to BBC.
- As a self-described advocacy and service organization, we note that the majority of the work of the B'nai Brith Canada group would not be considered charitable at law, and that it involves a significant amount of political activity.

Overall, the Organization has not demonstrated that it is able to account for the use of its resources to carry out charitable activities under its own control and supervision where it has transferred resources to non-qualified donees. It is therefore our position that the Organization is resourcing non-qualified donees in contravention of the Act.

c. Conduct of non-charitable activities/devotion of resources to non-charitable activities

A charitable activity is one that directly furthers a charitable purpose - which requires a clear relationship and link between the activity and the purpose it purports to further. Purposes including advancing education about anti-Semitism and the Holocaust, promoting equality for and ending discrimination against Jewish people,<sup>21</sup> providing support services to victims of discrimination, and upholding and defending human rights that have been secured by law<sup>22</sup> are charitable, so long as the activities the charity undertakes in furtherance thereof remain charitable. That is, the charity cannot have political purposes or engage in partisan political activities, its political activities cannot exceed legal restrictions, and it can only carry out its own activities or resource qualified donees.

---

<sup>21</sup> For more information, see Policy Statement CPS-021 *Registering Charities that Promote Racial Equality*

<sup>22</sup> For more information, see Guidance CG-001, *Upholding Human Rights and Charitable Registration*.

An activity is considered to be political<sup>23</sup> if it:

- explicitly communicates a call to political action (i.e. encourages the public to contact an elected representative or public official to urge them to retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country);
- explicitly communicates to the public that the law, policy, or decision of any level of government in Canada or a foreign country should be retained (if the retention of the law, policy, or decision is being reconsidered by a government), opposed, or changed;
- explicitly indicates in its materials (whether internal or external) that the intention of the activity is to incite, or organize to put pressure in, an elected representative or public official to retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country; or
- makes a gift to another qualified donee to support political activities

No registered charity may engage in partisan political activities. That is, a registered charity is prohibited from directly or indirectly supporting or opposing a candidate for public office, an elected representative, or political party. If a registered charity carries out partisan political activities, it can be subject to compliance action, including suspension of its tax-receipting privileges, or revocation of its charitable registration.

Examples of prohibited conduct would normally include:

- making public statements (oral or written) that endorse or denounce a candidate, elected representative, or political party;
- publishing or otherwise disclosing the voting record of selected candidates, elected representatives, or political parties on an issue;
- distributing literature or voter guides that promote or oppose a candidate, elected representative, or political party explicitly or by implication; or
- explicitly connecting the charity's position on an issue to the position taken on the same issue by a candidate, elected representative, or political party.

In this regard, our audit revealed the Organization pays salaries for positions not restricted to the Organization's own programs and activities. The Organization's expenditures include the salaries of B'nai B'rith Canada's National Director of Advocacy

<sup>23</sup> See, for example, *Actions By Christians For The Abolition of Torture (ACAT) v. Her Majesty the Queen* (2003) D.T.C. 4394 (FCA); *Positive Action Against Pornography v. M.N.R.*, [1988] 2 F.C. 340 (CA), approving *McGovern v. Attorney General*, [1981] 3 All.E.R. 493 (ChD), *Human Life International in Canada Inc. v. M.N.R.*, [1998] 3 F.C. 202 (C.A.), *Alliance For Life v. M.N.R.*, [1999] 3 F.C. 504 (CA); *N.D.G. Neighbourhood Assn. v. Canada (Revenue Taxation Department)*, [1988] 2 C.T.C. 14 (FCA); and *Scarborough Community Legal Services v. Canada (Minister of National Revenue - M.N.R.)*, [1985] 1 C.T.C. 98 (FCA) where the Court held participation in a rally to protest against a proposal by the Government to bring changes to the Family Benefits program, and involvement with a committee to improve property standards by-laws to be political activities.

and its National Director of Legal Affairs, representing 16% and 17% of the Organization's expenditures for the years under audit. Based on the job descriptions provided to us by the Organization, these positions are generally responsible for the activities and programs of B'nai Brith Canada's Advocacy Department, which, in addition to the Organization, includes three non-qualified donees: the Institute for International Affairs, the Parliament Hill Office, and the Canada-Israel Public Affairs Committee.<sup>24</sup> Based on the available information, it would appear that none of these entities would themselves qualify for charitable registration due to having political purposes, partisan political activities, and non-incidental and ancillary political activities. For example:

#### The Institute for International Affairs (IIA)

IIA "monitors the abuse of human rights worldwide, advocating on behalf of Jewish communities in distress, and intervening at both the governmental level and at international fora."<sup>25</sup> According to IIA's section of the B'nai Brith Canada group website,<sup>26</sup> the activities undertaken in association with this program include the following:<sup>27</sup>

- A campaign against the 2009 World Conference Against Racism (Durban II), during which BBC took out an advertisement in the National Post to "salute The Right Honourable Prime Minister Stephen Harper and the Government of Canada for its clear, unequivocal rejection of Durban II,"<sup>28</sup> and issued a series of 8 media releases in which it "call(ed) on Prime Minister Stephen Harper to continue his pressure on the UN by preventing another racist and bigoted conference from taking shape;" and "called upon Liberal Opposition leader Stephane Dion to work with the government in a non-partisan manner to ensure that Durban II, a UN conference designed to combat racism, does not once again foment and encourage racism against Israelis and the Jewish people,"<sup>29</sup> stated the "European Union should do the right thing and withdraw from Durban II,"<sup>30</sup> and "called on NDP leader Jack Layton to put 'principle above politics' and categorically reject Durban II."<sup>31</sup>

<sup>24</sup> <http://www.bnaibrith.ca/advocacy/> (accessed 30-09-2013)

<sup>25</sup> <http://www.bnaibrith.ca/advocacy/> (accessed 30-09-2013)

<sup>26</sup> <http://www.bnaibrith.ca/the-institute-for-international-affairs/> (accessed 30-09-2013)

<sup>27</sup> While many of the links on IIA's webpage are not currently working, we were able to access how they appeared as captured on July 2, 2012, through the Internet Archive ([www.archive.org](http://www.archive.org))

<sup>28</sup> <http://web.archive.org/web/20101214051901/http://bnaibrith.ca/files/27042009.pdf> (accessed 30-09-2013)

<sup>29</sup> <http://www.jewishtribune.ca/uncategorized/2008/01/08/prevent-durban-ii-from-becoming-another-durban-i-hatefest-canada-urged> (accessed 30-09-2013)

<sup>30</sup> <http://web.archive.org/web/20120702041352/http://www.bnaibrith.ca/prdisplay.php?id=1471> (accessed 30-09-2013)

<sup>31</sup> <http://web.archive.org/web/20120702045647/http://www.bnaibrith.ca/prdisplay.php?id=1354> (accessed 30-09-2013)

- A "public service" publication titled "Israel at War: What you need to know," which includes the following statement: "President Mahmoud Abbas, elected leader of the Palestinians, but thrown out of Gaza by Hamas, has a responsibility to step in and take back the leadership role he has abdicated."<sup>32</sup>
- A media release titled "'Government has rightly fingered Hamas as the cause of the current conflict,' says B'nai Brith Canada," stating: "The international community should follow Canada's principled stance by placing full blame on Hamas as the instigator and aggressor in this conflict and recognize that Israel has no choice but to exercise its sovereign right to defend its citizens, however painful those steps might be," and "President Mahmoud Abbas, the elected leader of the Palestinian Authority who was thrown out of Gaza by Hamas, has a responsibility to step in and take back the leadership role he has abdicated. The Palestinians have an opportunity to free themselves of their Hamas overlords and work towards true peace and stability in the region."<sup>33</sup>
- A media release titled "B'nai Brith Canada calls on international community to stand behind democratic Israel as it defends its citizens against Hamas terrorism," stating: "While the loss of life on all sides is tragic, we urge the international community to recognize that the Gaza Strip - the area ruled by Hamas - is nothing more than a breeding ground for terrorists that seek to destroy the Jewish State. Democratic friends and allies of Israel should rally behind it as it takes the painful but necessary steps to protect its citizens from what are incessant, ongoing terrorist rocket attacks by Hamas and other Palestinian terrorist militias."<sup>34</sup>
- A 2007 indictment prepared by BBC's Senior Legal Counsel, David Matas, against Iranian president, Mahmoud Ahmadinejad, "for incitement to genocide against the Jewish people," in which the BBC asked the Government of Canada to "ban and announce it is banning the entry of Mahmoud Ahmadinejad into Canada under any circumstances;" "decide to prosecute Mahmoud Ahmadinejad for incitement to genocide against the Jewish people should he show up in Canada despite the ban on entry;" "request the Security Council to refer to the International Criminal Court under Court Statute article 13(b) the situation of incitement to genocide of the Jewish people by persons in authority in Iran;" and "under Article IX of the Genocide Convention, ask the International Court of Justice to find Iran in violation of Article I of the Genocide Convention for failure to prosecute Mahmoud Ahmadinejad for incitement to genocide

<sup>32</sup> [http://web.archive.org/web/20101214051605/http://bnaibrith.ca/files/20090105\(2\).pdf](http://web.archive.org/web/20101214051605/http://bnaibrith.ca/files/20090105(2).pdf) (accessed 30-09-2013)

<sup>33</sup> <http://web.archive.org/web/20120702055350/http://www.bnaibrith.ca/prdisplay.php?id=1422> (accessed 30-09-2013)

<sup>34</sup> <http://web.archive.org/web/20120702044909/http://www.bnaibrith.ca/prdisplay.php?id=1420> (accessed 30-09-2013)

against the Jewish people."<sup>35</sup> On September 24, 2012, BBC "renewed its call" for "the Government of Canada to urge the Security Council to refer to the International Criminal Court (ICC) the ongoing incitement to genocide of the Jewish people by Iran's leadership" in a media release titled "Ahmadinejad Should be Prosecuted for Incitement to Genocide, not Honoured with UN Platform."<sup>36</sup>

#### Parliament Hill Office (PHO)

PHO "liaises regularly with members of parliament, civil servants, ambassadors and opinion-makers residing in the nation's capital, providing a strong voice on issues of concern to the community."<sup>37</sup>

While the link to PHO's webpage (<http://www.bnaibrith.ca/pub.html>) appears to be broken, we were able to access how it appeared as captured on March 23, 2012, through the Internet Archive ([www.archive.org](http://www.archive.org)). Based on the available information, it would appear that PHO's activities include conducting reviews of parliamentary proceedings, reviewing and providing feedback concerning legislation, and preparing an "Election Task Force" which focused on briefing candidates on key issues that concern B'nai Brith Canada and Jewish communities during election periods.<sup>38</sup>

Generally, a registered charity can make a representation to an elected representative or public official, and it will be considered charitable, but only if this type of activity is subordinate to a charitable purpose. In the PHO's case, such representations appear to be both its primary activity and making such representations appears to be the PHO's political purpose. An organization established for a political purpose cannot be a charity.<sup>39</sup>

#### Canada-Israel Public Affairs Committee (CIPAC)

CIPAC "encourage(s) positive Canada-Israel relations through a progressive activist agenda involving all sectors of the community."<sup>40</sup>

While the link to CIPAC's webpage (<http://www.bnaibrith.ca/cipac/cipac.html>) also appears to be broken, we were able to access how it appeared as captured on March 23, 2012, through the Internet Archive ([www.archive.org](http://www.archive.org)). Based on the

<sup>35</sup> <http://web.archive.org/web/20101214093310/http://bnaibrith.ca/pdf/institute/IndictmentIranianPresidentMarch07.pdf> (accessed 30-09-2013)

<sup>36</sup> <http://www.bnaibrith.ca/ahmadinejad-should-be-prosecuted-for-incitement-to-genocide-not-honoured-with-un-platform/> (accessed 30-09-2013)

<sup>37</sup> <http://www.bnaibrith.ca/advocacy/> (accessed 30-09-2013)

<sup>38</sup> <http://web.archive.org/web/20120323193351/http://www.bnaibrith.ca/pub.html> (accessed 30-09-2013)

<sup>39</sup> For more information, see Policy Statement CPS-022, *Political Activities*

<sup>40</sup> <http://www.bnaibrith.ca/advocacy/> (accessed 30-09-2013)

available information, it would appear that CIPAC's activities are focused on "foster(ing) positive Canada-Israel relations through a progressive, activist, agenda involving all sectors of the community," "mobiliz(ing) grassroots Canadians to express their views on Israel, the Middle East and Jewish world," "advocate(ing) the community's positions to government, to media, and to the Canadian population at large," and "initiat(ing) creative Israel-focused programming spanning the social, religious, cultural, political, and academic arenas."<sup>41</sup> through its pro-Israel programs and publications.

In this regard, we would advise that fostering good relations between countries is considered a political purpose. Charitable purposes cannot focus on international relations, as this is the purview of the state.<sup>42</sup> As previously mentioned, an organization established for a political purpose cannot be a charity.<sup>43</sup>

While the B'nai Brith Canada's National Director of Advocacy and National Director of Legal Affairs may be involved in the delivery of the Organization's charitable activities, it appears to us that the requirements of the positions also involve delivering non-charitable activities on behalf of non-qualified donees. As a result, we are unable to accept the salaries for these positions as being exclusively charitable expenditures for the Organization. We note that the salary costs for the two positions represent 16% and 17% of the Organization's overall expenditures in 2011 and 2010.

As previously stated, it is our position that the resources transferred to BBC and [REDACTED] are gifts from the Organization to non-qualified donees. Despite our numerous requests for additional information, the Organization has provided no information indicating that the non-qualified donees carried out activities under the Organization's direction and control. In addition, we are unable to identify any activities undertaken by these non-qualified donees which might further charitable purposes if they had been conducted under the Organization's direction and control. In particular, we note the following:

#### B'nai Brith Canada District No. 22 (BBC)

Based on the BBC's draft financial statements, provided to us by the Organization during our audit, its primary activity appears to be administering payroll for the B'nai Brith Canada group. No substantive charitable activities directly undertaken by BBC are identified in its financial statements.

<sup>41</sup> <http://web.archive.org/web/20120606111259/http://www.braibrith.ca/cipac/cipac.html> (accessed 30-09-2013)

<sup>42</sup> According to Hubert Picarda in *Law and Practice Relating to Charities* (London: Butterworths, 1999) at 171, the U.K. Charity Commissioners "will not admit to the Register organizations for the promotion of international friendship or understanding." He also cites Rowlatt J. in *Anglo-Swedish Society v. Commissioners of Inland Revenue*, [1931] 47 T.L.R. 295, who found that "a trust to promote an attitude of mind, a view of one nation by another" was not charitable.

<sup>43</sup> For more information, see Policy Statement CPS-022 *Political Activities*

Generally, based on the available information, it appears that the B'nai Brith Canada group focuses on advocacy work and the provision of services to its members, including lodges and sports leagues. Organizations established in part for their members, and that provide programs and/or benefits directly for their members, are not generally considered charitable at law because they lack a sufficient public character.<sup>44</sup> While advocacy is not necessarily a political activity, it can be, and where a registered charity's advocacy work involves political activity, it is restricted by the Act. Furthermore, under the Act and common law, an organization established for a political purpose cannot be a charity.<sup>45</sup>

██████████

The courts have held that an organization established to benefit a named individual or a private group (for example, a professional association) is established for private benevolence and therefore not charitable at law. Absent details about the video itself, we are unable to conclude that this activity could qualify as charitable.<sup>46</sup>

While it is our opinion that the Organization does not maintain direction and control over the activities conducted by the non-qualified donees, in our view, even should the Organization establish that it maintains direction and control over these activities, the activities would not appear to further the Organization's purposes, nor are they charitable at law.

As stated above, under the Act, a registered charity must devote all of its resources to charitable purposes and activities. Concerning the Organization's charitable activities, we accepted amounts the Organization reported as charitable expenditures for the fiscal years under audit, minus amounts identified as gifts to non-qualified donees (i.e., BBC and ██████████), and salary costs for B'nai Brith Canada's National Director of Advocacy and its National Director of Legal Affairs. We accepted amounts the Organization reported as devoted to the charitable programs and activities that appear to be under its own direction and control, including the National Task Force, anti-hate hotline, and annual audit of anti-Semitic incidents. This amounted to \$351,083 in 2011 and \$326,545 in 2010, representing 36% and 34% of the Organization's total expenditures as being devoted to charitable activities.

Concerning the Organization's non-charitable expenditures, as stated above, the Organization's gifts to non-qualified donees in 2011 and in 2010 represent 38% and 17% of its total expenditures. The salary costs for B'nai Brith Canada's National Director

---

<sup>44</sup> For more information, see CRA Policy Statement CPS-024, *Guidelines for Registering a Charity: Meeting the Public Benefit Test*

<sup>45</sup> For more information, see CRA Policy Statement CPS-022, *Political Activities*.

<sup>46</sup> See *National Model Railroad Association v. Minister of National Revenue* [1989] 1 C.T.C. 300.

of Advocacy and its National Director of Legal Affairs amounted to \$151,866 in 2011 and \$158,125 in 2010, representing 16% and 17% of the Organization's total expenditures. The Organization's fundraising expenditures<sup>47</sup> amounted to \$68,059 in 2011, representing 7% of its total expenditures for that fiscal year, and its management and administration-related costs were \$25,920 in 2011 and \$305,291 in 2010, representing 3% and 32% of its total expenditures.

Therefore, based on the information the Organization provided, our audit found the Organization has devoted 48% and 49% of its total expenditures to non-charitable activities during the audit period, and an additional 16% and 17% for salary costs that may only partially represent charitable expenditures.<sup>48</sup>

### Summary

To summarize, it is our opinion that the Organization has failed to devote its resources to charitable activities carried on by the Organization itself due to its:

- a. Gifts to non-qualified donees;
- b. Lack of direction and control over the use of resources / resourcing non-qualified donees; and
- c. Conduct of non-charitable activities / devotion of resources to non-charitable activities.

Accordingly, it is our position that the Organization has failed to meet the requirements of subsections 149.1(1) and 149.1(6.2) of the Act that it devote substantially all its resources to charitable activities carried on by the Organization itself. For this reason, it appears there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

## 2 **Failure to be Constituted for Exclusively Charitable Purposes**

- a. Broad and vague purpose

To be registered as a charity under the Act, the purposes of an organization must be exclusively charitable and define the scope of its activities. An organization's governing document must contain a clear statement of its purpose(s). If a purpose is worded in broad or vague language that could permit non-charitable activities and/or result in the delivery of non-charitable benefits, (where, for example, the words used

---

<sup>47</sup> Although a charity can use some of its resources for fundraising to support charitable activities that further its charitable purposes, it is the CRA's position that fundraising is not a charitable purpose in itself or a charitable activity that directly furthers a charitable purpose. For more information, see CRA Guidance CG-013, *Fundraising by Registered Charities*.

<sup>48</sup> See Appendix A for more information.

encompass concepts that go beyond the scope of charity<sup>49</sup>), it will not meet the "exclusive charitability" requirements of the Act.<sup>50</sup>

In our opinion, the Organization's stated purposes are vague and broadly worded. While "educat(ing) the public as to the practices of the Jewish religion," and "disseminat(ing) information to the public concerning the Jewish religion through programmes of inter-religious conferences, seminars, dialogues and publications" could be considered charitable purposes, they fall under the overarching statement of purpose "To solicit, request, receive and maintain a fund or funds and apply from time to time such fund or funds and/or the income derived therefrom from carrying on charitable activities and, without limiting the generality of the foregoing..." It appears this statement allows the Organization to apply funds without restriction, which readily includes applying funds towards non-charitable activities and transferring funds to non-qualified donees in contravention of the Act. Furthermore, "to encourage study and education in the field of human relations" is an ambiguous purpose that can be interpreted in many different ways. The Organization's intentions related to this purpose remain unclear to us. It is therefore our position that the Organization's purposes fail to define the scope of the activities that it can engage in, thus confining it to charitable activities, and ensuring the delivery of a charitable benefit to the public or a sufficient segment thereof. As a result, it is our position that the Organization's stated purposes are broad and vague and not charitable at law.

b. Collateral political purpose

Under the Act and in common law, an organization established for a political purpose cannot be a registered charity. The courts have determined political purposes to be those that seek to:

- further the interests of a particular political party or support a political party or candidate for public office; or
- retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country.

Additionally, it is a political purpose, and therefore not legally charitable, to engage in pressure tactics on governments such as swaying public opinion,<sup>51</sup> promoting an attitude of mind,<sup>52</sup> creating a climate of opinion,<sup>53</sup> or exercising moral pressure<sup>54</sup>

---

<sup>49</sup> See for example, *Re Tetley*, [1941] Ch 308, where the court held that the word *philanthropy* can encompass purposes and activities that go beyond the realm of charity, and *Travel Just v Canada (Revenue Agency)*, 2006 FCA 343, at para 10.

<sup>50</sup> See *Vancouver Society* supra note 2 at para. 154 per Iacobucci J

<sup>51</sup> *Human Life International in Canada Inc. v. M.N.R.*, [1988] 2 F.C. 340

<sup>52</sup> *Alliance for Life v. M.N.R.*, [1999] 3 F.C. 504

<sup>53</sup> *Ibid.*

<sup>54</sup> *Action by Christians for the Abolition of Torture (ACAT) v. The Queen & al.*, 2002 FCA 499.

when the aim of those tactics is to obtain a change or prevent a change in the laws and policies of the legislatures and governments.<sup>55</sup>

Although political purposes are never charitable, registered charities can participate in, or conduct, some types of political activities within certain limits, as long as those activities remain ancillary and incidental to the charity's charitable purposes, and do not support or denounce any political party or candidate. Partisan political activities are never permitted.

As previously stated, the Organization has resourced the B'nai Brith Canada group through its gift of funds to BBC, and the B'nai Brith Advocacy Department through its shared staff resources. The B'nai Brith Canada group, and in particular, its Advocacy Department have a significantly political focus. Based on our review of the available information, it appears that the B'nai Brith Canada group's political activities include partisan political activities, are of such a frequency and quantity that would necessarily involve a significant devotion of resources, and appear to further political purposes.<sup>56</sup> Accordingly, it appears to us that the Organization may exist in part to resource the B'nai Brith Canada group's political purposes.

c. Delivery of unacceptable non-incidental private benefits

As indicated above, to be charitable at law, a purpose must fall within a category of charity and deliver a public benefit. However, it is not enough that a purpose, on its face, falls within one or more of the four categories of charity and delivers a charitable benefit to a properly defined eligible beneficiary group. The public requirement also means a charity may not provide private benefits as it advances and furthers a charitable purpose, except within legally acceptable boundaries. The charity is responsible for establishing that any private benefit that may be delivered is acceptable.

Generally, a private benefit is a benefit or advantage provided to a person or organization that is not a charitable beneficiary, or a benefit provided to a charitable beneficiary that exceeds the boundaries of charity. An acceptable private benefit is one that is incidental to achieving a charitable purpose. A private benefit will usually be incidental where it is necessary, reasonable, and proportionate to the resulting public benefit.

In this context, necessary means legitimately and justifiably resulting from an action that directly contributes towards achieving a charitable purpose, or a required step in, or consequence or by-product of, an action taken only to achieve a charitable

---

<sup>55</sup> *Bowman & al v. Secular Society Ltd.*, [1917] A. C. 406; *McGovern & al v. A-G. & al.*, [1982] 1 Ch. 321; *Koeppler's Will Trusts*, Re[1986] Ch. 423.

<sup>56</sup> Apart from B'nai Brith Canada group's political activities raised in section 1c), see Appendix B for more details about the group's political activities.

purpose.<sup>57</sup> Reasonable means related to the need and no more necessary to achieve the purpose,<sup>58</sup> and fair and rational. Proportionate to the resulting public benefit means a private benefit must be secondary and subsidiary to a charitable purpose.<sup>59</sup> It cannot be a substantial part of a purpose, or form an additional or independent non-charitable end itself. The public benefit cannot be too indirect, remote, or speculative as compared to a more direct private benefit, particularly where the direct benefit is to private persons, entities or businesses.<sup>60</sup>

Based on our review of the Organization's activities, it is our position that the Organization is delivering unacceptable private benefits to the B'nai Brith Canada group and [REDACTED] by resourcing non-qualified donees.

### Summary

In summary, it is our position that the Organization is not constituted for exclusively charitable purposes, based on its:

- a. broad and vague purposes;
- b. collateral political purpose; and / or
- c. delivery of unacceptable non-incidental private benefits.

Accordingly, it is our position that the Organization fails to meet the legal requirement that it be constituted for exclusively charitable purposes, with all its purposes falling within one or more of the four categories of charity and delivering a public benefit without conferring an unacceptable private benefit. For these reasons, and each of these reasons, it appears there may be grounds for revocation of the charitable status of the Organization under subsections 149.1(1) and (6.2) and paragraph 168(1)(b) of the Act.

---

<sup>57</sup> See, for example, *Incorporated Council of Law Reporting for England and Wales v. Attorney General* [1972] Ch 73, [1971] 3 All ER 1029 (C.A.) (*Incorporated Council of Law Reporting*), *Royal College of Surgeons of England v. National Provincial Bank*, [1952] AC 631; *Royal College of Nursing v. St. Marylebone Borough Council*, [1959] 1 WLR 1007 (CA); and *I.R.C. v. Oldham Training and Enterprise Council*, supra note 6 (*Oldham*).

<sup>58</sup> See, for example, *Joseph Rowntree Memorial Housing Association Ltd and Others v. Attorney General*, [1983] Ch. 159 (ChD), and *In Re Resch's Will Trusts And Others v. Perpetual Trustee Co. Ltd*, [1969] 1 AC 514 (PC).

<sup>59</sup> See, for example, *Incorporated Council of Law Reporting*, supra note 64, *Inland Revenue Commissioner v. City of Glasgow Police Athletic Association*, [1953] A.C. 380 (H.L.), and *Oldham*, [1996] B.I.C. 539.

<sup>60</sup> See, for example, *Oldham*, supra note 6; *Canterbury Development Corporation v. Charities Commission*; *Canterbury Development Corporation Trust v. Charities Commission*; *CEDF Trustee Limited As Trustee of the Canterbury Economic Development Fund v. Charities Commission*, [2010] NZHC 331; *Hadaway v. Hadaway*, [1954] 1 W.L.R. 16 (PC); and *Re Co-operative College of Canada et al. and Saskatchewan Human Rights Commission*, (1975) 64 D.L.R. (3d) 531

3. **Failure to Maintain Adequate Books and Records**

Section 230(2) of the Act requires that every registered charity maintain adequate books and records, and books of account, at an address in Canada recorded with the Minister. In addition to retaining copies of donation receipts, as explicitly required by section 230(2), section 230(4) provides that:

"every person required by this section to keep books of account, who does so electronically, shall retain in an electronically readable format:

- (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 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 date of the last taxation year to which the records and books relate."

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

- it is the responsibility of the registered charity to prove that its charitable status should not be revoked;<sup>61</sup>
- a registered charity must maintain, and make available to the CRA *at the time of an audit*, meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required documentation and records subsequent thereto;<sup>62</sup> and
- the failure to maintain proper books, records, and records of account in accordance with the requirements of the Act is itself sufficient reason to revoke an organization's charitable status.<sup>63</sup>

A letter dated May 17, 2012, was issued to the Organization, in which the CRA provided a comprehensive list of books, records, and documentation to have available prior to our audit.

---

<sup>61</sup> *Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*, 2002 FCA 72 (FCA)

<sup>62</sup> *Canadian Committee for the Tel Aviv Foundation v. Canada*, supra footnote 2, *The Lord's Evangelical Church of Deliverance and Prayer of Toronto v. Canada*, (2004) FCA 397

<sup>63</sup> *College Rabbinique de Montreal Or Hacham D'Tash v. Canada (Minister of the Customs and Revenue Agency)* (2004) FCA 101; ITA section 168(1)

Although the audit commenced on September 4, 2012, not all of the books, records, and documentation requested by the CRA were available. During the course of our audit, only partial books and records were made available to the CRA. Due to the lack of books and records, and our outstanding queries, the CRA issued a subsequent request on September 24, 2012, to [REDACTED] CFO, requesting the information that was not provided during our audit. Further requests were made on November 6, 2012, November 26, 2012, December 17, 2012, January 21, 2013, and January 29, 2013. Most of the queries contained in these requests remain outstanding.

Our audit revealed the following deficiencies in the Organization's books and records:

- The Organization failed to provide sufficient documentation to substantiate that the funds transferred to non-qualified donees are conducted under its ongoing direction and control. The Organization's general ledger includes various loan accounts with its related entities. Our review of these loan accounts identified an additional \$195,000 in 2011 and \$87,079 in 2010 in funds being transferred from the Organization to BBC in addition to the amounts previously noted on the financial statements and T3010 returns as expenditures. The CRA made numerous attempts to obtain additional information regarding these loans: including the types of transactions being made, and the related loan agreements. To date, this information has not been provided. As a result, the Organization has not demonstrated it has maintained direction and control over these funds. Therefore, we have determined they represent gifts to non-qualified donees. As stated above, it is our position that the Organization has transferred a total of approximately \$365,000 in 2011 and \$162,079 in 2010 to non-qualified donees during the audit period, representing 38% and 17% of the Organization's total expenditures.
- The Organization's official donation receipt listings have discrepancies. The actual amount of tax receipted gifts issued for the audit period could not be verified. Figures reported on line 4500 of the T3010 (total eligible amount of all gifts for which the charity issued tax receipts) do not reconcile with either the CFO's [REDACTED] worksheet (as provided to the CRA), or the Organization's general ledger. For further details, refer to Appendix C.
- We also noted that the Organization's payroll costs are being reported as 100% charitable during the audit period. Our review of the job descriptions indicate that there should be allocations made for the employees of the Organization. The Organization is required to track charitable versus non-charitable staffing costs as noted in guide T4033, *Completing the Registered Charity Information Return*. Some expenditures can be considered partly charitable and partly management and administration. In these cases, it will be necessary to divide the amounts between lines 5000 and 5010, or 5020 (fundraising), 5030 (political), 5040 (other), where applicable.

It is our opinion the Organization has failed to maintain adequate books and records of account as per subsection 230(2) and is therefore in contravention of paragraph 168(1)(e) of the Act.

4. **Donation Receipts:**

a. Inappropriate issuance of donation receipts – Directed donations

A registered charity cannot issue an official donation receipt if a donor has directed the charity to give the donated funds to a non-qualified donee or to specified persons or entities selected by the donor. Such a donation is not a gift to the charity, but to the specified recipient. In effect, the charity becomes an instrument to allow for receipts to be issued for donations made to non-qualified donees, or to persons or entities that are not at arm's length to the donor which deliver an unacceptable private benefit, in contravention of the Act.<sup>64</sup>

A donation subject to a general donor direction that it be used in a particular program operated by a charity is acceptable, provided that all decisions regarding use of the donation within a program rest with the charity. The donation must be used for the charity's own charitable activities or for gifting to "qualified donees" as defined in the Act, and no unacceptable private benefit may accrue to the donor or any other person or entity. Compliance with these legal requirements means it is necessary to ensure that:

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

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

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

For example, our audit evidence shows that the Organization conducted fundraising on behalf of B'nai Brith Hillel of Toronto Inc., a related organization that lost its registered charitable status in 2003. B'nai Brith Hillel of Toronto Inc. is constructing a new non-profit Alzheimer's residence [REDACTED]. The Organization solicited donations by holding the GSBC Great Canadian Woman Awards dinner for

---

<sup>64</sup> See IT-110R3 *Gifts and Official Donation Receipts* paras. 15(f) and (g).

which proceeds were to go to the Alzheimer's residence. The Organization collected and receipted \$132,250 in 2011 on behalf of B'nai Brith Hillel of Toronto Inc., a revoked charity (i.e., a non-qualified donee).

We also note that Section 5 of the contract between [REDACTED] and BBC, dated July 13, 2011, states "(BBC) will contribute to the funding of the Project through donations as received and earmarked specifically for this Project. (BBC) will be entitled to a fee for its consultation services equivalent to five percent of all contributions provided by (BBC) to the Project". In our opinion, it appears these donations received by the Organization are directed donations given to a non-qualified donee [REDACTED] on behalf of another non-qualified donee (BBC), in contravention with the Act.

In our opinion, the Organization solicits and receives directed donations for non-qualified donees. For the reasons set out above, it is our view that the activities that are the subject of these donor directions are not the Organization's own activities. Therefore, we believe the Organization is allowing receipts to be issued for donations made to non-qualified donees.

b. Issuing Receipts not in Accordance with the Act and/or its Regulations

The Act stipulates various requirements pertaining to official donation receipts issued by registered charities. These requirements are contained in Regulations 3500 and 3501 of the Act and are described in some detail in Interpretation Bulletin IT-110R3, *Gifts and Official Donation Receipts*.

The audit revealed that the official donation receipts issued by the Organization did not comply with the requirements of Regulation 3501 of the Act as follows:

- The Organization does not retain a duplicate copy of the official donation receipt (paper or electronic). Data is maintained in the Organization's [REDACTED] system; however, these receipts cannot be reprinted without a new receipt number being issued to it.
- The system is unable to print out a listing of official donation receipts issued that includes all of the required items (i.e., the donor's name and address, the date of the donation, the date of the receipt if that date differs from the date of the donation, the serial number of the receipt, the type of gift and the donation amount). The listing provided includes only names, dates, donation amounts, and receipt numbers.
- Official donation receipts are issued where the donor has directed the Organization to give the funds to a non-qualified donee.
- The Organization issues receipts for fundraising events held to raise funds for a specific purpose to support programs of related non-qualified donees. For example, in the audit period, a fundraising dinner was held for

the Alzheimer's house, a project that is not part of the Organization, but B'nai Brith Hillel of Toronto Inc. (a revoked charity).

Under paragraph 168(1)(d) of the Act, 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.

### **Summary**

In summary, it is our position that the Organization is issuing:

- a. inappropriate donation receipts – directed donations;
- b. receipts not in accordance with the Act and/or its Regulations.

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

### **The Organization's Options:**

#### **a) No Response**

You may choose not to respond. In that case, the Director General of the Charities Directorate may give notice of its intention to revoke the registration of the Organization by issuing a Notice of Intention in the manner described in subsection 168(1) of the Act.

#### **b) Response**

Should you choose to respond, 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; or
- giving notice of its intention to revoke the registration of the Organization by issuing a Notice of Intention in the manner described in subsection 168(1) of the Act

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

If you have any questions or require further information or clarification, please do not hesitate to contact me at the numbers indicated below.

Yours sincerely,



Katie Spoelstra  
Audit Division  
Kitchener/Waterloo Tax Services Office

Telephone: (519) 896-3544  
Facsimile: (519) 585-2803  
Address: 166 Frederick St.  
Kitchener, ON N2H 0A9

Enclosures:

- Appendix A – Devotion of Resources Summary
- Appendix B – B'nai Brith Canada's Political Activities
- Appendix C – Reconciliation of Receipted Donations

C.c.: Mr Eric Bissell



Appendix A  
The League for Human Rights of B'nai B'rith  
Devotion of Resources Summary

	<u>2011-12-31</u>						<u>2010-12-31</u>				
	Actual 2011	Actual % of Expenses	Actual Amount	Actual Total	Actual % of Expenses		Actual 2010	Actual % of Expenses	Actual Amount	Actual Total	Actual % of Expenses
Line 4700 Total Revenue	777,121					Line 4050 Total Revenue	657,460		887,460		
Line 4050 Total Expenses	770,550					Line 4050 Total Expenses	804,961		964,961		
<b>CHARITABLE ACTIVITIES</b>						<b>CHARITABLE ACTIVITIES</b>					
Line 5000 Charitable	597,949	78%	246,866	351,083	38%	Line 5000 Charitable	484,670	56%	158,125	326,945	34%
<b>TOTAL CHARITABLE ACTIVITIES</b>	<b>597,949</b>	<b>78%</b>	<b>246,866</b>	<b>351,083</b>	<b>38%</b>	<b>TOTAL CHARITABLE ACTIVITIES</b>	<b>484,670</b>	<b>56%</b>	<b>158,125</b>	<b>326,945</b>	<b>34%</b>
<b>COULD BE PARTLY CHARITABLE ACTIVITIES</b>						<b>COULD BE PARTLY CHARITABLE ACTIVITIES</b>					
Salaries - Office of Advocacy and Civil Legal Affairs			151,866	151,866	16%	Salaries - Office of Advocacy and Civil Legal Affairs			158,125	158,125	17%
<b>TOTAL COULD BE PARTLY CHARITABLE ACTIVITIES</b>			<b>151,866</b>	<b>151,866</b>	<b>16%</b>	<b>TOTAL COULD BE PARTLY CHARITABLE ACTIVITIES</b>			<b>158,125</b>	<b>158,125</b>	<b>17%</b>
<b>NON-CHARITABLE ACTIVITIES</b>						<b>NON-CHARITABLE ACTIVITIES</b>					
Line 5010 Migration Admin	106,930	14%	75,000	25,920	3%	Line 6010 Myself and Admin	201,091	24%	75,000	24,000	2%
Line 5020 Fundraising	48,730	6%	0	69,059	7%	Line 6020 Fundraising	0	0%	0	0	0%
Line 5040 Other (Gifts, Donations, Qualified Charities)						Line 6040 Other (Gifts, Donations, Qualified Charities)					
B'nai B'rith Canada		1%	170,000	270,000	28%	B'nai B'rith Canada		0%	167,000	167,000	17%
Martin Home		0%	25,000	25,000	3%	Martin Home		0%	0	0	0%
Line 5040	0	0%	80,000	300,000	32%	Line 5040		0%	153,000	153,000	17%
<b>TOTAL NON-CHARITABLE ACTIVITIES</b>	<b>168,379</b>	<b>22%</b>	<b>290,000</b>	<b>458,979</b>	<b>48%</b>	<b>TOTAL NON-CHARITABLE ACTIVITIES</b>	<b>153,291</b>	<b>24%</b>	<b>310,779</b>	<b>367,579</b>	<b>44%</b>
<b>TOTAL EXPENDITURES</b>	<b>766,928</b>	<b>100%</b>	<b>195,000</b>	<b>961,928</b>	<b>100%</b>	<b>TOTAL EXPENDITURES</b>	<b>664,961</b>	<b>100%</b>	<b>87,079</b>	<b>952,040</b>	<b>100%</b>

## Appendix B

### B'nai Brith Canada's Political Activities

#### 1) Political statements issued by B'nai Brith Canada

- On October 15, 2012, the B'nai Brith Canada group issued a statement in which it "applauded NDP MP Dany Morin's private member's motion to begin mapping out a 'national bullying prevention strategy,'" and connected its position to MP Morin's position on this issue, as follows: "We applaud MP Morin for tabling this motion in the House of Commons. We have been calling for a national anti-hate strategy since 1997 when we initiated (a) series of groundbreaking hate on the internet conferences, worked to create resource material on bullying and its cyber variants and offered training to students and educators through Taking Action Against Hate workshops."<sup>1</sup>
- On November 14, 2012, the B'nai Brith Canada group released a statement expressing its disappointment with the Federal NDP Party, calling for the NDP "to recognize the fallacy of equating rocket barrages from Gaza that target civilians indiscriminately with Israel's right to defend its citizens." In this statement, the B'nai Brith Canada group connected both "the Government and the Liberals" with its position that "there can be no moral equivalency between terrorist groups targeting innocent civilians and Israel taking defensive action to defend itself." and called on the NDP to do the same.<sup>2</sup>
- On December 14, 2012, BBC issued a statement titled "Votes trump principles according to Trudeau staff," criticizing MP Justin Trudeau's decision to speak at the 'Revival of the Islamic Spirit' convention, "calling on the interim Liberal Party leader and human rights critic to intervene with Mr. Trudeau to urge him to reconsider his approach."<sup>3</sup>
- On December 20, 2012, BBC issued a statement titled "Jewish Community Supports Government Action Against Terror," applauding Prime Minister Stephen Harper and Minister of Public Safety Vic Toews for "their principled stance in combating terror," following the government announcement listing the Islamic Revolutionary Guard Corp's Qods Force (IRCG-QF) as a terror entity under the Criminal Code, and stating "B'nai Brith Canada has long called for the listing of the IRG-QF as a terrorist entity and its addition is an important step in combatting terror."<sup>4</sup>

---

<sup>1</sup> <http://www.bnaibrith.ca/national-bullying-strategy-welcomed/> (accessed 21-10-2013)

<sup>2</sup> <http://www.bnaibrith.ca/bnai-brith-disappointed-with-ndp-statement/> (accessed 21-10-2013)

<sup>3</sup> <http://www.bnaibrith.ca/votes-trump-principles-according-to-trudeau-staff/> (accessed 21-10-2013)

<sup>4</sup> <http://www.bnaibrith.ca/jewish-community-supports-government-action-against-terror/> (accessed 21-10-2013)

## 2) Political programs and activities

### B'nai Brith Canada District No. 22

During the audit, we were provided with the job descriptions for B'nai Brith Canada group positions earning more than \$50,000 many of which indicate to us that involvement in B'nai Brith Canada's political activities is a focus of the job. Examples include the following:

- The CEO's responsibilities include "to interact with all levels of Gov't."
- The Director of Communications' responsibilities include "to liaise with Members of Parliament and their staff on an ongoing basis. To identify key individuals in riding associations and constituency offices. To arrange regular consultation with these individuals, and facilitate such meetings for local and national lay leadership. To identify emerging issues and liaise with the national office in devising and implementing a strategic response...."
- The Director of Government Relations' responsibilities include "to participate in strategic planning on both national and regional political issues;"
- The Community & Governmental Relations Coordinator Quebec Region's responsibilities include to "liaise with politicians and bureaucrats on the provincial and municipal level, as well as federal MP's residing in Quebec, arranging regular consultation, and facilitating such meetings for local and national lay leadership." The Community & Governmental Relations Coordinator Manitoba Region's responsibilities include the same

### B'nai Brith Canada's Parliament Hill Office

The Parliament Hill Office "liaises regularly with members of parliament, civil servants, ambassadors and opinion-makers residing in the nation's capital providing a strong voice on issues of concern to the community"<sup>5</sup> While the Organization does not appear to be funding this program directly, based on our understanding of BBC's financial statements and the job descriptions provided, the Organization is funding its staff's salaries through BBC.

### Canada-Israel Public Affairs Committee

Canada-Israel Public Affairs Committee (CIPAC)'s mandate is "to encourage positive Canada-Israel relations through a progressive activist agenda involving all sectors of the community."<sup>6</sup> While the Organization does not appear to be funding this program directly, based on BBC's financial statements and the job descriptions provided, the Organization is funding its staff's salaries through BBC.

<sup>5</sup> <http://www.bnabritn.ca/advocacy/> (accessed 21-10-2013)

<sup>6</sup> <http://www.bnabritn.ca/advocacy/> (accessed 21-10-2013)

The Institute for International Affairs

The Institute for International Affairs (IIA) received \$135,000 from the Organization in 2010 and \$290,000 in 2011. It "monitors the abuse of human rights worldwide, advocating on behalf of Jewish communities in distress, and intervening at both the governmental level and at international fora."<sup>7</sup>

---

<sup>7</sup> <http://www.bnaibright.ca/advocacy/> (accessed 21-10-2013)

**The League for Human Rights B'nai Brith**

119241776 RR0001 (0374009)

01/01/2010 to 12/31/2011

**Appendix C - Reconciliation of Received Donations**

---

Reconciliation of received donations to various sources to test integrity of books and records and Organization's receiving system

Sources of Information

- (A) Board -retrieved in Sept 2012 ( [REDACTED] worksheet listing)
- (B) Line 4500 of Return filed
- (C) GL listing provided by CFO ( [REDACTED] W/P#905

Line 4500 (Received Gifts)	2011	2010	
Per GL [REDACTED] WP	290,997.07	8,077.35	
Per T3010 Return filed	290,997.00	8,176.00	
Variance	- 0.07	98.65	<i>ok, variance immaterial</i>
Per [REDACTED]	80,494.50	2,961.00	
Per GL [REDACTED] WP	290,997.07	8,077.35	
Variance	210,502.57	5,116.35	<i>to final letter</i>
Per [REDACTED]	80,494.50	2,961.00	
Per T3010 Return filed	290,997.00	8,176.00	
Variance	210,502.50	5,215.00	<i>to final letter</i>

<END>

February 11, 2014

Katie Spoelstra and Juliane Myska  
Audit Division  
Kitchener / Waterloo Tax Services Office  
166 Frederick St.  
Kitchener, Ontario  
N2H 0A9

Via Fax: (519) 585-2803

Dear Ms. Spoelstra and Ms. Myska:

**Re: League for Human Rights of B'nai Brith ("LHR") B/N 119241776 and  
B'nai Brith Foundation District ("BBF") No. 22 B/N: 118812106**

---

We are writing this letter in response to your letters of November 28, 2013 to [REDACTED] Frank Dimant of the above Organizations.

First, thank you for extending your deadline to respond to the letters. As most of the letters deal with common issues we are responding to them jointly but will deal with different facts as they arise.

Second, while we read with interest your commentary on general legal principles we take no position on it and do not consider it necessary to respond in order to deal with the specific issues in question here.

**Annulment Issue**

As a preliminary matter we want to take the opportunity to continue the discussion we initiated about the option of annulment for both organizations.

Our initial proposal to you regarding the annulment of the organizations was predicated on your position that both LHR and BBF were incorporated with objects that were impermissibly broad and vague. For reference please see the last sentence of the first full paragraph on page 18 of the BBF letter "...it is our position that the Organization's stated purpose is not charitable at law" and on page 20 of the LHR letter which states of that organization "...it is our position that the Organization's stated purposes are broad and vague and not charitable at law". As Ms. Myska confirmed in our call, neither organization has ever altered the purposes for which they were incorporated and so the ones examined by you are the original purposes for which the organizations were created.

Our initial position maintained that the sanction for an organization incorporated for purposes which are broad and vague is not revocation but rather annulment. As proof of this proposition we refer you to ss.149.1(23) of the Income Tax Act which states that:

*"The Minister may, by registered mail, give notice to a person that the registration of the person as a registered charity is annulled and deemed not to have been so registered, if the person was so registered by the Minister in error or the person has, solely as a result of a change in law, ceased to be a charity".*

If the Minister's position is that the objects of both BBF and LHR are not charitable at law then both organizations were, presumably, registered in error and the only recourse available to the Minister on this point is annulment and not revocation (there is no analogous provision allowing the Minister to revoke for similar reasons).

In discussing the Minister's response with Ms. Myska she had commented that the Minister's position is (if we understand correctly) that if the Organization carried on strictly charitable activities that would suffice to restrict a reading of the objects from one that was so broad as to allow it to carry on non charitable activities to ones that are charitable. This is effectively an application of the Principle of Benign Construction.

Assuming that we understand this position correctly we do not understand how it is applicable here. First, both letters are entirely devoted to stating that both the BBF and LHR had myriad non charitable activities. We therefore do not understand how the Minister can argue that the Charities' exclusively charitable activities save the objects from being so broad and vague as to allow the Organizations to undertake non charitable activities. There is a contradiction here which, we would submit, is fatal to the logic that the proper sanction is revocation (at least for this reason) rather than annulment.

Second, the Principle of Benign Construction applies only to the concept of objects that are overly broad. The principle comes from English law which has held:

*"In construing trust deeds the intention of which is to set up a charitable trust, and in others too, where it can be claimed there is an ambiguity, a benignant construction should be given if possible". (IRC v. McMullen [1981] AC 1).*

However, you have alleged, in both letters that the objects are also vague to an impermissible extent. Exclusively charitable activities cannot save objects from being read as being as specific enough to avoid a charge of vagueness.

Finally, in our dealings with the Assessment and Determinations division of the Charities Directorate the Principle of Benign Construction is never applied. We would submit that applying it in this instance to justify a sanction of revocation is inconsistent with the general practice of the Charities Directorate and therefore disingenuous. We would refer you to CRA guidance CG-019 in this regard.

### Control and Direction Over Transfers

Your audit of the Organizations has revealed that the B'nai Brith family of entities uses a multi-pronged structure to accomplish its global goals. In doing so, it effectively operates parallel structures where those members of the family which are charitable raise funds through BBF (as explained in Dr. Dimant's conversation with you referenced on page 7 of the BBF letter). On the other hand, those members which are not registered charities do not receive outright transfers from charitable entities, but may, if warranted, receive payments for goods or services provided to the charitable organizations.

B'nai Brith Canada ("BBC") acts as the central provider for services for each of the charitable and not for profit entities. For example, neither BBF nor LHR employ significant number of people (with certain exceptions described below). They also have no significant contracts in their own name for photocopiers, office supplies or contractors. Other members of the B'nai Brith family of organizations which are registered charities operate in a similar manner. As you know, we were not involved in the audit of the organisations which you undertook and so we are unaware as to the depth of the documentation which you may have in your file. Nevertheless, your audit of the expenses of both BBF and LHR must have showed a distinct lack of expenditures in obvious areas such as bookkeeping, administrative and managerial staff. (Indeed, as you visited the premises of both organizations you must have expected to see expenditures of rent. Similarly, you examined the books of both groups and met staff acting on their behalf but you likely did not find direct expenditures for them in the Organizations' books).

We would note that your letter illustrates concerns about the methods by which the Organizations exert control and direction. Obviously, if you are missing information about how it exerts control and direction then you could not have evaluated the control and direction actually exerted, and so we take the opportunity now to answer your questions about systems. Should you wish to know the actual steps taken to maintain that control we would be happy to meet with you further and discuss the specifics. Moreover, should the matter progress further we would be prepared to provide affidavits indicating the level of control and direction provided by the leadership to serve as evidence should this matter find itself at the Federal Court of Appeal.

In addition to the administrative functions undertaken by the various members of the B'nai Brith family the charitable activities are similarly distributed. This is alluded to throughout your letters including your comments regarding the promotional materials created by BBF and your concerns about sufficient control over amounts transferred to other members of the B'nai Brith family. Certain of the transfers – notably those to pursue the charitable objects of BBF – were done pursuant to an agency relationship. While there were no written agency agreements, it is our position that none was required. Control and direction over the funds was easily maintained as the staff people implementing the charitable programs act under the direction of, amongst others, BBF and LHR. Moreover, the directors of the B'nai Brith family of corporations overlap so that proper control and direction could be exercised. To be clear, the directors of BBF, LHR, the Institute for International Affairs ("IIA"), B'nai Brith Hillel of Toronto ("BBHT"), and B'nai Brith Congregation Synagogue (Non-profit) Inc ("BBCS") are all the same namely Frank Dimant, Eric Bissell and Joseph Bogoroch.

With respect to your specific findings we make the following comments.

First, as you know, BBF was the fundraising arm of all the charitable organizations in the B'nai Brith family of organizations. As part of its role, it paid for expenses other qualified does. In this case, transfers from BBF and LHR to BBC related, in part, to administrative services provided to these other groups. They also related to the implementation of BBF's charitable objects. Attached please find spreadsheets which attempt to characterize the movement of funds as described above. We would additionally point out that as most of the expenses are simply passed on by BBC to BBF that there is no issue of payments greater than fair market value to a non arm's length entity.

We also take this opportunity to address your comments on pages 13 and 14 of the LHR letter. Namely that LHR paid some amount of salary for BBC's National Director of Advocacy and National Director of Legal Affairs (effectively in house counsel). While most payments are made to BBC as consideration for services provided by it these two individuals are paid by LHR. The value of their services set off against other expenses of LHR incurred and paid for by the other members of the family of organizations. Similarly, just as the employees of BBC work for BBF, LHR and others so too do these employees provide services to other members of the family. To the extent that their work is not in furtherance of LHR's charitable objects it can be attributed to work done for none charity members of the family. This is also intended as an answer to your comments in the last bullet point on page 24 of the LHR letter.

Second, expenses to the Institute for International Affairs represent payments to an agent to accomplish BBF and LHR's (permissible) political aims. IIA's political activities are comprised of both permitted and impermissible activities. The leadership of IIA always assigned only the permitted activities of IIA to the resources contributed by BBF and LHR (through BBF).

Third, the B'nai Brith Congregation Synagogue (Non-profit) Inc ("BBCS") owns the building which houses BBF, LHR and other charitable organizations. It is part of the overall B'nai Brith family of organizations. Payments to the BBCS were in the nature of rents from BBF were on behalf of BBF and other charitable organizations housed in the premises.

Fourth, the B'nai Brith Hillel of Toronto ("BBHT") organization is involved in the construction and operation of a home for Alzheimer's patients. We understand from your letter that you are aware of the services provided by this organization and its previous litigation history. Payments from BBF to BBHT were under the general terms of an agency relationship to ensure that the Alzheimer's program home was successful.

Fifth, as you may be aware, the Jewish Tribune is a community newspaper publication. Payments from BBF to the Tribune were in the nature of fundraising and advertising.

Sixth, [REDACTED] produced a movie which BBF and LHR both felt was an important step in the fight against anti - Semitism. In your letter to LHR you describe the nature of the agreement between BBC and [REDACTED]. With respect, your own description of the arrangements defies your characterization of it as a 'gift' to a non - qualified donee but rather it should be characterized as payment for consideration. This is specifically evidenced by the bullet points at the top of page 10 of your letter to LHR. Payments to contractors for consideration are not only obviously *de rigueur*

for any economic actors in society but is specifically contemplated and approved in the CRA document "Using an Intermediary to Carry out a Charity's Activities within Canada". We would point out that this also answers your question about directed donations for non qualified donees as even if donations are intended for 'transfer' to a non qualified donee there are proper mechanisms by which the transfers can be effected (as was the case here).

Seventh, as you may know B'nai Brith was originally a group of fraternal lodges across the country. Though the structure of the Organization has clearly changed, the lodges are still a major source of fundraising for BBF. Payments to the lodges were essentially fundraising expenses. Again, it is unclear if the underlying documentation relating to these payments is in your possession. If you do require any further evidence on this point please advise.

Eighth, BBF is prepared to concede that payments for B'nai Brith Softball were in error and should not have been made. But that given the rather small amounts they would be an appropriate matter for a compliance agreement.

We would further note that your comments about transfer to qualified donees amounting to only 5% and 4% of BBF's expenditures during those years ignores the payments made on to entities such as BBC and BBCS which provided services to related qualified donees. In sum, your characterization of the transfers from BBF and LHR to BBC as 'gifts' is wholly inaccurate.

#### **Direction and Control Over Resources**

As we have remarked above, and ~~you have noted in your letter~~ control over the Organizations is exercised by the same group of directors and the same employees. There is no formal documentation in place evidencing such (with the exception of the corporate director registers), nor is any legally necessary. It is sufficient in law that the joint directors of the Organizations ensure that the funds are spent appropriately. If you have not taken evidence of the directors of the Organizations during your audit we would be prepared to send you copies.

Incidentally, we take no position on your comments of the activities of the various members of the B'nai Brith family of organizations. To our knowledge these organizations were not under audit and their activities could be funded from a variety of sources. If you are concerned about a specific activity of one of those groups then please advise and we will provide you with our position. Moreover, your position that none of the groups would qualify as charitable is, in our opinion, irrelevant as there are no restrictions on who can act as an agent of a registered charity.

#### **Broad and Vague Purposes**

The Organizations make no submissions on your position that the organizations were created with Broad and Vague purposes other than those made earlier under the title of annulment.

#### **Collateral Political Purpose**

Your comments in this regard seem to suggest that as BBC engages in political activities that these activities necessarily indicate that both BBF and LHR have collateral political purposes by virtue

of the funding arrangements between the groups. Respectfully, there is no evidence to suggest this is the case. Was a separate audit of BBC conducted as well to trace the source of funds for its various activities? That BBF is the fundraising arm of the B'nai Brith group of charities does not necessarily mean that it is the only source of funds for BBC itself.

As BBC is not the subject of this audit we make no representations on the nature of the political activity carried out by that organization as it is irrelevant. Your only evidence on this point is a vague assertion that "Absent evidence to the contrary, it appears to us that the Organization is funding the group's work in a general manner, the focus of which is significantly political". With respect, the burden is not on the Organization to disprove appearances. And moreover, ample evidence exists. Both BBF and LHR are active operating organizations which must pay rent, employees / contractors, and purchase supplies. As explained above, funds paid to BBC are for these inputs.

The above points are underlined by the fact that one can only presume a collateral purpose of any type where the activities of the organization in question seem to indicate such. The evidence you cite in your letter and appendix are activities of BBC and not those of either BBF or LHR.

#### **Private Benefits**

As you have not provided any additional information under this heading of your letter we believe it relates to previous positions which we have addressed above.

#### **Books and Records**

We understand that the specific comments you have made regarding books and records were addressed by [REDACTED] after your audit. If there was some concern we understand the attached spreadsheets and information in this letter should address your concerns. If we are incorrect please advise.

We do however make the following point. In the LHR letter you note that the T3010 does not reconcile with either the CFO's worksheet or the Organization's GL. However, your own Appendix C indicates that the variance between the T3010 and the CFO's worksheet is immaterial. Appendix C indicates that the other comparison with the T3010 is with something called [REDACTED] (and not the GL accounts). Under the circumstances we fail to understand how your conclusion in the second bullet point on page 24 is supported by Appendix C.

Appendix C of the BBF letter is completely unintelligible and we cannot make any submissions on it.

#### **Donation Receipts**

You state that your audit raised evidence that BBF conducted fundraising on behalf of BBHT and that therefore the donations made were directed to a non - qualified donees in contravention of the Act. In this regard we would make the following points.



First, you have not cited the evidence which has led you to form this opinion and so we cannot address the basis of your position. We would appreciate if you could please forward this information to our attention if you continue to maintain this position.

Second, you have not cited which provision of the Act regulates fundraising of this type. With respect, there is none, regulating fundraising is beyond the constitutional jurisdiction of the Federal government and the CRA cannot revoke for a law which does not exist.

Finally, a determination as to whether or not particular donations are directed involves a level of inquiry that is significantly deeper than any advertising an organization may have used to attract the donation in the first place. With respect, we have seen no evidence that donors have specifically directed their donations. And, as we have said, even if they had there is no law which would make the Organization which accepts such donations liable to revocation.

### **Issuing Receipts on Behalf of Non-Qualified Donees**

On page 24 of your letter to BBF you state that:

“Our audit has revealed that the Organization does not demonstrate direction and control over its purported activities, and in our opinion, the Organization is effectively lending its charitable registration number and corresponding tax-receipting privileges to non-qualified donees.”

You then cite a number of purported examples.

Respectfully, even assuming your examples were evidence of the proposition they ostensibly support, there is no provision in the Income Tax Act relating specifically to this offence. We note that you have cited none in particular. It is our position that there is no specific law which BBF would have transgressed in this instance and it is our further position that the facts expressed above illustrate that the examples do not support your position. Unless the CRA intends to explicitly indicate which law the organizations have transgressed we consider the matter closed.

### **Issuance of Receipts**

Your letter states that your audit has found 6 ways in which the official donation receipts issued by BBF (4 by LHR) were in contravention of Regulation 3501 of the Income Tax Act. For your ease of reference Regulation 3501 of the Act is attached.

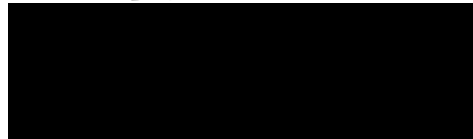
Respectfully, Regulation 3501 only deals with the contents of the receipts. There is no mention thereof, for example, a requirement to retain a duplicate copy in a particular format.

A review of the list you have included in the letters indicates that there are no examples in the LHR letter and only two in the BBF which may contravene Regulation 3501 of the Act. In particular that the receipts should have read “B’nai Brith Foundation District No. 22” rather than just “B’nai Brith Foundation”, and that gift in kind donations don not include a brief description of the donated property.

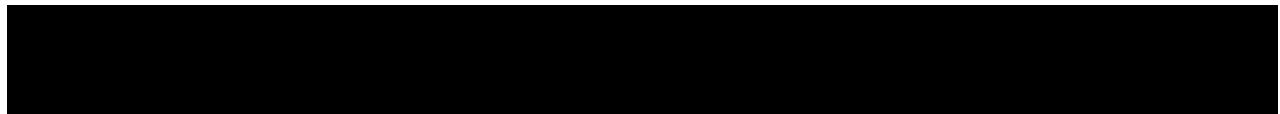
Assuming your examples are founded in fact we would suggest that the Charities Directorate's "Guidelines for Applying Sanctions" would indicate that this offence is of a type which is more properly dealt with by way of compliance agreement rather than revocation.

Under the circumstances we would propose that a Compliance Agreement is warranted to resolve the findings of your audit, or failing that annulment. We look forward to your response.

Yours truly,



Encl.



**BBF Queries for Claude**  
**Follow Up/Questions Outstanding**  
**Jan. 29/13**

2) **Still Outstanding - awaiting clarification from lawyer/accountant? Please advise when yo**  
 Intercompany Accounts - please explain the nature of the transactions running through thes  
 Allocations, monthly transactions going through and what they are for, etc.  
 It appears that some of these loans are written off to the related line 5040 allocation each y  
 Is there formal loan agreements in place? Is it intended that these loans will be repaid at so  
 Please provide any formal documentation you may have in regards to loans with all non arr

4) **Response waiting from auditor re: why this is a liability on the T3010 and a reserve on the**  
**Are these projects like a deferred revenue or restricted funds?**

**For each line below, please explain what this account/fund is for. Eg. What is Mother & C**  
**What is "Artwork Fund", "Family Health Care", "Private Company Rsv", "██████████",**  
**"Chapters Holocaust", "General Endow", "General Endow Growth" - how will these funds**  
 Please explain what these liabilities are for? If they relate to a specific project what the proj  
 Line 4330: Other liabilities

2801-00000-00	Mother & Child Trust Corporate Admin	-2,022.00
2802-00000-00	Artwork Fund Corporate Admin	-8,677,667.31
2803-00000-00	Fam Health Care Fund Corporate Admin	-977.43
2804-00000-00	Private Company Rsv Corporate Admin	-44,443.00
2805-00000-00	██████████ Endowment Corporate Admin	-8,806.40
2806-00000-00	ChaptersHolocaust Fd Corporate Admin	-88,544.47
2809-00000-00	General Endow Fund Corporate Admin	-1,748,715.67
2810-00000-00	Gen Endow Growth Corporate Admin	-10,888.96
		-10,582,065.24

<END>

*u have heard*  
*e accounts.*

*ear.*  
*me point in time?*  
*'s length parties.*

*financial statements.*

*Child Trust program?*

*be used? Describe the programs.*  
*ject is?*

**LHR Queries for Claude**  
**Follow Up /Questions Outstanding**  
**Feb 7 13**

- 2) Salary Allocation for LHR:  
*What is the 95K (amount posted as prepaid in 2009) - who's salary is this - please provide breakdown.*
  
- 4) Please provide details on how general admin allocation for head office is arrived at. (Eg. #7900-501001-01 \$75,000 in 2011 to LHR)  
*This question remains outstanding*
  
- 5) Video Production Information sent Jan/13
  - 1) The statement of expenses provided show expenses 'as at' March 1, 2012 and also 'as at' September 14, 2012.  
To clarify, the amount as at September 14, 2012 of \$190,145.99 is a total of all expenses paid by the organization for the period.
  
  - 2) Point 5 of the agreement provided states "The Organization will contribute to the funding of the Project through donations and earmarked specifically for this Project." From this point, it is our understanding that the League collects donations earmarked for the Project and these funds are used by the Organization to contribute to the video project. Is this correct? If so, what G/L account(s) are used for these contributions?

)

production since it began? Please confirm.

ations as received

l for the video,

ed to record these donations in the books and records of the League?

**BBF Queries for Claude**  
**Follow Up/Questions Outstanding**  
**Jan. 29/13**

- 2) **Still Outstanding - awaiting clarification from lawyer/accountant? Please advise when you have heard Intercompany Accounts - please explain the nature of the transactions running through these accounts. Allocations, monthly transactions going through and what they are for, etc. It appears that some of these loans are written off to the related line 5040 allocation each year. Is there formal loan agreements in place? Is it intended that these loans will be repaid at some point in time? Please provide any formal documentation you may have in regards to loans with all non arm's length parties.**
- 4) **Response waiting from auditor re: why this is a liability on the T3010 and a reserve on the financial statements.**

**Are these projects like a deferred revenue or restricted funds?**

**For each line below, please explain what this account/fund is for. Eg. What is Mother & Child Trust program? What is "Artwork Fund", "Family Health Care", "Private Company Rsv", "██████████", "Chapters Holocaust", "General Endow", "General Endow Growth" - how will these funds be used? Describe the programs. Please explain what these liabilities are for? If they relate to a specific project what the project is?**

Line 4330: Other liabilities

2801-00000-00	Mother & Child Trust Corporate Admin	-2,022.00
2802-00000-00	Artwork Fund Corporate Admin	-8,677,667.31
2803-00000-00	Fam Health Care Fund Corporate Admin	-977.43
2804-00000-00	Private Company Rsv Corporate Admin	-44,443.00
2805-00000-00	██████████ Endowment Corporate Admin	-8,806.40
2806-00000-00	ChaptersHolocaust Fd Corporate Admin	-88,544.47
2809-00000-00	General Endow Fund Corporate Admin	-1,748,715.67
2810-00000-00	Gen Endow Growth Corporate Admin	-10,888.96
		-10,582,065.24

<END>



• **3501.** (1) Every official receipt issued by a registered organization shall contain a statement that it is an official receipt for income tax purposes and shall show clearly in such a manner that it cannot readily be altered,

- o (a) the name and address in Canada of the organization as recorded with the Minister;
- o (b) the registration number assigned by the Minister to the organization;
- o (c) the serial number of the receipt;
- o (d) the place or locality where the receipt was issued;
- o (e) where the gift is a cash gift, the date on which or the year during which the gift was received;
- o (e.1) where the gift is of property other than cash
  - (i) the date on which the gift was received,
  - (ii) a brief description of the property, and
  - (iii) the name and address of the appraiser of the property if an appraisal is done;
- o (f) the date on which the receipt was issued;
- o (g) the name and address of the donor including, in the case of an individual, the individual's first name and initial;
- o (h) the amount that is
  - (i) the amount of a cash gift, or
  - (ii) if the gift is of property other than cash, the amount that is the fair market value of the property at the time that the gift is made;
- o (h.1) a description of the advantage, if any, in respect of the gift and the amount of that advantage;
- o (h.2) the eligible amount of the gift;
- o (i) the signature, as provided in subsection (2) or (3), of a responsible individual who has been authorized by the organization to acknowledge gifts; and
- o (j) the name and Internet website of the Canada Revenue Agency.

• (1.1) Every official receipt issued by another recipient of a gift shall contain a statement that it is an official receipt for income tax purposes and shall show clearly in such a manner that it cannot readily be altered,

- o (a) the name and address of the other recipient of the gift;
- o (b) the serial number of the receipt;
- o (c) the place or locality where the receipt was issued;
- o (d) where the gift is a cash gift, the date on which the gift was received;
- o (e) where the gift is of property other than cash
  - (i) the date on which the gift was received,
  - (ii) a brief description of the property, and

- (iii) the name and address of the appraiser of the property if an appraisal is done;
  - (f) the date on which the receipt was issued;
  - (g) the name and address of the donor including, in the case of an individual, the individual's first name and initial;
  - (h) the amount that is
    - (i) the amount of a cash gift, or
    - (ii) if the gift is of property other than cash, the amount that is the fair market value of the property at the time that the gift was made;
  - (h.1) a description of the advantage, if any, in respect of the gift and the amount of that advantage;
  - (h.2) the eligible amount of the gift;
  - (i) the signature, as provided in subsection (2) or (3.1), of a responsible individual who has been authorized by the other recipient of the gift to acknowledge donations; and
  - (j) the name and Internet website of the Canada Revenue Agency.
- (2) Except as provided in subsection (3) or (3.1), every official receipt shall be signed personally by an individual referred to in paragraph (1)(i) or (1.1)(i).
- (3) Where all official receipt forms of a registered organization are
  - (a) distinctively imprinted with the name, address in Canada and registration number of the organization,
  - (b) serially numbered by a printing press or numbering machine, and
  - (c) kept at the place referred to in subsection 230(2) of the Act until completed as an official receipt,

the official receipts may bear a facsimile signature.

- (3.1) Where all official receipt forms of another recipient of the gift are
  - (a) distinctively imprinted with the name and address of the other recipient of the gift,
  - (b) serially numbered by a printing press or numbering machine, and
  - (c) if applicable, kept at a place referred to in subsection 230(1) of the Act until completed as an official receipt,

the official receipts may bear a facsimile signature.

- (4) An official receipt issued to replace an official receipt previously issued shall show clearly that it replaces the original receipt and, in addition to its own serial number, shall show the serial number of the receipt originally issued.
- (5) A spoiled official receipt form shall be marked "cancelled" and such form, together with the duplicate thereof, shall be retained by the registered organization or the other recipient of a gift as part of its records.
- (6) Every official receipt form on which any of the following is incorrectly or illegibly entered is deemed to be spoiled:

- o (a) the date on which the gift is received;
- o (b) the amount of the gift, in the case of a cash gift;
- o (c) a description of the advantage, if any, in respect of the gift and the amount of that advantage; and
- o (d) the eligible amount of the gift.

**The League for Human Rights of B'nai Brith**

**COMMENTS ON REPRESENTATIONS OF FEBRUARY 11, 2014**

The audit conducted by the Canada Revenue Agency (CRA) identified that The League for Human Rights of B'nai Brith (the Organization) is not devoting its resources to charitable activities carried out by the Organization itself. Specifically, the audit concluded that the Organization:

- did not devote its resources to charitable activities that it carried on itself;
- has failed to be constituted for exclusively charitable purposes;
- has failed to maintain adequate books and records; and
- issued donation receipts for directed donations, and on behalf of non-qualified donees.

We have reviewed the Organization's representations dated February 11, 2014, and we maintain our position that the non-compliance issues identified during the audit represent a serious breach of the requirements of the *Income Tax Act* (Act) and that, as a result of this non-compliance, the Organization's registration should be revoked.

These reasons are described in greater detail in this Appendix, which addresses the CRA's responses to the Organization's representations regarding the non-compliance issues identified in the CRA's Administrative Fairness Letter (AFL), sent to the Organization on November 28, 2013. Below please find:

- A summary of the issues raised by the CRA in our AFL dated November 28, 2013;
- A summary of the representations provided by the Organization's representative, [REDACTED], dated February 11, 2014; and
- The CRA's conclusions.

**Failure to Devote Resources to Charitable Activities Carried on by the Organization Itself**

The CRA audit found that the Organization made the following transfers of funds to non-qualified donees during the period under audit:

- \$270,000 in 2011 and \$162,079 in 2010 to B'nai Brith Canada District No. 22 (BBC); and

- \$95,000 in 2011 to [REDACTED] for [REDACTED] documentary film.<sup>1</sup>

Our audit found that funds were transferred to BBC through the intercompany loan account, through direct bank transfers and a management and administration expense intercompany allocation. Despite several attempts to acquire further details about the loan accounts from the Organization,<sup>2</sup> no formal loan agreements or other related documentation or information have been provided. Funds were paid to [REDACTED] through the Organization's bank account.

During our audit review, we considered whether the transferred funds might represent the Organization undertaking its own activities through non-qualified donees as intermediaries. In our AFL, dated November 28, 2013, we noted the Organization failed to substantiate the application of its funds, or that any structured arrangements were in place surrounding the application of its funds.<sup>3</sup> We further noted the Organization did not clearly identify activities towards which its funds were applied. We observed the BBC's regular programs and activities, and noted we had not observed any programs and activities that would be considered charitable at law if these were identified as the Organization's own activities carried out through an intermediary. Based on the available information, we took the position that the Organization did not maintain continued direction and control over its resources and that it had resourced non-qualified donees in contravention of the Act. Overall, our audit found that the Organization had devoted 48% in 2011 and 49% in 2010 of its total expenditures to non-charitable activities and an additional 16% each year for salary costs that may only partially represent charitable expenditures.<sup>4</sup>

We have reviewed all of the material provided as part of the Organization's February 11, 2014, representations, and we must respectfully advise that our concerns regarding the Organization's failure to devote its resources to charitable activities carried on by the Organization itself have not been alleviated. We have addressed the points the Organization raised in its representations as follows:

- 1) The Organization's representations dated February 11, 2014, state that "B'nai Brith Canada ("BBC") acts as the central provider for services for each of the charitable and not for profit entities," and the group "effectively operates parallel structures where those members of the group which are charitable raise funds through (B'nai Brith Foundation District No. 22)." The representations also state "those members which are not registered charities do not receive outright transfers

<sup>1</sup> These transfers amounted to \$365,000 in 2011 and \$162,079 in 2010, representing 38% and 17% of the Organization's total expenditures for these fiscal periods.

<sup>2</sup> The CRA sent queries to the Organization requesting additional details about its operations on September 24, 2012, November 6, 2012, November 26, 2012, December 17, 2012, January 21, 2013, and January 29, 2013.

<sup>3</sup> As discussed in our AFL, the Organization did provide us with a funding agreement between BBC and [REDACTED], but the Organization itself is not a party to this agreement, and even if it were, the agreement does not serve to establish direction and control over the funded activity.

<sup>4</sup> But lacking information about how the Organization allocated its paid staff to undertake non-qualified donees' activities, we are unable to determine the extent to which their work and related salaries might qualify as charitable expenditures.

from charitable entities, but may, if warranted, receive payments for goods or services provided to the charitable organizations.”

The last statement is incongruous with the CRA’s audit findings. BBC received direct transfers from the Organization, and BBC is not a registered charity or otherwise a qualified donee. In fact, the CRA audit revealed the Organization did not transfer any funds to any qualified donees during the audit period. Furthermore, the Organization’s representations do not identify charitable organizations, the goods and services provided, or any associated expenditures related to the funds it transferred to BBC. While the Organization’s representations refer to attached spreadsheets “which attempt to characterize the movement of funds,” the attachments do not include additional details about the movement of funds.<sup>5</sup> As such, the Organization has not provided any information or documentation substantiating its position that funds transferred to BBC represent goods or services provided to qualified donees.

- 2) The Organization’s February 11, 2014, representations state as follows: “your audit of the expenses of both (B’nai Brith Foundation District No. 22) and (the Organization) must have showed a distinct lack of expenditures in obvious areas such as bookkeeping, administrative and managerial staff. (Indeed, as you visited the premises of both organizations you must have expected to see expenditures of rent. Similarly, you examined the books of both groups and met staff acting on their behalf but you likely did not find direct expenditures for them in the Organization’s books).”

To the contrary, the CRA did consider and account for the Organization’s staffing, administration, bookkeeping, and fundraising expenses, office supplies, equipment relating to head office, and rent expenses. The CRA accepted amounts reported by the Organization for fundraising, management and administrative expenditures.<sup>6</sup> In particular, the Organization’s related expenditures were substantiated in the CRA’s audit findings as follows:

- The Organization provided a listing of the employees of BBC that were allocated as the Organization’s own employees. Payroll expenditures associated with these employees, including allocation of time spent between charitable, administrative, and fundraising expenditures were accepted by the CRA as reported by the Organization.<sup>7</sup>

---

<sup>5</sup> These are a copy of the CRA’s query sheets dated January 29, 2013, with no responses added. The January 29, 2013, query was the last made by the CRA, following a series of attempts to acquire additional details about the Organization’s operations made May 17, 2012, September 24, 2012, November 6, 2012, November 26, 2012, December 17, 2012, and January 21, 2013. To date, most of our questions remain unanswered. On June 12, 2014, following attempts to contact the Organization’s representatives made on June 9 and 11, the CRA confirmed the completeness of the February 11, 2014, representations with the Organization’s representatives. While we were informed that the representatives would re-send the faxed documents on June 12, we did not receive another copy. On June 16, we left a final voicemail requesting a faxed copy of the Organization’s representations.

<sup>6</sup> These expenditures represented 10% and 32% of the Organization’s total expenditures in 2011 and 2010.

<sup>7</sup> With the exception of staff costs related to BBC’s National Director of Advocacy and its National Director of Legal Affairs, which is addressed in further details below.

- The Organization's management and administrative expenses, accepted as reported by the Organization, included various accounts relating to 'General Admin Head Office' with account names including "Salaries, IT consulting fees, Legal, Cell phone, Subs&licences, and Website."<sup>8</sup>
- The Organization provided the CRA with a listing of contract consulting services, and the associated expenditures were accepted by the CRA as reported by the Organization.<sup>9</sup> These included various fundraising consultants and fees paid to consultants for Legal, IT, Anti-Semitic Incidents, Holocaust Education, and National Task Force.
- The CRA obtained a copy of the draft financial statements of B'nai Brith Congregation Synagogue (Non-profit) Inc. (BBCS), the owner of the building that houses the Organization.<sup>10</sup> During our audit, the Organization stated that BBCS collects rent revenue from external third party tenants only, and BBCS does not charge rent to the members of the B'nai Brith Canada group members occupying space in the building. As such, rent was not incurred or expensed in the general ledger.

As a result, we respectfully disagree with the submission that our audit findings failed to account for the Organization's expenditures for its management and administration, including staffing and rent.

- 3) The Organization's representations claim that charitable activities are undertaken on the Organization's behalf by various members of the B'nai Brith Canada group through BBC. These activities are undertaken pursuant to an agency relationship, although no written agreements are in place.

We acknowledge there is no legal requirement to have a written agency agreement. However, in the absence of a written agreement, the Organization must still be able to demonstrate that it carried out its own activities. In order for the Organization to demonstrate that it carried out its own activities where it acted through non-qualified donees, it must show that it maintained direction and control over its resources, and over its agents' actions, as these related to its activities. In this regard, the Organization's representations state the staff implementing charitable programs under the Organization's direction maintained direction and control over its funds, and the B'nai Brith Canada group of entities shares directors to ensure control and direction is maintained. This is consistent with statements made by the Organization's representatives during our audit interview. However, it remains our position that it is not sufficient to demonstrate same control over the operations of the various charitable and not-for-profit organizations within the B'nai Brith Canada group, without substantiating

---

<sup>8</sup> While the Organization reported an additional \$75,000 to BBC as management and administrative expenses, this amount was not accepted and reclassified in our findings as a gift to a non-qualified donee because the Organization failed to provide any documentation to substantiate this transfer.

<sup>9</sup> As appearing in the Organization's general ledger and its T3010, Registered Charity Information Returns.

<sup>10</sup> At 15 Hove St., North York, ON

direction and control were exercised over charitable activities by the various non-qualified donees in their respective capacities as the Organization's agents.<sup>11</sup>

In this regard, we note the Organization's representations provide no further information or documentation that substantiates the application of its funds or its claim that funds transferred to non-qualified donees were applied to charitable activities carried on under the Organization's direction and control. To date, the Organization has not demonstrated that it carried on any activities (charitable, political, or other) pursuant to agency relationships with other members of the B'nai Brith Canada group, nor has it demonstrated that it received goods and services of proportionate value in exchange for the funds transferred to BBC.

- 4) The Organization's representations include the following additional details about transfers made to particular non-qualified donees:
  - a) Funds transferred to B'nai Brith Canada District No. 22 (BBC) related to expenses for administrative services provided to other qualified donees and the implementation of charitable objects.

We have found no support for the Organization's statement that transfers to BBC related to expenses for administrative services provided to other qualified donees and the implementation of the Organization's charitable objects. Our review of BBC's draft financial statements<sup>12</sup> revealed that BBC carried out minimal activities during the audit period, other than the payment of payroll expenses, interest on long-term debt, and amortization. Based on its financial statements, BBC does not appear to undertake any charitable activities.

- b) Funds transferred to ██████████ to support the production of a movie about anti-Semitism were wrongly characterized by the CRA as gifts to a non-qualified donee and should be characterized as payments for consideration.

As stated in our AFL, dated November 28, 2013, the "Letter of Agreement and Indemnity,"<sup>13</sup> is a funding agreement between ██████████ and BBC. The Organization is not a party to this agreement. Funds transferred to ██████████ may represent payments for consideration to BBC but they do not represent payments for consideration to the Organization. The Organization has provided no evidence that it exercises any direction or control over the use of its funds by ██████████ as required to establish that it is carrying out its own charitable activities in accordance with the provisions of the Act. It remains our position that funds transferred to ██████████ represent gifts to a non-qualified donee.

---

<sup>11</sup>See, *Bayit Lepletot v MRN*, 2006 FCA 128, [2006] FCJ n°505 at para 5: "It is open for the appellant to carry on its charitable works through an agent but it must be shown that the agent is actually carrying on the charitable works. It is not sufficient to show that the agent is part of another charitable organization which carries on a charitable program."

<sup>12</sup> Provided to us by the Organization during our audit.

<sup>13</sup> "Letter of Agreement and Indemnity" between ██████████ and BBC, dated July 13, 2011.

- 5) The Organization's representations dated February 11, 2014, state that it "paid some amount of salary for BBC's National Director of Advocacy and National Director of Legal Affairs (effectively in house counsel). While most payments are made to BBC as consideration for services provided by it these two individuals are paid by (the Organization). The value of their services (sic) set off against other expenses of (the Organization) incurred and paid for by the other members of the family of organizations. Similarly, just as the employees of BBC work for (B'nai Brith Foundation District No. 22), (the Organization) and others so too do these employees provide services to other members of the family. To the extent that their work is not in furtherance of (the Organization's) charitable objects it can be attributed to work done for none (sic) charity members of the family."

During our audit, the Organization provided a listing of the employees of BBC that were allocated as the Organization's own employees, and related job descriptions. The Organization's expenditures included salaries for BBC's National Director of Advocacy and National Director of Legal Affairs. These were expensed by the Organization as 100% charitable. However, as noted in our AFL, the associated job descriptions include responsibilities and services to non-qualified donees within the B'nai Brith Canada group, which include undertaking non-charitable activities. As a result, we took the position that the salary costs for these positions could not be considered 100% charitable, as they only partially represent charitable expenditures.

It is our understanding that the Organization's position stated in its representations is that the value of services provided to non-qualified donees by its staff was off-set against expenses incurred on its behalf. However, the Organization has not included any additional documentation or information supportive of this position, such as staffing allocations. The representations also fail to identify any specific expenses incurred by, or services provided to the Organization further to this arrangement. The Organization has not provided any evidence demonstrating that it only paid staff to work for non-qualified donees in exchange for services it was provided, or expenses it incurred.

The Organization's representations also appear to suggest that its staff may be working for other registered charities within the B'nai Brith Canada group. However, it has not provided any additional information or documentation that substantiates this position. Therefore, it remains our position that we have not been provided with sufficient information to determine salary costs for BBC's National Director of Advocacy and National Director of Legal Affairs can be considered charitable expenditures.<sup>14</sup>

- 6) The Organization's representations dated February 11, 2014, state that expenses to the Institute for International Affairs (IIA) represent payments to an agent to accomplish the Organization's (permissible) political aims.

The Organization's representations included no additional information or documentation that identified or substantiated the political activities and associated expenses in

---

<sup>14</sup> The salary costs for the two positions represent 16% and 16% of the Organization's overall expenditures in 2011 and 2010.

question. As such, we have found no support for the Organization's statement that it carried on permitted political activities through IIA as its agent.

Following our review of the Organization's February 11, 2014, representations, it remains our position that the Organization has not demonstrated it is able to account for the use of its funds to carry out charitable activities under its direction and control where it has transferred funds to non-qualified donees, in contravention of the Act. The Organization has failed to meet the requirements of subsections 149.1(1) and 149.1(6.2) of the Act that it devote substantially all its resources to charitable activities carried on by the Organization itself. For these reasons, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

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

Our AFL dated November 28, 2014, stated that the Organization's stated purpose, pursuant to its letters patent dated February 16, 1970, is broadly worded, and allows for the undertaking of non-charitable activities and the delivery of non-charitable benefits, including by empowering the Organization to transfer its resources to non-qualified donees in contravention of the Act. The purpose fails to define the scope of the activities that can be engaged in by the Organization, thus confining it to charitable activities, and ensuring the delivery of a charitable benefit to the public or a sufficient segment thereof.

We also stated our concerns that the Organization may exist in part to further the B'nai Brith Canada group's political purposes, because the Organization appears to resource the group's work in a general manner, and the group's political activities are of such a frequency and quantity that would necessarily involve a significant devotion of resources. In particular, our AFL noted the following:

- Our audit findings show that the Organization and its resources and activities do not appear to be sufficiently separated from the rest of the group.
- The Organization has not demonstrated that it maintained control over the use of the funds it gifted to non-qualified donees.
- The Organization failed to identify or substantiate any activities, charitable or other, that were conducted on the Organization's behalf by non-qualified donees.
- The Organization failed to demonstrate that it received goods and services of proportionate value in exchange for the funds it transferred, and staff resources it provided to non-qualified donees.

The CRA audit found the Organization was resourcing non-qualified donees in contravention of the Act during the audit period. Accordingly, we took the position that the Organization delivers unacceptable non-incidentally private benefits as a collateral purpose. Overall, the CRA determined that the Organization is not constituted for exclusively charitable purposes, based on its broad and vague purposes, collateral political purpose, and delivery of unacceptable, non-incidentally private benefits.

The Organization's February 11, 2013, representations make no submission on the CRA's position that its stated purpose is not charitable at law because it is broadly worded other than proposing the Organization's registration as a registered charity should be annulled, and specifically "that the sanction for an organization incorporated for purposes which are broad and vague is not revocation but rather annulment."<sup>15</sup> In response to the CRA's concerns that the Organization exists in part to further the B'nai Brith Canada group's political purposes, the Organization's representations state that BBC's engaging in political activities is not necessarily indicative of the Organization having collateral political purposes. The representations state that as BBC is not the subject of the CRA's audit, the Organization has no representations on the nature of the political activity carried out by BBC. The representations state that funds transferred to BBC were for rent, employees/contractors, and supplies.

As noted above, during our audit, the Organization informed us that the reason rent was not incurred or expensed in its general ledger is B'nai Brith Congregation Synagogue (Non-profit) Inc. (BBCS) does not charge rent to the members of the B'nai Brith Canada group. Also as noted above, other expenditures accepted by the CRA in our audit findings as these were reported by the Organization under fundraising,<sup>16</sup> and a portion of management and administration,<sup>17</sup> included payroll associated with employees identified by the Organization as its own, various accounts relating to 'General Admin Head Office' including 'General Admin Head Office' with account names including "Salaries, IT consulting fees, Legal, Cell phone, Subs&licences, and Website" and contract professional and consulting services.

Separate from amounts reported and accepted as fundraising, management and administration expenditures, the Organization transferred \$270,000 and \$162,079 in 2011 and 2010 to BBC, representing 28% and 17% of its total expenditures for those fiscal periods. As addressed above, the Organization's representations contain no further information or documentation to substantiate its claims that funds transferred to BBC represented payments for rent, or payments for employees/contractors and supplies in excess of amounts already accepted as reported to us. Also, as addressed above, the Organization has failed to substantiate its alternative positions that these funds were applied on the Organization's behalf, through non-qualified donees acting as its agents, or as payments for consideration.

While the Organization's representations contained no submissions on the nature of the political activity carried out by BBC or other non-qualified donees resourced by the Organization during the audit period, as we described in our AFL, the focus of the B'nai Brith Canada group's work is significantly political. Moreover, the Organization has failed to demonstrate direction and control over, or otherwise substantiate the non-qualified donees' use of its funds and staff. Accordingly, it remains our position that the Organization fails to meet the legal requirement that it be constituted for exclusively charitable purposes, with all its purposes falling within one or more of the four

---

<sup>15</sup> This position is addressed in detail below under the title "Refusal of Annulment."

<sup>16</sup> \$68,059 in 2011 and NIL in 2010, representing 7% and 0% of its total expenditures.

<sup>17</sup> \$25,920 in 2011 and \$305,291 in 2010, representing 3% and 32% of its total expenditures.

categories of charity and that it deliver a public benefit without conferring an unacceptable private benefit.

The Organization's stated purpose is broadly-worded, empowering the Organization to transfer resources to non-qualified donees. Its financing of the significantly political work of the B'nai Brith Canada group is indicative of a collateral political purpose. It delivers unacceptable, non-incidental private benefits by resourcing non-qualified donees.<sup>18</sup> For these reasons, there are grounds for revocation of the charitable status of the Organization under subsections 149.1(1) and (6.2) and paragraph 168(1)(b) of the Act.

### **Failure to Maintain Adequate Books and Records**

As stated in our AFL dated November 28, 2013, during the course of our audit, only partial books and records were made available to the CRA. Due to the lack of books and records, and outstanding queries, the CRA issued subsequent requests for additional information and documentation on September 24, 2012, November 6, 2012, November 26, 2012, December 17, 2012, January 21, 2013, and January 29, 2013. In our AFL, we noted that most of the queries contained in these requests remained outstanding, and accordingly, we took the position that the Organization failed to maintain adequate books and records of account as per subsection 230(2), and was therefore in contravention of paragraph 168(1)(e) of the Act.

The Organization's February 11, 2014, representations state that all CRA queries regarding the books and records of the Organization were addressed by [REDACTED] after the audit, and that any concerns remaining should be addressed by the spreadsheets attached to the representations. However, the spreadsheets provided with the Organization's representations are an exact copy of query sheets sent by the CRA to the Organization, with no additional information added by the Organization. All queries contained therein remain outstanding. No further information has been provided regarding the inadequate books and records noted in our AFL dated November 28, 2013.

The Organization's representations note that "Appendix C indicates that the variance between the T3010 and the CFO's worksheet is immaterial. Appendix C indicates that the other comparison with the T3010 is with something called [REDACTED] (and not the GL accounts). Under the circumstances we fail to understand how your conclusion in the second bullet point on page 24 is supported by Appendix C."<sup>19</sup>

---

<sup>18</sup> Including funds transferred to BBC and [REDACTED], \$365,000 and \$162,079 were transferred to non-qualified donees in 2011 and 2010, representing 38% and 17% of the Organization's total expenditures for these fiscal periods.

<sup>19</sup> This bullet point from our AFL reads as follows: "The Organization's official donation receipt listings have discrepancies. The actual amount of tax receipted gifts issued for the audit period could not be verified. Figures reported on line 4500 of the T3010 (total eligible amount of all gifts for which the charity issued tax receipts) do not reconcile with either the CFO's [REDACTED] worksheet (as provided to the CRA), or the Organization's general ledger. For further details, refer to Appendix C."

We note that while Appendix C's first comparative between the general ledger and the T3010 figures generated an immaterial discrepancy, the remaining two comparatives show a significant variance between the [REDACTED] report summary provided by the Organization, the general ledger and T3010 figures. Appendix C is the CRA's attempt at reconciling the reported received donations of the Organization to the Organization's various records provided during the audit. Received donation amounts reported on the T3010, Registered Charity Information Return, and the CFO's worksheet could not be reconciled to the Organization's [REDACTED] donor summary. Therefore, due to the inconsistent information provided to us by the Organization, the actual received donation amounts for the audit period remain unknown at this time.

It therefore remains our position that the Organization has failed to maintain adequate books and records of account as per subsection 230(2), and is therefore in contravention of paragraph 168(1)(e) of the Act.

### **Donation Receipts**

As stated in our AFL, a charity may not issue an official receipt for income tax purposes if the donor has directed the charity to give the funds to a non-qualified donee. Our audit evidence shows that the Organization conducted fundraising on behalf of B'nai Brith Hillel of Toronto Inc. (BBHT), a related organization that lost its registered charitable status in 2003. The Organization solicited donations for BBHT through the "HSBC Great Canadian Woman Awards" dinner, for which the pamphlet clearly states: "Proceeds to benefit construction of the [REDACTED]" In this regard, the Organization collected and received \$132,250 in 2011 on behalf of BBHT, a revoked charity (i.e., a non-qualified donee). We also noted that the Organization conducted fundraising on behalf of [REDACTED] who is also a non-qualified donee. The Organization explicitly communicated to donors that these donations would be directed to non-qualified donees, and in exchange for these donations, the Organization issued official receipts for income tax purposes. By issuing official receipts on behalf of non-qualified donees, the Organization was effectively lending its charitable registration number and corresponding tax-receipting privileges to non-qualified donees, in contravention of the Act.

In addition, the CRA audit revealed that the official donation receipts issued by the Organization did not comply with the requirements of Regulation 3501 of the Act.

The Organization's representations contain the following responses:

- a) The CRA failed to cite the evidence upon which it based this position.

All evidence supporting this position derived from the Organization's books and records.

For example, the following chart denotes the Organization's account numbers and amounts related to directed donations given to BBHT in support of BBHT's Alzheimer's home:

Account #	Account Name	2011 Amount
	GCW Donation	121,410.00
	GCW Donation	10,840.00
	<b>Total Great Canadian Women dinner</b>	<b>132,250.00</b>

- b) There is no provision of the Act regulating fundraising of this type. As regulating fundraising is beyond the constitutional jurisdiction of the Federal government, the CRA cannot revoke the Organization for a law which does not exist.

While fundraising is not a charitable purpose in itself or a charitable activity that directly furthers a charitable purpose, the CRA has not taken the position that the Organization's breaching a provision of the Act regulating fundraising, but rather, that it used its receipting privileges in a non-compliant manner by soliciting donations for a non-qualified donee.

- c) A determination as to whether or not particular donations are directed involves a level of inquiry that is significantly deeper than any advertising an organization may have used to attract the donation in the first place. The Organization's representatives have seen no evidence that donors have specifically directed their donations. However, even if they had, there is no law which would make a charity accepting such donations liable to revocation.

As previously stated, all evidence cited in support of our position derived from the Organization's books and records.

Respectfully, the CRA's proposal to revoke the Organization's registration under the Act is not premised on its accepting of directed donations. Rather, our position, based on the Organization's materials,<sup>20</sup> is that the Organization solicited donations on behalf of non-qualified donees, and issued official receipts on behalf of non-qualified donees for directed donations, in contravention of the Act.<sup>21</sup>

- d) There is no provision in the Act relating specifically to issuing receipts on behalf of non-qualified donees, and therefore no specific law which the Organization would have transgressed.

A charity may not issue an official receipt for income tax purposes if the donor has directed the charity to give the funds to a non-qualified donee, as this constitutes a contravention of the Act. Under paragraph 168(1)(d) of the Act, the Minister may, by

<sup>20</sup> As cited in Section 4(a) of our AFL dated November 28, 2013.

<sup>21</sup> See *Canadian Committee for the Tel Aviv Foundation v Canada*, 2002 FCA 72, [2002] FCJ n°315 at para 30.

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.

By issuing official receipts on behalf of non-qualified donees, the Organization was effectively lending its charitable registration number and corresponding tax-receipting privileges to non-qualified donees, in contravention of the Act.

- e) Regulation 3501 only deals with the contents of the receipts. There is no mention thereof, for example, a requirement to retain a duplicate copy in a particular format.

The requirement to retain duplicate copies of the receipts is stated in section 230(2)(b) of the Act.

As a result of our review, it remains the CRA's position that the donations in question are directed donations given to non-qualified donees, in contravention of the Act. It remains our position there exist grounds for revocation of the charitable status of the Organization under paragraph 168(1)(d) of the Act because the Organization is issuing inappropriate donation receipts for directed donations, and receipts not in accordance with the Act and/or its Regulations.

### **Refusal of Annulment**

According to subsection 149.1(23) of the Act, "the Minister may, by registered mail, give notice to a person that the registration of the person as a registered charity is annulled and deemed not to have been so registered, if the person was so registered by the Minister in error or the person has, solely as a result of a change in law, ceased to be a charity." This means that registration may be annulled for only the following reasons:

- Registration was granted in error.
- An organization no longer qualifies as a registered charity because of a change in the law.

In your letter dated February 11, 2014, you proposed that the Organization's registration as a registered charity be annulled and indicated that if the objects of the Organization were not charitable at law at the time of its registration, the Organization must have been registered in error. We have considered whether the Organization was registered in error.

The Organization's objects are contained in its letters patent dated February 16, 1970, under the *Canada Corporations Act*. These objects, with which it was registered as a charity, and re-registered following its revocation for failure to file its annual information return,<sup>22</sup> are stated as follows:

---

<sup>22</sup> We understand these remain its current objects.

*To solicit, request, receive and maintain a fund or funds and apply from time to time such fund or funds and/or the income derived therefrom from carrying on charitable activities and, without limiting the generality of the foregoing:*

- a) To educate the public as to the practices of the Jewish religion;*
- b) To disseminate information to the public concerning the Jewish religion through programmes of inter-religious conferences, seminars, dialogues and publications, so as to promote a better understanding of this religion in the community as a whole;*
- c) To encourage study and education in the field of human relations.*

Based on our review of the Organization's application in support of its registration as a charity, the CRA did not receive specific details about its activities at the time of original registration, effective February 16, 1970. However, the Organization's charitable status was revoked for failure to file its annual information return on December 31, 1983. Following its revocation, the Organization applied to be re-registered. At this time, the Organization's application for re-registration went through the complete application review process.<sup>23</sup>

In support of its application for re-registration, the Organization provided the CRA with a list of its activities at the time,<sup>24</sup> as follows:

- Conducted research on various aspects of intercultural communication and human relations in Canada.
- Prepared briefs to various agencies on such topics as religion in schools, human rights codes, and religious broadcasting.
- Informed corporations across Canada of the particular needs of Jewish workers to observe certain religious holidays.
- Distributed 'Confrontation Games' program, an audio-visual presentation to help teachers, students, parents and others dealing with the public in schools, hospitals, etc. recognize developing problems of racism.
- Presented workshops for the general public on such topics as bigotry, racism, and related issues.
- Sponsored program of human rights awards for the media.
- Participated in interfaith discussion and high level meetings with Protestant and Catholic clergy and lay leaders to improve understanding among Christian and Jewish communities.
- Maintained a resource centre dealing with human rights, comparative religions, and education.

---

<sup>23</sup> Organizations that have had their charitable registration revoked can apply to be re-registered; however, all applications for re-registration go through the complete application review process. Before an organization can be re-registered it is required to file all missing Registered Charity Information Returns (Form T3010) and financial statements for all the fiscal periods preceding the application for re-registration. In order to be re-registered, an organization must meet all current legislative and administrative requirements for registration as a charity. Even if an organization's formal purposes and activities were previously acceptable, it might not qualify for re-registration because the legislation, common law, and administrative policies concerning registered charities change over time.

<sup>24</sup> Appendix A to its December 31, 1983, information return.

- Distributed two human relations video workshop programs: 'Role Call,' oriented towards student groups, and 'Reservations,' directed towards an industrial or adult audience.
- Distributed the 'Treatment of the Holocaust in Canadian History and Social Science Textbooks.' This book, the first published by the League, provided insights into the study of this most important historical tragedy.

Even though at the time of its re-registration, the Organization's stated objects may have been broad, the CRA applied the reasoning of the decision *Guaranty Trust Co. of Canada v. Minister of National Revenue*, [1967] S.C.R. 133. In doing so, the CRA looked beyond the stated objects of the Organization and examined its activities. Based on the information provided to us, at the time of its re-registration, effective January 1, 1984, the Organization's activities were devoted to charitable purposes. Accordingly, the CRA concluded that the Organization was in fact constituted for exclusively charitable purposes.

It is our position that the Organization qualified for charitable registration at the time of its registration. The decision to register the Organization was a reasonable decision based on the information provided by the Organization. As such, we are of the opinion that the Organization was not registered in error.

We also considered if annulment could be granted as a result of a change in law, specifically a change to the legislation affecting the charitable nature of the Organization such as a change to the Act, or a change to the common law, and concluded that there was no change in law that would justify the Organization's annulment.

As previously described in our AFL dated November 28, 2013, our audit found that the Organization changed its operations since registration and because of the changes it made to its operations, the Organization no longer meets the requirements necessary for charitable registration under the Act. The Organization was not registered in error nor did it cease to be a charity solely as a result of a change in law. As a result, the Organization's registration as a registered charity cannot be annulled, but should be revoked in the manner described in subsection 168(1) of the Act.

## Section 149.1 Qualified Donees

### 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; or
- (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.

### 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;
- (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 (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;
- (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; and
- (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.

#### **Section 168:**

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

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

Where a registered charity or a registered Canadian amateur athletic association

- (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 as such,
- (c) fails to file an information return as and when required under this Act or a regulation,
- (d) issues a receipt for a gift or donation 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 or donation the granting of which was expressly or impliedly conditional on the association making a gift or donation to another person, club, society or association,

the Minister may, by registered mail, give notice to the registered charity or registered Canadian amateur athletic association that the Minister proposes to revoke its registration.

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

Where the Minister gives notice under subsection (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,
- (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, or
- (g) refuses to accept for registration for the purposes of this Act any retirement income fund,

the person in a case 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), or the administrator of the plan or an employer who participates in the plan, in a case described in paragraph (f) or (f.1), 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),
- (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), or
- (d) the time the decision of the Minister to refuse the application for acceptance of the amendment to the 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.

## **Section 188: Revocation tax**

### **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 registered charity

- (a) 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;
- (b) that is not the subject of a suspension under subsection 188.2(1);
- (c) that has no unpaid liabilities under this Act or under the Excise Tax Act;
- (d) that has filed all information returns required by subsection 149.1(14); and
- (e) 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.

### **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) Transfer of property tax**

Where 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 liable with the foundation for the tax imposed on the foundation by that subsection in an amount not exceeding the net value of the property.

### **188(5) Definitions**

In this section,

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

$$A - B$$

where

A is the fair market value at that time of all the property owned by the foundation at that time, and

B is the total of all amounts each of which is the amount of a debt owing by or any other obligation of the foundation at that time;

“net value” of property owned by a charitable foundation, as of the day of its transfer, means the amount determined by the formula

$$A - B$$

Where

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

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

### **189(6) Taxpayer to file return and pay tax**

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

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

### **189(6.1) Revoked charity to file returns**

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

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

### **189 (6.2) Reduction of revocation tax liability**

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

- (a) the amount, if any, by which
  - (i) the total of all amounts, each of which is an expenditure made by the charity, on charitable activities carried on by it, before the particular time and during the period (referred to in this subsection as the "post-assessment period") that begins immediately after a notice of the latest such assessment was sent and ends at the end of the one-year period exceeds
  - (ii) the income of the charity for the post-assessment period, including gifts received by the charity in that period from any source and any income that would be computed under section 3 if that period were a taxation year, and '
- (b) all amounts, each of which is an amount, in respect of a property transferred by the charity before the particular time and during the post-assessment period to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

### **189(6.3) Reduction of liability for penalties**

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