



**BY COURIER**

June 26, 2024



BN: 10753 4877RR0001

GB:1933 2100 0346

Your file no: T1008824

**SUBJECT: Notice of Confirmation**

Dear 

We have reviewed the objection to the Notice of intention to revoke the registration of the Jewish National Fund of Canada Inc. (Organization) issued on August 20, 2019 as well as your representations. In our view, the information provided has not alleviated the non-compliance.

As a result, we confirm the Minister's proposal to revoke the registration of the Organization issued under subsection 168(1) and 149.1(2) of the Act on the basis that the Organization:

- ceased to comply with the requirements of this Act for its registration by failing to be constituted for exclusively charitable purposes; **Paragraph 168(1)(b)**;
- ceased to comply with the requirement of the Act for its registration by being engaged in activities that are not in furtherance of charitable purposes; **Paragraph 168(1)(b)**;
- ceased to comply with the requirement of the Act for its registration by not having direction and control over the activities undertaken in Israel and thus not devoting its resources to its own charitable activities; **Paragraph 168(1)(b)**;
- ceased to comply with the requirement of the Act for its registration by providing funds to non-qualified donees; **Subsection 149.1(2)**; and
- failed to comply with subsection 230(2) of the Act by having insufficient documentation to substantiate the activities undertaken in Israel and its failure to keep information in such form that would enable the Minister to determine whether there are grounds for the revocation of its registration; **Paragraph 168(1)(e)**.

Below is our analysis of the response provided to our proposal letter and our decision on the registration of the Organization as a registered charity.

Purposes

We maintain our opinion expressed within our July 26, 2023 correspondence. The Organization indicated that the Canada Revenue Agency (CRA) has been unreceptive to its repeated offers to amend its charitable purposes. While the proposed amendments may be valid charitable purposes, the question of whether an organization is constituted exclusively for charitable purposes cannot be determined solely by references to its stated purposes, but must take into account the activities

in which the organization currently engages<sup>1</sup>. We remain of the opinion that the activities of the Organization are not charitable, that the information about the eligible beneficiaries are lacking and that the Organization does not have direction and control over its funds sent to Israel.

Furthermore, we have the following comments in relation to the prevention of poverty following your latest representations. These comments also apply to the section “salaries paid to indigent workers<sup>2</sup>” contained within our proposal letter dated July 26, 2023. The “relief of poverty” head of charity has predominantly been determined through a consideration of whether the intended beneficiaries require such relief.

Early examples date back to the preamble of *The Charitable Uses Act of 1601*, which referred to the relief of the aged, impotent, and poor people; marriage of poor maids; and aid or ease of any poor inhabitants<sup>3</sup>.

Since then, the concept of “relief of poverty” has evolved with various considerations of what it means to be poor. Courts, including the Supreme Court of Canada, have recognized that poverty is a relative term that does not need to be limited to the destitute<sup>4</sup>.

However, there is no authority that indicates that the “relief of poverty” head of charity includes the “prevention of poverty”. No court has expanded the common law category in this manner<sup>5</sup>. The relief of poverty only became a charitable purpose in the United Kingdom with the enactment of the 2006 Charity Act.

Furthermore, within the Vancouver Society decision the court stated the following about adopting an entirely new definition of charity:

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<sup>1</sup> Vancouver Society of Immigrant and Visible Minority Women v. M.N.R. [1999] 1 SCR 10 , at paragraph 159, 194 (Vancouver Society), A.Y.S.A Amateur Youth Soccer Association v. Canada (Revenue Agency) [2007] 3.S.C.R 217 at paragraph 42 and CRA guidance CG-019 How to draft purposes for charitable registration.

<sup>2</sup> For purposes of the CRA’s review, the term “indigent worker” is defined as the following per the Organization’s submissions to CRA: “immigrants who would otherwise be unemployable because of emotional or physical impairment” and “All funds spent by us in Israel are used wholly and solely for the employment of indigent labourers. This money is used for paying daily stipends to immigrants from backward Middle East and North African countries and countries of eastern Europe, who because of emotional or physical disability, would otherwise be unemployable.” During the audit, the Organization provided two documents where it provided the criteria for determining who is an indigent worker. There are small discrepancy between both documents in defining who is an indigent worker. On the first document, indigent workers are workers who: 1- Have been unable to find work by themselves, 2- Unskilled, 3-Reside in areas where there are few jobs available for their level of skills, 4- Have utilised all their unemployment benefits and are receiving welfare payments from the National Insurance Institute, 5- New immigrants from Ethiopia, and 6- Are from Minority groups who are not suited for any other job. On the second document, field employees are employees who: 1- were not able to find work themselves, 2- Are not professionals, 3- Reside in areas with a limited number of positions applicable to their professional level, 4- Exhausted all of their unemployment benefits and are being paid income support from the National Insurance Institute, 5- Immigrant from Ethiopia and Russia and 6- Minorities for which this type of employment is the only one applicable.

<sup>3</sup> Vancouver Society, at paragraph 145.

<sup>4</sup> Vancouver Society, at paragraph 185 citing Re Central Employment Bureau for Women and Students; Careers Association Incorporated, [1942] 1 All ER 232 p 233.

<sup>5</sup> Credit Counselling Services of Atlantic Canada Inc. v. Canada (National Revenue), 2016 FCA 193 paragraph 43 (Credit Counselling)

“Even though some substantial change in the law of charity would be desirable . . . , it would not be appropriate for the Court, . . . , to adopt an entirely new definition of charity. If this is to be done, especially for the purposes of the *Income Tax Act*, the specifics of the desired approach will be for Parliament to decide since a new and more expansive definition of charity, without warning, could have a substantial and serious effect on the taxation system.”<sup>6</sup>

The Federal Court of Appeal (FCA) decision in *Credit Counselling* stated that:

“In the United Kingdom, Parliament adopted the *Charities Act 2011*, 2011, c. 25 and in so doing included the prevention of poverty (in addition to the relief of poverty) as a charitable purpose. In effect, the Appellant is asking this Court to do that which required an act of the UK Parliament to do. In my view, just as in the United Kingdom, it will require an act of Parliament to add the prevention of poverty as a charitable purpose.

As a result, in my view, the prevention of poverty is not a charitable purpose and hence the Appellant cannot succeed on this ground.”<sup>7</sup>

Therefore, we maintain our opinion that the prevention of poverty is not a charitable purpose in Canada. Also, the reference made by the Organization to the publication of the Charity Commissioners, “The Prevention of Poverty for the Public Benefit” is not relevant in a Canadian context since the prevention of poverty is not a charitable purpose in Canada.

Furthermore, the representations indicated that like many other charities, the Organization has a mission statement that is different from its stated charitable purposes. The representations explained that the legal requirements of charitable purposes often make them unintelligible or confusing to the public, commonly leading charities to reframe their work to be more relatable as a “mission statement”. Mission statements are fundamentally an exercise in public relations, and not the adoption of a new charitable purpose.

We have done research on the meaning of “mission statement” and have found, that to put it simply, a mission statement sums up the purpose of a charity. It is an essential piece of documentation for a charity. Not only does it clarify the charity’s purposes and provide a template for direction, it holds decision-makers to account and acts as a motivator for staff, volunteers and donors.

Mission statements make clear what is important, whom the stakeholders are and provides directions. One way in formulating a mission statement would be to answer the following questions: 1- what do we do, 2- how do we do it, and 3- whom do we do it for.

One of the three items contained within the mission statement of the Organization, at the time of audit, was to provide funds to Keren Kayemeth Le’Israel (KKL) to redeem the land of Israel. To provide funds to a non-qualified donee is not a charitable purpose. The representation indicated

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<sup>6</sup> Vancouver Society, page 6 of 132 (pdf document from the SCC) and paragraph 202

<sup>7</sup> *Credit Counselling Services of Atlantic Canada Inc. v. Canada (National Revenue)*, 2016 FCA 193, paragraph 18 and 19.

that the funds flowed under an appropriate contractual relationship; however, we are of the opinion that the Organization did not have direction and control of the funds provided to KKL. Furthermore, the Organization has not provided any relevant documentation supporting that the indigent workers were eligible beneficiaries or that the activities undertaken in Israel was theirs.

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

The arguments brought forward within the “Failure to be constituted for exclusively charitable purposes” above, in relation to the prevention of poverty, are also applicable within this section of the letter. As indicated above, there is no authority that indicates that the “relief of poverty” includes the “prevention of poverty”. The courts have not expanded the common law category in this manner. The relief of poverty only became a charitable purpose in the United Kingdom with the enactment of the 2006 Charity Act. Therefore an activity undertaken to prevent poverty is not a charitable activity for a Canadian charity.

Should the prevention of poverty be determined to be a charitable activity by the Canadian courts, the Organization has many issues in demonstrating that the activities / funds disbursed in Israel were for the activities of the Organization.

For example, the Organization was unable or unwilling to provide supporting documentation showing that the indigent workers<sup>8</sup> selected were eligible beneficiaries. There is no documentation provided:

- demonstrating the beneficiaries exhausted all of their unemployment benefits and were being paid income support from the National Insurance Institute;
- demonstrating the beneficiaries were unable to find work by themselves;
- demonstrating the beneficiaries were non-professionals;
- demonstrating the beneficiaries were residing in areas with a limited number of positions applicable to their professional level;
- demonstrating that the selection criteria were created by the Organization instead of KKL has expressed within our letter dated July 26, 2023; etc.

Following the Organization’s representations relating to the payments to indigent workers, further research was undertaken and we found information relating to the minimal wage salary in Israel during the audit period<sup>9</sup>. When considering this new information, the wages paid to the indigent workers were still above an acceptable level. The salary paid to the indigent workers was above the monthly minimum wages; therefore, the Organization provided them with a private benefit. For 2011, the Organization paid on average indigent workers in excess of ₪76,246 or \$18,789 CAD above the minimal monthly wages. For 2012, the excess was ₪76,246 or \$19,738 CAD above the minimal monthly wages. Consequently, this excess in payment cannot relieve poverty as per the Organization’s position. The Organization is providing a private benefit to these indigent workers. Furthermore, the representations indicated that the CRA analysis about the stipends paid to the indigent workers was flawed by assuming that all the indigent workers were singles and

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<sup>8</sup> We use this term since this was the term used by the Organization during the audit and may or may not be the contemporaneous.

<sup>9</sup> <https://www.btl.gov.il/English%20Homepage/Mediniyut/GeneralInformation/Pages/MinimumWage.aspx>

without dependents. The representations provided some statistics about households; however, it did not provide any documentation about the marital status of the sample reviewed by us; which was provided by the Organization during the audit. We were unable to find documentation within the audit file about this subject. Therefore, we are maintaining our opinion on this issue.

Furthermore, the documentation reviewed for the audit period does not show that the Organization had direction and control over the funds sent to its agent and that the funds sent were used for the Organization's activities. Prior to issuing our proposal letter on July 26, 2023, we requested the Organization provide all of its documentation for two completed projects. However, no such information was received from the representative. The information received<sup>10</sup> from this request contained some information that was previously provided by the Organization during the audit process like the Trademark License Agreement, the General Agency Agreement and the Memorandum of Understanding. A new General Agency Agreement was provided with a Charitable Activities Protocols where the protocol contemplated four potential structures for working with qualified donees or intermediaries by the Organization. These new structures are: 1- projects performed by Canadian Registered Charity, 2- Intermediary without KKL involvement, 3- Intermediary with KKL involvement, and 4- KKL is the intermediary. Within option 2, 3, and 4, the following was stated by the Organization:

The Organization should carefully review the invoices that it receives from the intermediary before reimbursing the intermediary. The invoices (which may be in Hebrew) must be accompanied by a written description (in English) describing the expenses. After the Organization reimburses the intermediary, it must seek confirmation that the funds were received by the intermediary. [emphasis added by CRA]

Some examples of agreements were provided by the Organization. There was insufficient evidence provided that the Organization had direction and control over the activities, like by providing ongoing instruction, monitoring and supervision or by providing financial reporting or progress report. These are just few of the things that we would have expected to have received from the Organization for our review given its history of operations in Israel and with the agents it contracted with.

In the representations to our proposal letter, the Organization indicated that the Eitanim Psychiatric Hospital and the Kiryat Malachi Accessible Playground Project<sup>11</sup> were part of this new Charitable Activities Protocols implemented by the Organization. We have reviewed these two project agreements, with the documentation previously received, and came to the following conclusions / observations:

- Eitanim Psychiatric Hospital

The agreement reviewed for this project does not contain the statement that the Charitable Activities Protocols mentioned would be contained within any future agreements. Per the

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<sup>10</sup> Fax dated May 25, 2023

<sup>11</sup> Letter dated October 24, 2023 - page 40 of 46

Charitable Activities Protocols, it contains a statement that the Organization should<sup>12</sup> carefully review the invoices that it receives before reimbursing the intermediary. The invoices (which may be in Hebrew) must be accompanied by a written description (in English) describing the expenses. After the Organization reimburses the intermediary, it must seek confirmation that the funds were received by the intermediary<sup>13</sup>.

It is reasonable to conclude that the Organization had not implemented its Charitable Activities Protocols with this agreement and it had no intention in using this new form of agreement with this intermediary. What is meant by this, is that the agreement made by the Organization with its intermediary stated that: “this is the first and final payment for this project. JNF Canada is flowing \$300,000 CAD; this is a small portion of the overall work being done at the Eitanim Psychiatric Hospital.” Therefore, it is reasonable to conclude that the Organization, before making a disbursement to this intermediary, did not review any invoices relating to this project as per its Schedule 1 attached with the project agreement. It is also reasonable for us to infer that the Organization was contributing funds to an established project of which it had no direction and control and gifting to a non-qualified donee.

However, the project agreement states the following per section “2.6 Expenditures. It is expected that all of the funds advanced to the Agent will be for reimbursement of the expenses of the Agent in the conduct of the Charitable Project. The Agent will provide proof of paid invoices to JNF Canada for reimbursement.” Therefore, in the view of CRA, there are no guarantees that the funds sent would be used for this project. It is only expected that the funds would be used for this project. It is reasonable to conclude that funds could be used for other purpose by the recipient for other activities. As for the documentation provided by the Organization on October 24, 2023<sup>14</sup>, the representations made reference to invoices paid prior to the Organization’s involvement with the project. We have reviewed these documents and observed that they were making reference to the Hergoz Medical Center. After undertaking an internet search, we were unable to confirm if the Hergoz Medical Center was part of the same entity as the Eitanim Psychiatric Hospital. However, we noticed from the documentation provided by the Organization, that the Herzog Medical Center was located at Givat Shmuel in Jerusalem while the Eitanim Psychiatric Hospital is located at 91060 HaRav Raphael Katsenelbogen Street in Jerusalem. Therefore, it appears that these two entities are distinct from one another and we do not understand why these supporting documents were provided for this project if they are not the same entities. It is unclear what project was done at the Hergoz Medical Center and what the involvement of the Organization was. Therefore, it is reasonable to conclude that these invoices were not related to the Eitanim Psychiatric Hospital project.

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<sup>12</sup> In the view of the CRA, use of the word “should” indicates it is recommended yet not obligatory that the Organization review and approval invoices it is ultimately claiming to be part of its own funded activities via its agent(s) in Israel.

<sup>13</sup> In the view of the CRA, this statement solely means the Organization is responsible to ensure the funds were received by the intermediary yet not necessarily applied to the specific project for which the Organization is ultimately claiming to be part of its own funded activities, under its control, via its agent(s) in Israel.

<sup>14</sup> See page 40 of 46 of the representations

- Kiryat Malachi Accessible Playground Project

The agreement reviewed for this project does not contain the statement that the Charitable Activities Protocols mentioned would be contained within any future agreements. Per the Charitable Activities Protocols, it contains a statement that the Organization should carefully review the invoices that it receives from KKL before reimbursing KKL, who will reimburse the intermediary. The invoices (which may be in Hebrew) must be accompanied by a written description (in English) describing the expenses. After the Organization reimburses KKL, it must seek confirmation that the funds were received by the KKL and, in turn, it must seek confirmation that the performing intermediary received the funds which is part of the Organization's new Charitable Activities Protocol.

Therefore, it is reasonable to conclude that the Organization has not implemented its Charitable Activities Protocols with this General Agency Agreement. We have expressed the same concerns previously in regard to section 2.7 Expenditures of the General Agency Agreement. It is stated: "It is expected that all of the funds advanced to KKL will be for reimbursement of the expenses of KKL and/or Third Party Agent in the conduct of the Charitable Project...". Therefore, there are no guarantees that the funds sent would be used for this project. It is only expected that the funds would be used for this project. Consequently, it is reasonable to speculate that funds could be used for other purposes by KKL and not for this project.

Finally, as per the Minutes of Caniscom held on July 3, 2011,<sup>15</sup> it is reasonable to conclude that the Organization was not conducting its own activities, but acting as a conduit for KKL, by being its fundraising arm in Canada or by providing KKL with a private benefit, by supporting its work, by paying part of its labor cost. A similar conclusion can also be made with Caniscom minutes that was held on June 14, 2012.

#### Books and records

We are of the opinion that the latest representations received did not alleviate the concerns with the lack of supporting documentation showing that the Organization maintained adequate books and records for its activities undertaken in Israel.

The Organization referred to the eBay Canada<sup>16</sup> decision, where it said that, based on the same logic of this decision, that the electronic records of the Organization were also stored within Canada for the purpose of subsection 230(2) of the Act even if some of the Organization's electronic records were stored on servers in Israel.

We do not agree with the Organization's position. As per Guidance CG-002, Canadian registered charities carrying on activities outside Canada, it is stated within the "Question and Answers" section, that following the eBay decision, it is still the CRA's position (which remains grounded

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<sup>15</sup> "Explanation was provided concerning the projects undertaken in Canada by donors. Projects are used in order to let the donors know where their dollars are being developed, however; the money raised is allocated to pay indigent workers who work on these projects."

<sup>16</sup> eBay Canada Ltd. v. Canada (National Revenue), 2008 FCA 348

in legislation) that charities must keep their electronic and paper-based books and records at an address in Canada<sup>17</sup>. Records kept outside of Canada and accessed electronically from Canada are not considered to be records kept in Canada. The same is also said on the Canada.ca website<sup>18</sup>. On this page, it is stated that the CRA will not give permission to keep records outside Canada to: 1-registered charities, 2-registered Canadian amateur athletic associations, 3-Canadian municipalities, 4-public bodies performing a function of government and 5-housing corporation resident in Canada and exempt from tax under Part 1 of the Act.

Also, we are of the opinion that the books and records for activities undertaken in Israel were not being kept in Canada. As per the T2020<sup>19</sup> contained within the audit file, ██████████ said that most of the documentation requested by the auditors for the activities undertaken in Israel were never requested by the Organization from KKL<sup>20</sup>. These documents were only requested following the auditor's request. Furthermore, as per a discussion between the Organization's representative and the Appeal Branch on August 22, 2023, a request for an extension of time to respond to our letter<sup>21</sup> was received since the records for ██████ reply were in Israel and were in the process of being translated by their agent KKL. Consequently, it is reasonable to conclude that records for activities undertaken in Israel were not kept in Canada during the audit period nor currently.

There are other issues relating to the books and records which were not resolved with the latest representations or any of the previous communications of the Organization. For example, there was no documentation provided to demonstrate that the beneficiaries were eligible beneficiaries during the audit or at the objection stage<sup>22</sup>.

Furthermore, during the audit and the objection process, the Organization provided various types of agreements it had with KKL (its agent in Israel) without providing sufficient documentation showing direction and control or the implementation of the said agreements. In *Bayit Lepletot*<sup>23</sup>, the Court reaffirmed the principle that, not only is it incumbent on the charitable organization, who uses an agent, to show that the agent is carrying on the work on its behalf, but that proof of control over the activities of the agent is necessary to establish that the charitable works are those of the charity and not those of the agent. Invoices and a spreadsheet for current projects were provided by the Organization in Hebrew within their latest representation; however, they were not translated in English or French. We are of the opinion that the information provided is not sufficient to demonstrate that the Organization has direction and control over the activity or that the activity

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<sup>17</sup> [Canadian registered charities carrying on activities outside Canada - Canada.ca](#)

<sup>18</sup> [Where to keep your records, for how long and how to request the permission to destroy them early - Canada.ca](#)

<sup>19</sup> Audit w/p #201, page 14 & 15 from discussion dated 19-06-2015. Relates to w/p 140-1 to 140-4 (request for documents).

<sup>20</sup> The Organization's representations to the AFL letters also note: "records were available upon request by the Charity" and "The Charity could request any documents or translations from the Canada Desk with little notice" [emphasis added]

<sup>21</sup> Appeals Branch letter dated July 26, 2023.

<sup>22</sup> The following documentation was missing: 1- documentation showing that beneficiaries exhausted all of their unemployment benefits and were being paid income support by the National Insurance Institute, 2- documentation showing that the beneficiaries were unable to find work by themselves, 3- the beneficiaries were non-professionals, 4- documentation showing that the beneficiaries were residing in areas with a limited number of positions applicable to their professional level, 5- documentation to demonstrate that the selection criteria for the beneficiaries were created by the Organization instead of KKL has expressed within our July 26, 2023 letter, etc.

<sup>23</sup> *Bayit Lepletot v. Canada (Minister of National Revenue)* (2006 FCA 128) 2006-03-28

was theirs. Just providing a few invoices and some type of agreements is not sufficient to demonstrate that the Organization had direction and control over the funds provided or that the activity was theirs. This is specifically noted given the volume of projects and quantum of resources advanced to KKL as it is the CRA's expectation that extensive documentation would exist and that it would have been provided during the opportunities the Organization had to present records during the audit and objection process. Furthermore, the Organization did not provide any documentation showing that their resources at the time of the audit were under their direction and control and therefore their own activities. It is our opinion that the Organization is avoiding addressing the audit findings by creating various types of agreement with its agent in Israel. Furthermore, we found various issues with the different agreements created by the Organization. These issues were not addressed by the Organization aside from saying that they were no longer valid and replaced by another agreement. The non-compliance findings were significant, and proper documentation of the Organization activities in Israel was not provided.

Monthly payroll listings of indigent workers hired in 2011 and 2012 were provided to the auditor. The listing contained the name of the indigent worker, the employee number, weeks worked, gross pay and net pay deposited in the indigent workers bank account and the project number. No information was provided about the projects being worked on, such as addresses of the projects, the progress of the project, etc. ██████████ mentioned to the auditor that the CRA's request for information on October 31, 2014, was information the Organization never requested from KKL<sup>24</sup>.

Furthermore, the Organization indicated that it was not legally required to keep its books and records in an official language. However, pursuant to paragraph 230(2)(a) of the Act the Organization is required to keep its information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration. Records that are not translated into either French or English is not in a form that will enable the CRA to determine if the Organization's activities outside of Canada complied with the requirements of the Act for registration.

Documentation received in response to our request made during our February 14, 2023 discussion, for two examples of projects completed by the Organization, indicated that the Organization had to carefully review the invoices it receives from its intermediary prior to reimbursing them. The invoices, which may be in Hebrew, must be accompanied by a written description (in English) describing the expenses. The latest representations received in reference to our letter dated July 26, 2023, contained no translation for the invoices provided. All invoices were in Hebrew and no translation was provided by the Organization. Therefore, we are of the opinion that the Organization is not implementing its policies.

Finally, the Organization indicated that our July 26, 2023 letter listed various purported 'deficiencies' that were found in the audit without identifying the particular projects to which the deficiencies related to. The Organization submitted documentation for a number of its projects and

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<sup>24</sup> Examples of information not requested from KKL are: 1- documents supporting which KKL's construction projects each indigent workers worked on, 2- criteria to determine what is an indigent worker, list of the workers who have been working (accepted) and evaluation grid for each of the indigent workers who applied for work and those who have been hired for the charitable projects, 3- documents between the Organization, Caniscom and KKL regarding the discussion, acceptance and achievement of the charitable projects in Israel, and 4- back up (computerized or manual data) for the charitable projects in Israel.

now claims it was difficult and probably impossible for them to respond to the listed deficiencies without a clear sense of the projects to which they relate. We are of the view that the Organization should have known which projects were reviewed given that it provided the documentation for the said projects during the audit. Given that complete documentation for all projects was not provided, but rather a sample, the Organization had direct knowledge of the limited projects it put forth to CRA for analysis and proof of its activities.

### Other

The Organization believes that the CRA did not apply an appropriate standard and approach because it was influenced by the negative and misleading views encompassed in the campaigns and complaints against the Organization. It is the Organization's position that those campaigns and complaints made their way into the records of the CRA and tainted the audit and resulted in a process that lacked fairness, rigour and impartiality.

If an individual suspects that a business, a charity or a person is not complying with the requirements of the Act, this individual can report them to the CRA by submitting a lead to the Leads Program.<sup>25</sup>

As per the Charities Directorate (CD) website<sup>26</sup>, a taxpayer can submit a lead anonymously, but if it chooses to identify themselves, their identity is kept confidential. The CD reviews and considers all leads related to charities; however, the submission of a lead alone is not determinative as to whether an audit or other compliance actions are commenced. Audits and compliance actions undertaken are based on possible non-compliance with the Act and are risk based on whether the charity is meeting its legislative requirements based on a review of the charity's books and records. The CD's actions are only made public if they result in a charity being: 1- revoked, 2- annulled, 3- suspended; and/or 4- penalized.

As for the screeners comments, this document helps the auditor determine the scope of the audit based on the reason of the audit selection. It is a tool used to communicate the items of concern that require specific review and comments by the auditor. The auditor uses this information to develop its Audit Plan. Once the audit is completed, the screener's comments are addressed on Form T20, Audit Report. Furthermore, the audit results are based on information determined from the books and records of the Organization and not from the campaigns and complaints received by CRA.

Therefore the standards and approach used for this audit were appropriate and followed CRA procedures.

The Organization expressed concerns that the auditor contacted [REDACTED] who at the time of the audit, was the Director of Finance of the Organization. The Organization expressed concerns that [REDACTED] was not qualified to answer many of the questions asked of [REDACTED] by the auditor. However, this concern only appeared to be raised after receipt of the proposal letter dated July 26, 2023. We have not located any such allegation prior to this time. It is the Organization's

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<sup>25</sup> [Reporting suspected tax or benefit cheating in Canada – Overview - Canada.ca](#)

<sup>26</sup> [Contact the Charities Directorate - Canada.ca](#)

stance that the auditor took ██████████ to be the voice of the Organization, and conflated ██████████ understanding of the Organization's purpose, activities, and operation with the official position of the Organization<sup>27</sup>. We are of the view that if ██████████ could not answer the questions of the auditor, it was ██████████ responsibility to consult with the other senior people of the Organization and/or its representatives. Also, before the start of the audit, the Organization was aware of the initial audit questionnaire it had to provide to the auditor. If the Organization felt that ██████████ was not the proper individual to liaise with the auditor, it was their responsibility to delegate another senior individual in order to be the liaison. ██████████ was the Director of Finance of the Organization at the time of audit and therefore should have been well versed about the financial operations of the Organization. Furthermore, if ██████████ was unsure on how to answer a question (asked by the auditor or part of the initial audit questionnaire), it was ██████████ responsibility to consult with other members of the Organization before providing an answer<sup>28</sup> or have them present<sup>29</sup> when the audit team visited the Organization's operations over the extended audit period. Finally, the Organization indicated to the CD that they were in regular contact with their agent's Finance department through their CFO, which was at the time of audit ██████████<sup>30</sup>. These concerns now being raised by the Organization do not sway the CD's and or findings with respect the repeated and serious non-compliance with the Act.

To conclude, the Organization made reference to its past audits<sup>31</sup> where it said that none of its historical non-compliance was flagrant or intentional. The Organization's practices in the audit years for the 1977, 1981, 1985 and 1995 fiscal years were reviewed. It is the Organization's position that any issues of non-compliance the CRA raised in previous audits were not of sufficient concern to the CRA to pursue revocation, or even require the Organization to enter into a compliance agreement. The CRA letter dated August 21, 1989 raised concerns about the Organization's direction and control, and maintenance of books and records; however, the audit was closed without any sanction. We do not agree with the Organization's position and conclusion of the past audits as the major concerns about the Organization's activities overseas have been present since the first audit. Final decision letters were not issued by the CD at the time for various reasons<sup>32</sup>.

As a result, we confirm the Minister's proposal to revoke the registration of the Organization issued under subsection 168(1) and 149.1(2) of the Act on the basis that the Organization:

- ceased to comply with the requirements of this Act for its registration by failing to be constituted for exclusively charitable purposes; **Paragraph 168(1)(b)**;

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<sup>27</sup> See October 24, 2023 representation from the Organization, p. 6 - 8 & exhibit C.

<sup>28</sup> "Depending on the size of the business and the amount of segregation of the duties, it may not be possible to receive relevant answers to all interview questions from one individual." [Income Tax Audit Manual Chapter 10 - Canada.ca](#)

<sup>29</sup> As required by the Organization's by-laws at the time (the By-Laws), the Organization was governed during the Audit Years by a forty-two member Board of Directors (the Board), ten Officers, and an Executive Committee. See letter dated September 12, 2016 addressed to the CRA auditor.

<sup>30</sup> See letter dated September 12, 2016 from the Organization representative addressed to the CD auditor, page 21 last paragraph with footnote 68 within the same page.

<sup>31</sup> See October 24, 2023 representation from the Organization

<sup>32</sup> For example, in early 1984 the Minister declared a moratorium on all compliance actions concerning charities. Following this moratorium, the 1981 audit was closed.

- ceased to comply with the requirement of the Act for its registration by being engaged in activities that are not in furtherance of charitable purposes; **Paragraph 168(1)(b)**;
- ceased to comply with the requirement of the Act for its registration by not having direction and control over the activities undertaken in Israel and thus not devoting its resources to its own charitable activities; **Paragraph 168(1)(b)**;
- ceased to comply with the requirement of the Act for its registration by providing funds to non-qualified donees; **Subsection 149.1(2)**; and
- failed to comply with subsection 230(2) of the Act by having insufficient documentation to substantiate the activities undertaken in Israel and its failure to keep information in such form that would enable the Minister to determine whether there are grounds for the revocation of its registration; **Paragraph 168(1)(e)**.

If you disagree with this decision, you may file an appeal with the Federal Court of Appeal within 30 days from the date of mailing of this letter.

Additional information relating to the Federal Court of Appeal is available on the court's website at [fca-caf.gc.ca](http://fca-caf.gc.ca).

Sincerely,

Holly Brant  
Manager  
Charities Section  
Tax and Charities Appeals Directorate  
Appeals Branch

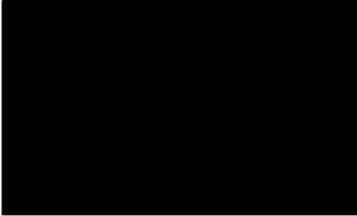
CC: [REDACTED] Chief Financial and Operating Officer  
Jewish National Fund of Canada

[REDACTED]



August 20, 2019

**REGISTERED MAIL**



BN: 10753 4877 RR0001  
File #: 0246231

Dear 

**Subject: Notice of intention to revoke  
Jewish National Fund of Canada (Keren Kayemeth Le'Israel) Inc. /  
Fonds National Juif du Canada (Keren Kayemeth Le'Israel) Inc.**

We are writing with respect to our letters dated May 12, 2016, and April 19, 2018 (copies enclosed), in which the Jewish National Fund of Canada (Keren Kayemeth Le'Israel) Inc./Fonds National Juif du Canada (Keren Kayemeth Le'Israel) Inc. (the Organization) was invited to respond to the findings of the audit conducted by the Canada Revenue Agency (CRA) for the period from January 1, 2011 to December 31, 2012. Specifically, the Organization was asked to explain why its registration should not be revoked in accordance with subsection 168(1) of the Income Tax Act.

We have reviewed and considered your respective written responses dated September 12, 2016, May 17, 2018, and October 5, 2018 (copies enclosed). Your replies have not alleviated all of our concerns with respect to the audit findings concerning the Organization's non-compliance with the requirements of the Act for registration as a charity. Our outstanding concerns are explained in Appendix A attached.

**Conclusion**

The audit by the CRA found that the Organization is not complying with the requirements set out in the Act. In particular, it was found that the Organization was not constituted and operated for exclusively charitable purposes, failed to devote resources to charitable activities carried on by the Organization itself, and failed to maintain adequate books and records. 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 for charitable registration and should be revoked in the manner described in subsection 168(1) of the Act.

For the reasons mentioned in Appendix A, pursuant to subsections 168(1), 149.1(1) and 149.1(2) of the Act, we 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)(e), and subsection 149.1(2), of the Income Tax Act, that I propose to revoke the registration of the charity listed below and that by virtue of paragraph 168(2)(b) thereof, the revocation of registration is effective on the date of publication of this notice in the Canada Gazette.

<b>Business number</b>	<b>Name</b>
10753 4877 RR0001	Jewish National Fund of Canada (Keren Kayemeth Le'Israel) Inc. / Fonds National Juif du Canada (Keren Kayemeth Le'Israel) Inc. Montreal QC

Should the Organization choose 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, with the reasons for objection and all relevant facts, must be filed within **90 days** from the day this letter was mailed. The notice of objection should be sent to:

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. As such, the Organization's registration will be revoked on the date of publication, unless the 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 intention to revoke registration, can be found in Appendix B, attached.

### **Consequences of revocation**

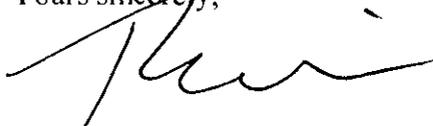
As of the effective date of revocation:

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

- b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the notice of intention to revoke. This revocation tax is calculated on Form T2046, Tax Return Where Registration of a Charity is Revoked (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 T2046 and the related Guide RC4424, Completing the Tax Return Where Registration of a Charity is Revoked, are available on our website at [canada.ca/charities-giving](http://canada.ca/charities-giving);
- c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the Excise Tax Act. As a result, the Organization may be subject to obligations and entitlements under the Excise Tax Act that apply to 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, we advise that subsection 150(1) of the Act requires that every corporation (other than a corporation that was a registered charity throughout the year) file a return of income with the Minister in the prescribed form, containing prescribed information, for each taxation year. The return of income must be filed without notice or demand.

Yours sincerely,



Tony Manconi  
Director General  
Charities Directorate

Enclosures

- CRA letter dated May 12, 2016
- CRA letter dated April 19, 2018
- Organization's response dated September 12, 2016
- Organization's response dated May 17, 2018
- Organization's response dated October 5, 2018
- Appendix A, Comments on Representations
- Appendix B, Relevant provisions of the Act

c.c.:



Jewish National Fund of Canada (Keren Kayemeth Le'Israel) Inc.





Canada Revenue Agency

Agence du revenu du Canada

**REGISTERED MAIL**

Jewish National Fund of Canada  
(Keren Kayemeth Le'Israel) Inc



Attention:

BN : 107534877RR0001  
File # : 0246231

May 12, 2016

**Subject: Audit of Jewish National Fund of Canada (Keren Kayemeth Le'Israel) Inc**

Dear Madam,

This letter is further to the audit of the books and records of the Jewish National Fund of Canada (Keren Kayemeth Le'Israel) Inc (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the fiscal periods ending December 31, 2011 and 2012.

Following our audit, the CRA has identified specific areas of non-compliance with the provisions of the *Income Tax Act* and/or its *Regulations* in the following areas.

AREAS OF NON-COMPLIANCE		
	Issue	Reference
1.	Failure to be constituted and operated for exclusively charitable purposes	149.1(1), 168(1)(b)
2.	Failure to devote resources to charitable activities carried on by the Organization itself: 2.1 Lack of direction and control over the use of resources / gifting to non-qualified donees 2.2 Failure to devote resources to charitable activities	149.1(1), 149.1(2), 168(1)(b).
3.	Failure to maintain adequate books and records	168(1)(e), 230(2).

Canada

The purpose of this letter is to describe the areas of non-compliance identified by the CRA during the course of the audit as they relate to the legislative and common law requirements applicable to registered charities, and to provide the Organization with the opportunity to make additional representations or present additional information. Registered charities must comply with the law, failing which the Organization's registered status may be revoked in the manner described in section 168 of the Act.

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

### Identified areas of non-compliance

#### 1. Failure to be constituted and operated for exclusively charitable purposes

In order for an organization to be recognized as a charity, it must be constituted exclusively for charitable purposes, and devote its resources to charitable activities in furtherance thereof. In the Supreme Court decision of *Vancouver Society of Immigrant and Visible Minority Women v. M.N.R.*<sup>1</sup>, Iacobucci J. speaking for the majority, summarized the requirements for charitable registration at paragraph 159, as follows:

*"In conclusion, on the basis of the Canadian jurisprudence, the requirements for registration under s. 248(1) come down to two:*

*(1) the purposes of the organization must be charitable, and must define the scope of the activities engaged in by the organization; and*

*(2) all of the organization's resources must be devoted to these activities..."*

The term "charitable" is not defined in the Act; therefore it is necessary to rely on the jurisprudence in the common law. The courts have recognized four general categories of charitable purposes: (1) the relief of poverty; (2) the advancement of religion; (3) the advancement of education; and (4) other purposes beneficial to the community as a whole (or a sufficient section thereof) in a way that the law regards as charitable. This last category identifies an additional group of purposes that have been held charitable at law rather than qualifying any and all purposes that provide a public benefit as charitable.

Whether or not an organization is constituted exclusively for charitable purposes is determined based on its stated objects as contained in its governing documents, and on

<sup>1</sup> *Vancouver Society of Immigrant & Visible Minority Women v. Minister of National Revenue*, [1999] 1 S.C.R. 10 (*Vancouver Society*)

the activities in which it engages.<sup>2</sup> An organization with a mixture of charitable and non-charitable purposes and/or activities does not qualify for registration.

The Organization was registered as a charitable organization effective January 1, 1967. According to its Letters Patent, the objects of the Organization are:

- To create, provide, enlarge and administer a fund to be made up of voluntary contributions from the Jewish community and others to be used for charitable purposes.
- The operations on the Corporation may be carried on throughout Canada and elsewhere.

Notwithstanding that they were broad and vague, the Organization's purposes were accepted when it was originally granted registration under the understanding that it would restrict itself to charitable activities. The Organization was cautioned at the time in regards to what constitutes charitable activities and the requirements of the Act to maintain its registration.

The audit revealed that the only activity the Organization is currently engaged in is paying the salaries of workers in Israel. It is our view that this activity does not further the Organization's formal purposes (or a charitable purpose per se as contemplated by the first object) and it appears the Organization is not undertaking any other activities that would further charitable purposes. Rather, the Organization appears to be furthering unstated non-charitable purposes. In fact, according to the information obtained in the interview questionnaire received [REDACTED]

[REDACTED] on September 11, 2014, the mission statement of the Organization is:

- To provide funds to Keren Kayemeth Le'Israel (KKL) to redeem the land of Israel.
- To connect Canadian Jewry to their national homeland and to their partnership in its development.
- To emphasize the centrality of Israel to Jewish life.

It is therefore our understanding that the Organization is no longer devoting its resources to activities in support of charitable purposes, but is rather furthering unstated non-charitable purposes.

As such, it is our view that the Organization is currently not established for **exclusively** charitable purposes as required by subsection 149.1(1) of the Act. As a result, it appears there may be grounds for revocation of the Organization's status under paragraph 168(1)(b) of the Act.

<sup>2</sup> Vancouver Society, supra note 1, at para. 194

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

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 "qualified donees" as defined by the *Act*.
- It can carry out its own charitable activities. These are activities carried out by persons under the registered charity's immediate control (for example - members, employees, or volunteers), or by its intermediaries (for example - agents or contractors). 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 Canadian charity is an active and controlling participant in a program or project that directly achieves a charitable purpose.

Whether it is carrying out activities directly or through an intermediary, a charity must maintain a record of steps taken to direct and control the use of its resources, as part of its books and records, to allow the CRA to verify that all of the charity's resources have been used for its own activities.

We refer to the comments of the court in *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*<sup>3</sup>:

"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..."

And

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

As reiterated by the Federal Court of Appeal, it is not enough for a charity to fund an agent that carries on certain activities.<sup>4</sup> The *Act* requires that the agent actually conduct those activities *on the organization's behalf*.

"...A charity that chooses to carry out its activities in a foreign country through an agent or otherwise must be in a position to establish that any acts that purport to

<sup>3</sup> 2002 FCA 72 at paragraphs 40 and 30

<sup>4</sup> *Bayit Lepletot v. Minister of National Revenue*, [2006] FCA 128

4

be those of the charity are effectively authorized, controlled and monitored by the charity."<sup>5</sup>

**2.1 Lack of direction and control over the use of resources / gifting to non-qualified donees**

Based on our findings, we are of the view that the Organization did not operate in accordance with the aforesaid requirements during the audit period.

Again, we refer to the Organization's mission statement:

- To provide funds to Keren Kayemeth Le'Israel (KKL) to redeem the land of Israel.
- To connect Canadian Jewry to their national homeland and to their partnership in its development.
- To emphasize the centrality of Israel to Jewish life.

The information provided during the audit indicates that KKL is an organization in Israel that acts as a general contractor responsible for the construction of infrastructure. Additionally, it seems that KKL acts as the Organization's agent in Israel. We would note that even if KKL is considered to be a charitable organization in Israel, it is not recognized as a qualified donee under the Act.

The Organization provided us with a contract signed by both parties in December 2009 that states that KKL is contracted by the Organization "to provide work for laborers (new immigrants, refugees, etc.) who would ordinarily be unemployable". However, the contract does not provide further details regarding the roles and responsibilities of all parties involved. Furthermore, it does not include a detailed description of how the activity will be conducted on the Organization's behalf or how it furthers the Organization's charitable purposes. The contract does not contain sufficient information to establish adequate, continuous direction and control by the Organization over the use of its funds by KKL for specified projects. For example, the contract does not include: time frames or deadlines for the project; a provision for regular written financial and progress reports supporting the agent's receipt and disbursement of funds; a provision to update the Organization on the progress of activities undertaken; a provision for the Organization's funds to be segregated from those of its agent; or any other specific details about the funded activities.

The contract also indicates that the Jewish National Fund of Canada – Israel Committee (CANISCOM) was established as the Organization's representative in Israel to oversee the day-to-day operations of KKL. The information provided during the audit shows that CANISCOM is made up of volunteers who are mostly Canadians now living in Israel. It

<sup>5</sup> *Canadian Magen David Adom for Israel v. Minister of National Revenue*, [2002] FCA 323 at paragraph 66

100-5

seems that the Organization is using these volunteers as a second board of directors to oversee the projects in Israel and take meeting minutes which are reported to the board in Canada.

The audit revealed that the total expenditures for charitable programs were \$3,818,018 for 2011 and \$5,296,184 for 2012. [REDACTED] stated that all these expenses were incurred to carry out the Organization's charitable programs in Israel. As per the information gathered during the audit, the funds were transferred directly to KKL by the Organization to employ indigent workers, namely hard-to-hire or unemployable and who are needy immigrants, for the construction of public infrastructure in Israel. After inquiring about the details of those transfers, [REDACTED] stated, during our telephone conversation on May 7, 2015, that when the Organization has funds available, it transfers such funds to KKL in Israel. It appears from that conversation that the Organization does not inquire about the progress of the work done or provide any instructions with respect to how the funds should be used prior to making those transfers.

In order to further determine if the Organization attempted to direct and control the use of funds transferred to KKL, we requested additional information regarding the projects conducted in Israel. In our written request of October 14, 2014, we asked for communications between the Organization, CANISCOM and KKL regarding the discussion, acceptance and achievement of the charitable projects in Israel for 2011 and 2012, including reports of the meetings from CANISCOM sent to the Organization. [REDACTED] provided the CRA only with the minutes of CANISCOM following their meetings held on July 3, 2011 and on June 4, 2012 at the KKL headquarters in Jerusalem, Israel. The minutes provided the following information in relation to the \$9,114,202 of funds transferred to KKL in Israel for 2011 and 2012:

- For the minutes of July 3, 2011:

*A field trip then took place to view some of the new projects being developed in Israel. The visit included the following areas around Jerusalem. The Committee was informed of the background and rationale of each site as well as the progress of each project – Restorers of Jerusalem, Rabin Park, Ramot Forest and Mount Scopus. Explanation was provided concerning the projects undertaken in Canada by donors. Projects are used in order to let the donors know where their dollars are being developed, however the money raised is allocated to pay indigent workers who work on these projects.*

- For the minutes of June 14, 2012:

*[REDACTED] provided some background on the field trip that they were to partake in which included projects in the area of Sederot, a water reservoir, the new forest and of course the new park being established. [REDACTED] pointed out that*

*although JNF sells projects in Canada, the money raised goes to pay the salaries of indigent workers that work on these projects.*

No further details were provided to the CRA regarding the projects mentioned in those minutes. It appears that CANISCOM did not provide the Organization with details regarding the projects conducted such as: the place, the address, the discussions, the informal communications via telephone or email, the plans, decisions regarding the choice of projects, the visits, the photographs, the progress reports, the work in progress, the achievements, the on-site inspections by the Organization's staff members, the receipts for expenses and financial statements or any documents related to these projects that would help us determine that they were, in fact, authorized, controlled and monitored by the Organization.

Despite the fact that the Organization received some documents from CANISCOM and KKL, it does not appear that the Organization has had an active role in carrying out the activities in Israel. Rather, the Organization appears to have given full authority to KKL to use its funds in the accomplishment of KKL's own programs, more specifically to pay the salaries of workers. Therefore, we are of the view that the Organization failed to maintain effective direction and control over the use of its resources such that it can't be determined that all of its resources were devoted to its own charitable activities. In fact, it appears the Organization was merely transferring funds directly to KKL, a non-qualified donee, without direction and control. Gifting resources to support the activities of an organization that is not a qualified donee is a contravention of subsection 149.1(1) of the Act.

Under paragraph 149.1 (2) of the Act, the Minister may revoke the registration of a charity because it has failed, as described at paragraph 168(1)(b), to comply with the requirements of the Act for its registration.

## **2.2 Failure to devote resources to charitable activities**

As previously mentioned, the results of the audit indicated that amounts totaling \$3,818,018 for 2011 and \$5,296,184 for 2012 were transferred by the Organization to KKL in order to employ indigent workers, namely hard-to-hire or unemployable and who are needy immigrants, for the construction of public infrastructure in Israel. The information gathered during the audit suggests that providing employment (by merely paying salaries) to these workers to build infrastructures in Israel is the sole purpose of the Organization. In fact, the audit revealed that the funds transferred by the Organization to KKL were used to pay the salaries of those indigent workers. Following our written requests of October 14, 2014 and of February 13, 2015, [REDACTED] provided the CRA with documents such as: KKL deposits for transfers received from the Organization, the monthly payroll of indigent workers employed, the summary of hours worked for each of the indigent workers, the numbers and project names that indigent workers worked on, the selection criteria, and three evaluation grids of indigent workers.

We would advise that simply paying the salaries of workers is not a charitable purpose in itself, nor does it further any charitable purpose. Also, the courts have not recognized "providing employment" or "helping people find employment" as charitable purposes in and of themselves when the beneficiary group is the general public. However, either providing employment, or helping individuals find employment, could be a charitable activity if it directly furthers one of the following charitable purposes:

- Relieving poverty by relieving unemployment of the poor;
- Advancing education by providing employment-related training; and
- Benefiting the community in a way the law regards as charitable by:
  - Relieving unemployment of individuals who are unemployed or facing a real prospect of imminent unemployment and are shown to need assistance;
  - Relieving conditions associated with disability;
  - Improving socio-economic conditions in areas of social and economic deprivation; and
  - Promoting commerce or industry.

For more information on the subject, please consult CRA Guidance CG-014, *Community Economic Development Activities and Charitable Registration* at <http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/cmtycnmcdivpmt-eng.html>.

Relating the above to the Organization's purported activities in Israel, we have examined whether paying salaries to indigent workers could be considered to be relieving unemployment of individuals who are in need. In order to be recognized as charitable, in this respect, activities considered to relieve unemployment must be aimed toward enhancing an individual's employability, which would generally include some or all of the following:

- Providing employment-related training;
- Providing career counseling;
- Providing assistance with résumés or preparing for job interviews; and
- Establishing lists of available jobs.

The focus must be placed on providing training as opposed to providing an individual with employment or supplying an employer with staff. However, the audit showed that the Organization is solely financing the employment of individuals that are poor and paying their salaries by providing funds to a non-qualified donee. As mentioned above, neither providing employment, nor financing the salaries of such individuals is a charitable endeavour. The only exception would be when operating social businesses for persons with a disability, which has not been established in this case. Furthermore, when the emphasis is on helping employers recruit employees, this does not further a charitable purpose due to the potential delivery of a more than incidental private benefit to the employers. Considering the above, the Organization did not demonstrate that

these activities enhance employability of the workers. Therefore, it would not qualify as relieving unemployment.

We would also advise that even if the programs were designed to comply with the requirement for registration, the Organization failed to show that it was carrying on its own charitable activities. As the documentation submitted during the audit in support of these programs did not allow the CRA to determine that the Organization had ongoing direction and control over the use of funds transferred to KKL and that KKL was clearly acting on its behalf, we are of the view that these programs were not the Organization's own activities. Consequently, it appears that the Organization did not conduct any charitable activities in Israel.

By failing to demonstrate that it devoted all of its resources to its own charitable activities, it appears that there may be grounds for revocation of the Organization's registration under paragraph 168(1)(b) of the Act.

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

In order to comply with the obligations of registration, it is a fundamental requirement that all registered charities maintain proper books and records to enable the CRA to determine whether all its resources are devoted to charitable activities as required by the Act.

Specifically, subsection 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 subsection 230(2), the subsection 230(4) provides that:

"every person required by this section to keep records and books of account shall retain:

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

The audit revealed that the Organization failed to maintain adequate books and records for the activities it purported to carry out in Israel. The meeting minutes provided by

CANISCOM, the Organization's representative in Israel, were only a page long and did not include details regarding the funded programs. Following our requests for additional information during the course of the audit to justify transfers of funds from the Organization to KKL, the Organization provided us with a monthly payroll of indigent workers employed, a summary of hours worked for each of the indigent workers, the numbers and project names that indigent workers worked, the selection criteria and three evaluation grids of indigent workers. However, the audit did not reveal any evidence to show that these payments constituted charitable expenditures by the Organization towards its own programs. The audit findings seem to suggest that these payments were simply unregulated payments to KKL. The Organization failed to request or maintain detailed reports of the use of funds by its agent including reports about the progress of the work conducted in Israel. It failed to provide evidence of its input into the programs, evidence as to how those programs were charitable in nature, segregate books and records, processes and approval to support the reported expenses by KKL. As a result, we are of the view that the Organization did not maintain adequate books and records to substantiate that its resources were devoted to its own charitable programs.

When it comes to expenses incurred in Canada, the audit revealed that the Organization had expense accounts for administrators and employees of \$207,795 for 2011 and \$196,449 for 2012. These expenses represent reimbursement of travel expenses including the cost of accommodation, meals, parking, and other similar expenses for business purposes. The administrators and employees used their personal vehicles to conduct the affairs of the Organization. As such, they provided expense reports for the kilometers traveled for business purposes and were reimbursed by the Organization for these expenses. However, the expense reports did not provide sufficient details to demonstrate the claimed travels were conducted in pursuit of the Organization's charitable purposes. Specially, the reports did not indicate the date of the travel, its purpose in relation to the Organization's objects, the departure address, the destination address, or the total distance traveled, in order to substantiate the claims or amounts paid.

By failing to maintain adequate books and records, we are of the view that there may be grounds to revoke the Organization's registration under paragraph 168(1)(e) 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;
- the application of penalties and/or suspensions provided for in sections 188.1 and/or 188.2 of the *Act*; or
- giving notice of its intention to revoke the registration of the Organization by issuing a notice of intention to revoke in the manner described in subsection 168(1) of the *Act*.

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

If you have any questions or require further information or clarification, please do not hesitate to contact me at the numbers indicated below. My team leader, Mr. Sylvie Côté, may also be reached at (514) 229-5890.

Yours sincerely,



Pierre Thibodeau  
Audit Division  
Montréal District Office

Telephone: (514) 229-0604  
Toll free: 1-888-892-5667 (bilingual)  
Facsimile: (514) 283-8208  
Address: 305 René-Lévesque Blvd. West  
7th floor Section 445-1-3  
Montréal, QC H2Z 1A6

c.c.:



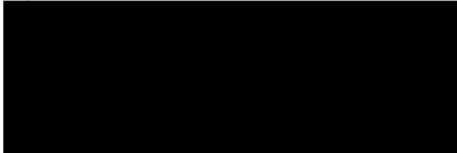


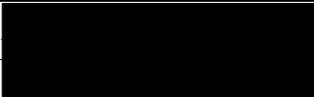
CANADA REVENUE  
AGENCY

AGENCE DU REVENU  
DU CANADA

**REGISTERED MAIL**

Jewish National Fund of Canada  
(Keren Kayemeth Le'Israel) Inc.



Attention 

BN : 107534877RR0001  
File # : 0246231

April 19, 2018

**Subject: Audit of Jewish National Fund of Canada (Keren Kayemeth Le'Israel) Inc.**

Dear 

We are writing further to our letter dated May 12, 2016, (copy enclosed), in which you were invited to submit representations as to why the registration of Jewish National Fund of Canada (Keren Kayemeth Le'Israel) Inc. (the Organization) should not be revoked in accordance with subsection 168(1) of the *Income Tax Act*.

We thank you for your patience in awaiting our response. We have reviewed the representations provided on your behalf  dated September 12, 2016, and it is our position that concerns relating to the Organization's method of operation remain. The issues are detailed below.

As described in our letter, the Canada Revenue Agency (CRA) identified specific areas of non-compliance with the provisions of the *Income Tax Act* and/or its *Regulations* in the following areas:

AREAS OF NON-COMPLIANCE		
	Issue	Reference
1.	Failure to be Constituted for Exclusively Charitable Purposes	149.1(1) and 168(1)(b)

2.	Failure to Devote Resources to Charitable Activities Carried on by the Organization itself: a) Lack of direction and control over the use of resources/resourcing non-qualified donees b) Conduct of non-charitable activities	149.1(1) and 168(1)(b)
3.	Failure to Maintain Adequate Books and Records	149.1(2), 168(1)(e), 230

This letter describes the areas of non-compliance identified by the CRA relating to the legislative and common law requirements that apply to registered charities, and offers the Organization an opportunity to respond and present additional information. The Organization must comply with the law; if it does not, its registered status may be revoked in the manner described in section 168 of the Act.

### General legal principles

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

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

<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(6.1) or (6.2) of the Act relating to political activities, and *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 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. The exception is subsection 149.1(1) which defines charitable purposes/objects as including "the disbursement of funds to qualified donees." The CRA must therefore rely on the common law definition, which sets out four broad categories of charity. The four broad charitable purpose/object categories, also known as the four heads of charity, were outlined by Lord Macnaghten in *Commissioners for Special Purposes of the Income Tax v. Pemsel*, [1891] A.C. 531 (PC) (*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.

Additionally, the courts have held that an organization is not charitable in law if its activities are illegal or contrary to Canadian public policy.<sup>3</sup>

The public benefit requirement involves a two-part test:

- The first part of the test requires the delivery of a **benefit** that is recognizable and capable of being proved, and socially useful. To be recognizable and capable of being proved, a benefit must generally be tangible or objectively measurable. Benefits that are not tangible or objectively measurable must be shown to be valuable or approved by “the common understanding of enlightened opinion for the time being.”<sup>4</sup> In most cases, the benefit should be a necessary and reasonably direct result of how the purpose will be achieved and of the activities that will be conducted to further the purpose, and reasonably achievable in the circumstances.<sup>5</sup> An “assumed prospect or possibility of gain” that is vague, indescribable or uncertain, or incapable of proof, cannot be said to provide a charitable benefit.<sup>6</sup>
- 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:
  - have an eligible beneficiary group that is negligible in size, or restricted based on criteria that are not justified based on the charitable purpose(s); or
  - provide an unacceptable private benefit. Typically, a private benefit is a benefit provided to a person or organization that is not a charitable beneficiary, or to a charitable beneficiary that exceeds the bounds of charity. A private benefit will usually be acceptable if it is incidental, meaning it is necessary, reasonable, and not disproportionate to the resulting public benefit.<sup>7</sup>

<sup>3</sup> Canadian Magen David Adom for Israel v. Canada (Minister of National Revenue) (2002 FCA 323), 2002-09-13 at paragraph 57. See also Everywoman's Health Centre Society (1988) v. Minister of National Revenue, [1992] 2 F.C. 52.

<sup>4</sup> 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>5</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>6</sup> National Anti-Vivisection Society, supra note 4 per Lord Wright at p.49. See also, for example, In re Shaw decd., [1957] 1 WLR 729; and Gilmour, supra note 4 per Lord Simonds at pp. 446-447.

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

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

To comply with the requirement that it devote all of its resources to charitable activities carried on by the organization itself, a registered charity may only use its resources (funds, personnel and/or property) in two ways:

- for its *own charitable activities* - undertaken by the charity itself under its continued supervision, direction and control; and
- for gifting to "qualified donees" as defined in the Act.<sup>9</sup>

A charity's own charitable activities may be carried out by its directors, employees or volunteers, or through intermediaries (a person or non-qualified donee that is separate from the charity, but that the charity works with or through, such as an agent, contractor or partner). If acting through an intermediary, the charity must establish that the activity to be conducted will further its charitable purposes, and that it maintains continued

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<sup>8</sup> *Vancouver Society*, supra note 4 at para. 194. See also *A.Y.S.A. Amateur Youth Soccer Association v. Canada (Revenue Agency)* [2007] 3 S.C.R. 217 at para. 42.

<sup>9</sup> A "qualified donee" means a donee described in subsection 149.1(1) of the Act. As per subsection 149.1(6)(b), a charitable organization shall be considered to be devoting its resources to charitable activities carried on by it to the extent that, in any taxation year, it disburses not more than 50% of its income for that year to qualified donees.

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>10</sup> The charity must be able to show that the terms establish a real, ongoing, active relationship with the intermediary,<sup>11</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.

To summarize, the CRA must be satisfied that the Organization's purposes are exclusively charitable in law, and that its activities directly further charitable purposes in a manner permitted under the Act. In making a determination, we are obliged to take into account all relevant information. Accordingly, the audit inquired into all aspects of the Organization's operations. The fact that some of the areas of non-compliance identified in this letter may, or may not, have been evaluated in preceding audits does not preclude the need for compliance with existing legal requirements. Furthermore, the CRA may take a position that differs from that reached previously based on reconsideration of the pertinent facts and law.<sup>12</sup>

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

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

#### **1. Failure to be constituted for exclusively charitable purposes**

To be registered as a charity under the Act, Canadian law requires that an organization's purposes be exclusively charitable, and define the scope of the activities that can be engaged in by the organization.<sup>13</sup>

To be exclusively charitable in law, a purpose must fall within one or more of the four categories of charity and deliver a charitable public benefit. If a purpose is worded in broad or vague language that could permit non-charitable activities and/or result in the delivery of non-charitable benefits (where, for example, the words used may be

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<sup>10</sup> For more information, see CRA Guidance CG-002, *Canadian Registered Charities Carrying Out Activities Outside Canada* and Guidance CG-004, *Using an Intermediary to Carry Out Activities Within Canada*.

<sup>11</sup> See notably *Canadian Committee for the Tel Aviv Foundation v Canada*, 2002 FCA 72 at para 30, [2002] FCJ no 315 [*Canadian Committee for the Tel Aviv Foundation*], which states as follows: "Under the scheme of the Act, it is open to a charity to conduct its overseas activities either using its own personnel or through an agent. However, it cannot merely be a conduit to funnel donations overseas."

<sup>12</sup> See, for example, *Canadian Magen David Adom for Israel v. Canada (Minister of National Revenue)*, (2002) FCA 323, per Sharlow J.A for the majority at para.69.

<sup>13</sup> See *Vancouver Society of Immigrant and Visible Minority Women v MNR*, [1999] 1 SCR 10 at para 158; *Travel Just v Canada Revenue Agency*, 2006 FCA 343 at para 8, [2007] 1 CTC 294.

interpreted in different ways and/or encompass concepts that go beyond the scope of charity),<sup>14</sup> it will not be clear that it is charitable in law (falls within a charitable purpose category and provides a public benefit), or that it defines the scope of the organization's activities.

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

As stated in our letter dated May 12, 2016, it is our view that the Organization's formal purposes are broad and vague. In its September 12, 2016 response, the Organization agreed that the purposes could be more specific and provided new proposed purposes.

However, based on our review, the Organization has not demonstrated that activities carried out on its behalf furthered its charitable purposes, and that it maintained continued direction and control over activities, and over the use of the resources it provided to its intermediary: Keren Kayemeth Le'Israel's (the KKL-JNF or JNF).

Our review identified that the Organization's resources appear to have been applied to JNF's non-charitable projects in the Occupied Territories, and to supporting the Israeli armed forces, and not to activities furthering its charitable purposes. It is our position that the Organization has operated as a conduit for JNF, a non-qualified donee, in contravention of the Act.<sup>15</sup> Our concerns are described in detail below.

### **Relief of poverty**

To relieve poverty in the charitable sense means providing relief to the poor. The poor are not simply the destitute, but anyone lacking essential amenities (i.e., food, clothing and other basic needs to individuals who are poor) available to the general public.<sup>16</sup> To be charitable, the resulting public benefit must be *recognizable and capable of being proved, and socially useful*. In the case of poverty relief, there must be a logical connection between the benefit and the relief sought. Not all goods, services or other benefits that can be provided relieve poverty in a charitable manner.

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<sup>14</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).

<sup>15</sup> A conduit is an organization that operates as 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, is in contravention of the Act. See subsections 188.1(4) and 188.1(5) of the Act.

<sup>16</sup> *Re Gardom*, [1914] 1 Ch 662. See also *Re Central Employment Bureau for Women and Students' Careers Association Inc.* [1942] 1 All ER 232; and *Re Gillespie*, [1965] VR 402 (S. Ct. of Victoria).

According to the Organization's representations, it devoted all its resources to the relief of poverty by ensuring the employment of indigent workers in Israel who are hard-to-hire or unemployable by paying their salaries to work on projects selected by the Organization.

The Organization stated that the work product of the Indigent Workers (the Selected JNF Projects) is incidental and ancillary to the Organization's purpose to relieve the workers' poverty. The Organization stated that even if the Selected JNF Projects were not themselves charitable in nature, this would not diminish employing indigent workers to relieve poverty as a charitable purpose.

While we agree this activity can further a charitable purpose, we disagree that in the Organization's case, the selected projects are irrelevant insofar as these indicate unstated non-charitable purposes. Based on our review of the Organization's promotional and marketing materials, and its website, it is our position that the projects are its main focus, and the employment of indigent workers serves as a means to an unstated end of broadly supporting the work of JNF. The Organization's website mainly describes the projects of JNF as well as the Organization's fundraising events, rather than focusing on the relief of indigent workers' poverty. For example, the Organization's website states as follows:

*"Since its inception in 1901, the Jewish National Fund has been the sole agency responsible for the development and infrastructure of land in Israel. Our many programs include land reclamation, reforestation, and road building. The goal is to increase support and awareness for JNF's initiatives, and ultimately to raise funds for these projects in order to enhance the lives of the citizens of Israel.*

*The JNF directs 100% of its charitable dollars to support the Land of Israel. Therefore, you can be assured that your donation is going directly to fulfill the needs of one of our many development areas such as water, forestry and environment, education, community development, security, tourism and recreation, and research and development."*<sup>17</sup>

We also note page 75 of the Organization's representations states "The (Organization) made the final decisions over which projects were suitable for support, and the selected projects were a result of its own rigorous process of vetting, designing, supervising and fundraising." The Organization's selection of projects for its support indicates the projects are not unrelated to its support of indigent workers.

Finally, the Organization's focus on supporting JNF's projects in its fundraising and marketing activities can also be identified throughout the Organization's internal communications. For example, an email from [REDACTED] the Organization [REDACTED]

<sup>17</sup> <http://jnf.ca/index.php/about-jnf/vision> (accessed April 12, 2018)

██████ to ██████ the Canada Desk, responsible for the management and operation of the Organization's presence in Israel, dated July 1, 2011 (Exhibit E-5), states as follows: "we are looking for projects between \$500,000 and \$1,000,000 Canadian to present to our Honouree to choose as a Negev Dinner Project. Can you suggest anything for us that might have to do with children or water within that price range that may interest him? I checked on the Marketing website and came up with a few projects, but can use more ideas".

Consequently, it is our position that the Organization's primary focus is not the aiding of beneficiaries but the accomplishment of the projects to which it supplies workers. As described in detail below, it appears that not all projects selected for support are charitable at law.

### Advancement of religion

The leading common law decisions have established that advancing a religion in the charitable sense involves manifesting or promoting its three key attributes (i.e., faith in a 'higher unseen power' such as God, a Supreme Being or Entity, worship/reverence, and a particular and comprehensive system of doctrines and observances), spreading its message about them, and taking positive steps to sustain and increase belief in them.<sup>18</sup>

Religious motivation is not a pertinent consideration, and will not transform a secular activity into one directed toward religious advancement.<sup>19</sup> In the charitable context, to ensure delivery of the required public benefit, methods of advancing religion cannot be so subjective, understated, indirect, unstructured or informal that it cannot be determined that the organization's religion will be reasonably furthered as a sufficiently direct result and consequence.<sup>20</sup> Activities that advance religion cannot be proportionally incidental to non-religious activities; the focus should be on religion.

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<sup>18</sup> *Keren Kayemeth Le Jisroel Ltd. v. Inland Revenue Commissioner*, (1931) XVII T.C. 27 (H.C.J. K.B.), affirmed [1931] 2 K.B. 465 (C.A.), affirmed [1931] 2 K.B. 465 (C.A.): "It seems to me that the promotion of religion means the promotion of the spiritual teaching of the religious body concerned and the maintenance of the spirit of the doctrines and observances upon which it rests or in which it finds expression, if one likes to put it in that way, or at any rate with which it is bound up." (per Rowlatt J. in the first instance at p. 33.), on appeal to the Court of Appeal: "...as to 'religion' I agree with the observations of Rowlatt J. on that head. The promotion of religion means the promotion of spiritual teachings in a wide sense, and the maintenance of the doctrines on which it rests and the observances that serve to promote and manifest it—not merely a foundation or cause to which it can be related. Religion as such finds no place in the Memorandum of the Association." (Emphasis added) (per Lord Hanworth M.R. at p. 477.); *United Grand Lodge v. Holborn BC*, [1957] 1 W.L.R. 1080 (Q.B.): To advance religion means to promote it, to spread the message ever wider among mankind; to take some positive steps to sustain and increase religious belief and these things are done in a variety of ways which may be comprehensively described as pastoral and missionary..." (per Donovan J. at p. 1090.); *Hutterian Brethren Church of Wilson v The Queen*, [1979] 1 F.C. 745, affirmed, [1980] 1 F.C. 757 (F.C.A.) (*Hutterian Brethren*): "The business of farming is neither a religious nor a charitable activity; it is a commercial activity. And this is so even if that business is carried on by persons believing farming to be the only activity compatible with a truly religious life . . ." (per Pratte J. at p. 759.)

<sup>19</sup> See, for example, *Keren Kayemeth*, supra note 6 (per Lawrence L.J. at p. 484); *Hutterian Brethren*, supra note 7 (per Pratte J. at p. 759, and per Ryan J. at p. 766); *Oldham*, supra note 5 (per Lightman J. at pp. 554-555).

<sup>20</sup> See, for example, *National Deposit Friendly Society Trustees v Skegness UDC*, [1959] AC 293 (H.L.) (per Lord Denning at p. 322) (*National Deposit Friendly Society*); *In Re Pinion*, [1964] 1 All E.R. 890, where the court refused to

The Organization asserts that the selected projects are charitable themselves, as they further the advancement of religion because of the Organization's religious underpinnings, however, it is the CRA's position that the Organization's activities do not advance religion in the charitable sense.

## Summary

In summary, it is our position that the Organization is not constituted for exclusively charitable purposes, based on its devotion of resources to a non-qualified donee and activities that do not appear to be exclusively charitable in nature, and in furtherance of exclusively charitable purposes. In particular, it is our view that the Organization's activities do not further purposes to relieve poverty and advance religion in the charitable sense.

Consequently, it is our position that the Organization has failed to meet the requirements of subsection 149.1(1) of the Act that it be constituted for exclusively charitable purposes, and devote its resources to charitable activities it carries on itself.

For this reason, there may be grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

Accordingly, we will not comment on the Organization's proposed changes to its formal purposes at this time.

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

### a) Lack of direction and control over the use of resources/resourcing non-qualified donees

The Organization has stated its activities were mainly conducted through an intermediary, Keren Kayemeth Le'Israel (the KKL-JNF or JNF), under the Organization's direction and control. The Organization stated that, through JNF, it devoted all its resources to the relief of poverty by ensuring the employment of indigent workers in Israel who were hard-to-hire or unemployable by paying their salaries to work on projects selected by the Organization. However, our audit determined that the

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hold charitable a bequest to a museum of the testator's paintings, which may otherwise be charitable as educational, as they had no artistic merit and were thus neither educational nor of public utility; *Fuaran Foundation v. C.C.R.A.*, (2004) F.C.A. 181 (*Fuaran Foundation*), (per Sexton J.A. at paras. 7, 13, 14, 15); *House of Holy God*, supra note 7; *Hutterian Brethren*, supra note 6. See also CRA *Guidelines on Meeting the Public Benefit Test*, CPS-024, March 10, 2006 at para 3.1.1

information and documentation provided by the Organization did not substantiate this position.

For example, while the Organization stated it maintained direction and control over the payments of indigent workers, the documents it submitted to us did not adequately support this claim. We note that documents provided, such as the monthly expenditure reports for fiscal years 2011 and 2012 (Exhibits H-8 and 9), were requested from the JNF in response to our query, suggesting the Organization did not regularly oversee these expenditures. These included, for example, an email - Subject title: Monthly Payroll – CRA Query (Exhibit H-1), which read in part as follows:

*"I have a detailed list of all the field workers with their gross and net pay for 2011 and 2012. I have also attached the documents relating to the CRA query re KKL (JNF) Payroll".*

*"At month-end the Salary computer system generates a detailed list of workers and their net pay together with their bank details".*

Also, because the monthly expenditure reports were provided in Hebrew, we could not verify the Organization's level of oversight concerning the following details, which were not otherwise provided to us:

- which projects the indigent workers were assigned to;
- whether projects themselves furthered the Organization's charitable purposes;
- what type of work the workers provided;
- the geographic location of each project; and
- the status of each project.

No documentation was provided to show that the Organization had the authority to approve, amend, or reject the proposed staffing requirements and salaries of indigent workers. Further, no documentation was provided to show that the Organization had assessed potential indigent workers against a set of defined criteria it had itself established, and how it determined particular workers were eligible beneficiaries of its charitable relief.

We also note JNF characterizes the Organization as a 'donating country' rather than a body controlling specified activities JNF carries out on its behalf, which suggests the Organization may be resourcing JNF's projects, rather than its own. For example, the 2016 KKL-JNF Joint Achievements Report - Adopted Projects<sup>21</sup> reads in part as follows:

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<sup>21</sup> <https://hanof.kkl.org.il/KKLProjectPool/ProjectPool/DonatedProjects.aspx?WebIndex=5> (accessed April 18, 2018)

*"The report is presented according to Israel's three regions and forty-five donating countries and includes project type and specific location. In addition, each project's stage of development and donation status is indicated".*

In addition, the 2016 JNF Canada Staff Mission document states, "We are honored to host you on a tour of KKL-JNF projects in Israel, many of which have been made possible through the generous support of friends in Canada."<sup>22</sup>

It continues: "In addition to information on the sites and projects visited, you will find information on projects that are available for donation as well as those specifically offered to Canada for promotion." Several pages of the document list "projects available for donation," which include a detailed description of the projects as well as the donation required by KKL-JNF offices abroad for KKL-JNF to carry the project out.

Moreover, based on JNF's previous website, under KKL-JNF promotional newsletters "Hot Issues" projects were listed as "available for donation".<sup>23</sup>

We also reviewed a page from JNF UK's website entitled "Relationship between JNF UK and KKL (JNF),"<sup>24</sup> which described how the structure of its relationship with the JNF was unable to validate the JNF UK's direction and control over JNF's use of its funds. The page reads in part as follows:

*"JNF UK and KKL (JNF) have a similar history. However, JNF UK has always been independent of KKL.*

*Originally, the trustees of JNF UK decided that the appropriate way to fulfil its objects was to remit funds to KKL to support charitable projects of KKL. Historically, JNF UK's relationship with KKL was governed by a series of trust deeds which set out how KKL was to use JNF UK's money.*

*The relationship between JNF UK and KKL broke down in 1999. **The main issue was that KKL wanted JNF UK to recognise that it was a branch of KKL and to recognise its supremacy over JNF UK; JNF UK refused to acquiesce.** In order to attempt to move on from this argument, on 9 June 1999 the parties reached an agreement which acknowledged that JNF UK was an independent UK charity.*

***In March/April 2005, JNF UK stopped sending funds to KKL; it had lost confidence in KKL's ability or willingness to apply JNF UK's funds as***

<sup>22</sup> [http://www.kkl-jnf.org/files/News archive/March16/JNF-canada-mission/proof\\_Canada-Mission-2016.pdf](http://www.kkl-jnf.org/files/News%20archive/March16/JNF-canada-mission/proof_Canada-Mission-2016.pdf) (accessed April 5, 2018)

<sup>23</sup> <http://hanof.kkl.org.il/utilities/HotIssuesciviliansFront-may2016.html> (accessed November 2, 2017)

<sup>24</sup> <https://www.jnf.co.uk/relationship-jnf-uk-kl/> (accessed April 12, 2018)

***directed by JNF UK. On 17 October 2005, KKL purported to terminate the Memorandum of Understanding. Lengthy litigation followed, which was settled with a re-affirmation of JNF UK's independence.*** (emphasis added)

*Today, KKL is one organisation among many in Israel invited by JNF UK to submit project proposals which are assessed in the same way as all other project proposals."*

In particular, we note the statement that JNF/KKL wanted JNF UK to recognize it as a *branch* of JNF/KKL and to recognize its *supremacy* over JNF UK, and we note JNF UK's statement that it had lost confidence in JNF/KKL's ability or willingness to apply JNF UK's funds as directed by JNF UK. In this regard, we are concerned that the Organization may not have the ability to maintain direction and control over its resources and over the conduct of its activities, as JNF UK claims was the case in its own relationship with JNF/KKL.

While the Organization has stated that it is independent of JNF, and involved in water, environmental, and development projects in the Middle East, we were unable to distinguish between the activities of the Organization and those of JNF. In its literature, the Organization referred to itself and to its projects as being carried out by "JNF," and on the Organization's website and twitter account, it described itself in an identical manner to JNF:

*"The Jewish National Fund is the caretaker of the land of Israel, on behalf of its owners – Jewish people everywhere."<sup>25</sup>*

Our concerns regarding the Organization's ability to maintain ongoing direction and control over the use of its resources are further substantiated by the following factors:

#### Agency Agreement

As mentioned above, the Organization stated it carried out its activities in Israel through JNF. The Organization has submitted an unexecuted general agency agreement establishing the parameters of the agency relationship and providing for the conduct of charitable projects, which are not clearly specified. It is our understanding the specific charitable projects to be undertaken would be the subject of written schedules conforming with Schedule 1, attached to the agreement, however, no specific project schedules were annexed to the general agency agreement provided to us. While the Organization's representations provided a brief description of the projects it is undertaking or will undertake (Schedules A & B), specific details are lacking.

#### Budget

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<sup>25</sup> <https://twitter.com/jnfca> (accessed April 5, 2018)

The Organization stated its Board approved its annual budget and any expenses exceeding the annual budget, as per its by-laws. However, no annual budgets and no supporting documentation substantiating related Board approvals were provided to us.

#### Monitoring and Supervision

The Organization's representations stated members of its senior management regularly went to Israel to examine potential and on-going project sites. The related supporting documentation provided to us included a list of senior staff attending Israel trips, flight receipts, and emails confirming flights. No documentation was provided demonstrating the Organization's senior management conducted any on-site inspections of project sites, or otherwise exercised oversight concerning JNF's use of its funds in Israel. Further, no written reports of the trips from senior management to the Organization were provided to us.

The Organization has stated that Canada Desk, which was responsible for the management and operation of the Organization's presence in Israel, provided progress updates on the Organization's progress and requested funds to pay the indigent workers. As supporting documentation, the Organization provided three emails (Exhibits F(8) – F(10)), stating it had remitted specific amounts as per the attached schedules. We note the schedules were limited to listing projects and amounts remitted. No other information was provided to allow us to verify, for example, whether amounts were provided in installments based on satisfactory performance; the status/stage of the projects; the geographic location of each project; and whether the Organization's resources were applied to the projects in accordance with instructions provided by the Organization.

Further, at page 26 of the Organization's representations, the Organization stated that before releasing the funds for use to pay the indigent workers employed on a selected project, JNF was required to provide a progress report to the Organization. As supporting documentation, the Organization provided a sample email (Exhibit E(1)) from ██████████ - the Canada Desk to ██████████ stating that ██████████ had received initial plans for the ALUT Beer Sheva Stage 11 landscaping and attached the plan. ██████████ asked that the directors look at it and let her know what they thought. No documentation was provided to substantiate that the Organization actually approved the project/initial plans. Finally, no progress report was provided to us during our audit review.

#### Sub-contractors

The Organization's representations stated that JNF solicited tenders from contractors, signed the contract on behalf of the Organization, and kept in communication with the selected contractor throughout the process. The contractors who employed the indigent

workers paid them with the Organization's funds. No documentation was provided to substantiate that the Organization maintained direction and control over the use of the funds it transferred to JNF for these contractors.

b) Conduct of non-charitable activities

In our opinion, even should the Organization be able to establish the activities conducted through JNF in the course of the selected projects to be its own, not all projects are charitable in law.

**Conducting projects in the Occupied Territories**

The courts have held that an organization is not charitable in law if its activities are contrary to public policy. An activity cannot be held to be contrary to public policy unless there is a definite and officially declared and implemented policy (that is, found in an Act of Parliament, a regulation or other publicly available government document of any kind).<sup>26</sup>

That said, Global Affairs Canada has declared and implemented a policy entitled "*Canadian Policy on Key Issues in the Israeli-Palestinian Conflict*"<sup>27</sup>. In part, it reads as follows:

**"Canada's policy on Occupied Territories and Settlements**

Canada does not recognize permanent Israeli control over territories occupied in 1967 (the Golan Heights, the West Bank, East Jerusalem and the Gaza Strip). The Fourth Geneva Convention applies in the occupied territories and establishes Israel's obligations as an occupying power, in particular with respect to the humane treatment of the inhabitants of the occupied territories. As referred to in UN Security Council Resolutions 446 and 465, Israeli settlements in the occupied territories are a violation of the Fourth Geneva Convention. The settlements also constitute a serious obstacle to achieving a comprehensive, just and lasting peace.

Canada believes that both Israel and the Palestinian Authority must fully respect international human rights and humanitarian law which is key to ensuring the

<sup>26</sup> See CRA Summary Policy CSP-P13 *Public policy*.

<sup>27</sup> [http://www.international.gc.ca/name-anmo/peace\\_process-processus\\_paix/canadian\\_policy-politique\\_canadienne.aspx?lang=eng](http://www.international.gc.ca/name-anmo/peace_process-processus_paix/canadian_policy-politique_canadienne.aspx?lang=eng)

protection of civilians, and can contribute to the creation of a climate conducive to achieving a just, lasting and comprehensive peace settlement.

### **United Nations Resolutions on the Middle East**

Every year, resolutions addressing the Arab-Israeli conflict are tabled in the United Nations, such as at the United Nations General Assembly and the Human Rights Council. Canada assesses each resolution on its merits and consistency with our principles. We support resolutions that are consistent with Canadian policy on the Middle East, are rooted in international law, reflect current dynamics, contribute to the goal of a negotiated two-state solution to the Arab-Israeli conflict, and address fairly and constructively the obligations and responsibilities of all parties to the conflict. Canada advocates a fair-minded approach and rejects one-sided resolutions and any politicization of the issues. Successive Canadian governments have been concerned about the polemical and repetitive nature of many of the numerous resolutions. Canada believes that the United Nations and its member states have a responsibility to contribute constructively to efforts to resolve the Israeli-Arab conflict. Canada will continue to examine carefully each of these resolutions as they come forward."

### **The Barrier**

Canada recognizes Israel's right to protect its citizens from terrorist attacks, including through the restriction of access to its territory, and by building a barrier on its own territory for security purposes. However, Canada opposes Israel's construction of the barrier inside the West Bank and East Jerusalem which are occupied territories. This construction is contrary to international law under the Fourth Geneva Convention. Canada not only opposes Israel's construction of a barrier extending into the occupied territories, but also expropriations and the demolition of houses and economic infrastructure carried out for this purpose."

### **International Law**

#### *I. International Court of Justice (ICJ) the principal judicial organ of the United Nations*

The Court's role is to settle, in accordance with international law, legal disputes submitted to it by States and to give advisory opinions on legal questions referred to it by authorized United Nations organs and specialized agencies. The Court is composed of 15 judges, who are elected for terms of office of nine years by the United Nations General Assembly and the Security Council.

On July 9, 2004, the Court rendered its Advisory Opinion in the case concerning the "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory" (request for advisory opinion).

The Court observed that certain humanitarian law and human rights instruments includes qualifying clauses or provisions for derogation which may be invoked by States parties, *inter alia* where military exigencies or the needs of national security or public order so require. It stated that it was not convinced that the specific course Israel had chosen for the wall was necessary to attain its security objectives and, holding that none of such clauses are applicable, found that the construction of the wall constituted breaches by Israel of various of its obligations under the applicable international humanitarian law and human rights instruments.

In conclusion, the Court considered that Israel could not rely on a right of self-defense or on a state of necessity in order to preclude the wrongfulness of the construction of the wall. The Court accordingly found that the construction of the wall and its associated régime are contrary to international law and called on Israel to cease construction of the Barrier 'including in and around East Jerusalem'; dismantle the sections already completed; and 'repeal or render ineffective forthwith all legislative and regulatory acts relating thereto.

Moreover, the U.N. Security Council Resolution 2334 adopted by the Security Council at its 7853rd meeting, on 23 December 2016, reaffirmed its relevant resolutions, including resolutions 446 (1979), and 465 (1980) which Canada supports. Resolution 2334 "reaffirms that the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace."

The Fourth Geneva Convention also establishes Israel's obligations as an occupying power, in particular Article 49 which provides that the "Occupying Power shall not deport or transfer part of its own civilian population into the territory it occupies". Canada has also ratified the 1977 Protocols to the Geneva Convention. Article 85 of Protocol 1 makes "the transfer by the Occupying Power of parts of its own civilian population into the territory it occupies" a grave breach of that Protocol.

Finally, Israel's confiscation of land, water and other resources for the benefit of settlements violates the Hague Convention on the Laws and Customs of War on Land, signed on 18 October 1907, which prohibits an occupying power from expropriating the resources of an occupied territory for its own benefit.

It is our understanding that during the audit period the following project selected by the Organization was and is still being conducted in the Occupied Territories:

Canada Park – the Organization’s flagship project

The Organization raised \$15 million after the 1967 war to build Canada Park (now referred to by the JNF as *Ayalon – Canada Park*), a 3200 hectares park between Jerusalem and Tel Aviv, within the Occupied Palestinian Territories. Three Palestinian villages (Beit-Nuba, Emmaus and Yalou) were demolished to make way for the park. In 2007, the Organization launched a \$7 million campaign to refurbish the park.

A 1986 UN Special Committee reported to the UN Secretary-General that the villagers were being denied their right of return to their land now occupied by this park built by the Organization. In part, the report read:

*“In preparing its report the Special Committee has attempted to put before you the complete picture of the reality in the Occupied Territories as it affects the human rights of the civilian population. By this letter, the Special Committee wishes to draw your attention to a number of aspects that deserve a particular mention.*

*As may be seen from the information reflected in the report, the policy of annexation and settlement has continued to be implemented by the Israeli authorities. The Special Committee is deeply concerned by the fate of civilians evicted from their native land. One particular illustration of this situation is the fate of the inhabitants of Emmaus, Beit-Nuba and Yalou, reduced to the state of wandering refugees since their villages were razed by the occupying authorities in 1967. The Special Committee considers it a matter of deep concern that these Villagers have persistently been denied the right to return to their land on which Canada Park has been built by the Jewish National Fund of Canada and where the Israeli authorities are reportedly planning to plant a forest instead of allowing the reconstruction of the destroyed villages.”<sup>28</sup>*

Although outside the audit period, the following additional projects, while not an exhaustive list, also support our finding that the Organization conducted activities in the Occupied Territories:

1) Jordan Park – Geographic location: Golan Heights

Based on JNF’s website, Jordan Park extends over an area of around 1,000 dunam (approx. 250 acres) to the northeast of the Kinneret (Sea of Galilee), adjacent to the eastern channel of the Jordan River.

<sup>28</sup><https://unispal.un.org/DPA/DP/UNISPAL.nsf/9a798adb322aff38525617b006d88d7/d2d88498a4bf12d2052566db004e5998?OpenDocument>

It was rehabilitated and developed thanks to a contribution from friends of KKL-JNF worldwide, including Canada.<sup>29</sup>

## 2) Naftali Mountains Forest in the Golan Heights

Based on JNF's website, the Naftali Mountains Forest grows along the Ramim Ridge in the west of the Galilee Panhandle. These hills soar to a height of over 800 meters, and the ridge's peaks offer a magnificent view of upper-northern Israel, including the Hula Valley, the Golan Heights, Mount Hermon and southern Lebanon. It was rehabilitated and developed thanks to contributions from friends of KKL-JNF worldwide, including Canada.<sup>30</sup>

## 3) Alexander River Restoration Project

Based on the Organization's previous website, proceeds from the 2010 Negev Gala were invested into the Alexander River Restoration Project. The project involved recycling of sewage water for agricultural purposes, the building of wetland, the restoration and greening of a once dying waterway – the Alexander Zaymar River<sup>31</sup>. The river flows from the West Bank city of Nablus through Israel.

## 4) Jerusalem, The Western Wall Tunnels, Upgrade and Improve the Great Hall Area (Project No. 13107)

Based on the 2016 KKL-JNF Friends in Israel and Worldwide, KKL-JNF Joint Achievements Reports, Adopted Projects,<sup>32</sup> the Organization contributed funds to help the Western Wall Heritage Foundation upgrade and improve the Great Hall area of the Western Wall Tunnels. Visitors will be able to watch the Temple Mount's topographical changes through history come alive through a model adjacent to a section of the exposed, underground wall. Based on a Google Maps search, the Western Wall is located close to Bethlehem, a city in the West Bank.

## 5) Mount Scopus (East Jerusalem)

The Organization lists Mount Scopus as one of its projects on its previous website:

*“As part of the “Redeemers of Jerusalem” program the Jewish National Fund of Canada will help meet the extraordinary challenge of Mount Scopus. Trees were planted along the slopes which is now a budding forest, a nature path was*

<sup>29</sup> <http://www.kkl-jnf.org/tourism-and-recreation/forests-and-parks/jordan-park.aspx> (accessed April 4, 2018)

<sup>30</sup> <http://www.kkl-jnf.org/tourism-and-recreation/forests-and-parks/naftal-mountains-forest.aspx> (accessed April 4, 2018)

<sup>31</sup> <http://www.jnf.ca/projects1-nav.html> (accessed July 16, 2014)

<sup>32</sup> <http://hanof.kkl.org.il/KKLProjectPool/ProjectPoolDonatedProjects.aspx?WebIdx=5> (accessed July 24, 2017)

*mapped out and a scenic observation plaza was built with a view of the Jerusalem skyline.”<sup>33</sup>*

An April 2003 issue of *The Hamilton Jewish News* has an ad for the annual JNF Hamilton fundraising gala (Negev Dinner), which states that:

*“Proceeds from the 2003 Hamilton Negev Dinner will go toward The Greening of Mount Scopus. One of the most beautiful sites within Jerusalem, with its peak soaring to 2,736 feet, Mount Scopus is located on the northernmost part of the ridge of the Mount of Olives. The afforestation of the once barren Mount Scopus hillside has been an integral part of Jewish National Fund of Canada’s programs, one of which is to create a series of forests and parklands surrounding Jerusalem.”<sup>34</sup>*

#### 6) Givat Oz HaGaon Settlement

Based on JNF’s website, in 2014 a young leadership solidarity mission from Toronto with fifteen participants, came to Israel to do four days of volunteer work. They cleared the area of the grounds that was used towards building a “security house” at Givat Oz HaGaon.<sup>35</sup> This location is in the Israeli-occupied West Bank.

Further, a post made to the Organization’s Facebook page from August 31, 2014, entitled “Day 2 of our young solidarity mission to Israel,” reads as follows:

*“We began our day at Givat Oz HaGaon. A place in Gush Etzion established to perpetuate the memory of the three teens (Eyal, Gilad & Naftali) who were killed by Hamas leading to the war in Gaza. We were met by a lady, Nadia, who explained the purpose of the site and what the goals were. She set us up for some hard labour which was going to take place later on. Before we left Givat Oz, they put us to work doing the same kind of infrastructure work JNF does. We cleared an area so that they could put up a structure to house [sic] for a security office. Everyone pitched in and really took their roles seriously. We made a great team!!!”*

#### 7) Avnei Eitan Settlement in the Golan Heights

Based on JNF’s website, this project was featured in 2015. KKL-JNF prepared 530 dunam (132.5 acres) of farmland for use by residents of this Golan community to enable them to develop local agriculture and absorb newcomers. This project, was made

<sup>33</sup> <http://www.jnf.ca/projects1-nav.html> (accessed July 16, 2014)

<sup>34</sup> <https://cdn.fedweb.org/fed-18/2/HJNApril2003.pdf?v=1395333157> (accessed April 12, 2018)

<sup>35</sup> <http://www.kkl-jnf.org/about-kl-jnf/green-israel-news/august-2014/canada-jewish-young-leadership-solidarity-israel/> (accessed April 12, 2018)

possible thanks to a generous donation from [REDACTED]

<sup>36</sup>

Further "The 2015 KKL-JNF Joint Achievement Report – Adopted Projects" document reads in part:

*"KKL-JNF and JNF Canada are planning the development of a playground at Avnei Eitan, which now includes children who moved to the community from Gush Katif following the disengagement from Gaza. Development elements for this important community project will include earthworks and debris removal, infrastructure, rubber safety surfacing, play structures, benches and shade elements. (No.11319)"*

It is our position that establishing and maintaining physical and social infrastructure elements and providing assistance to Israeli settlements in the Occupied Territories serves to encourage and enhance the permanency of the infrastructure and settlements, and appears to be contrary to Canada's public policy and international law on this issue.

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

The courts have stated that some activities may not be charitable when carried on in a different country. For example, increasing the effectiveness and efficiency of Canada's armed forces is charitable, but supporting the armed forces of another country is not.

The following projects, while not an exhaustive list, support our finding that the Organization's resources were used to conduct activities in support of the Israel Defense Forces (IDF):

1) Sde Boker – Gadna Base – Outdoor Fitness Area (Project No.8323)

Based on JNF's previous website, the Organization contributed funds in 2015. The implementation status is "in progress". The Gadna is a special program that prepares young Israelis for their service in the IDF. Almost all Israeli high school students participate in one week of Gadna activity before joining the army. KKL-JNF and the Organization are creating an outdoor gathering and fitness area at the Gadna base at Sde Boker for the regular army staff.<sup>37</sup>

2) Tse'elim IDF Base – Landscaping (Project No.11537)

<sup>36</sup> <http://www.kkl-jnf.org/people-and-environment/kkl-jnf-projects-partners/dfu-2015/avnei-eitan-dfu/> (accessed April 12, 2018)

<sup>37</sup> <http://hanof.kkl.org.il/KKLProjectPool/ProjectPool/ProjectPage.aspx?ProjectID=8323> (accessed July 21, 2017)

Based on JNF's previous website, the Organization contributed funds in 2015. The implementation status is "in progress". KKL-JNF and the Organization are developing three areas of Negev's extensive Tse'elim army base. JNF advised donors that "by contributing to the landscape development project at the Tse'elim IDF base in the Negev you will become part of the special relationship that KKL-JNF has with the Israel Defense Forces."<sup>38</sup>

3) Tel Nof Air Force Base (Project No.13425)

Based on JNF's previous website, the Organization contributed funds in 2015. The implementation status is "detailed planning". The Tel Nof Air Force Base is a highly important military branch dedicated to defending the state of Israel. KKL-JNF and the Organization, in cooperation with the IDF, are planning recreation projects that focus on children and youth, located close to the homes of the air force staff. A donation to this project goes towards establishing and improving recreation areas for the children of families who live on an air force base.<sup>39</sup>

Further, according to the 2016 JNF Canada Staff Mission Tour document, the Organization made donations to three projects at the Tel Nof Air Force Base that included the Flight Squadron 133, Flight Squadron 210 and four play areas for the families' children.<sup>40</sup>

4) Palmachim Air Force Base (Project No. 14111)

Based on JNF's previous website, the Organization contributed funds in 2016 to the quality of life for the crew of the 124th Squadron, a helicopter squadron based at the Palmachim Airbase, located near Rishon LeZion. The project involved creating a suitable moadon (meeting place) that served as a place where crew can relax and refuel.<sup>41</sup>

5) Nevatim Air Force Base (Project No: 14112)

Based on JNF's previous website, the Organization contributed funds in 2016 to repair the club (moadon) facilities and kitchenette of the 131 Squadron - The Yellow Bird - at the Nevatim Airbase. The refurbished club provided the crew with a seating area, TV, fully equipped kitchen and dining area.<sup>42</sup>

<sup>38</sup> <http://hanof.kkl.org.il/KKLProjectPool/ProjectPoolProjectPage.aspx?ProjectID=11537> (accessed July 21, 2017)

<sup>39</sup> <http://hanof.kkl.org.il/KKLProjectPool/ProjectPoolProjectPage.aspx?ProjectID=13425> (accessed July 21, 2017)

<sup>40</sup> [http://www.kkl-jnf.org/files/News archive/March16/JNF-canada-mission/proof\\_Canada-Mission-2016.pdf](http://www.kkl-jnf.org/files/News%20archive/March16/JNF-canada-mission/proof_Canada-Mission-2016.pdf) (accessed April 5, 2018)

<sup>41</sup> [Hanof.kkl.org.il/KKLProjectPool/ProjectPoolDonatedProjects.aspx?WebIndex=5](http://Hanof.kkl.org.il/KKLProjectPool/ProjectPoolDonatedProjects.aspx?WebIndex=5) (accessed October 15, 2017)

<sup>42</sup> *ibid*

6) Hatserim Air Force Base (Project No. 14012)

Based on JNF's previous website, the Organization contributed funds in 2016 for a relaxation area for the benefit of the pilots and staff at the Hatserim Air Force Base in the Negev. Improving quality of life for air force personnel who, because of their work, live on the base with their families, is crucial for their personal well-being and that of their families, in addition to contributing to the performance of the pilot team.<sup>43</sup>

7) Bat Galim Naval Base (Project No. 14066)

Based on JNF's previous website, the Organization contributed funds in 2016 to help develop the training complex at the Bat Galim Naval Base. The project included installing pergolas, upgrading the paved plaza; removing unsightly, exposed pipes; installing planters and tables; dismantling and flooring; installing KKL-JNF benches and tables; and a donor recognition pillar.<sup>44</sup>

8) Haifa – Bat Galim Naval (Project No. 14070)

Based on JNF's previous website, the Organization contributed funds in 2016 to help facilitate the upgrade of the existing auditorium for soldier intake, training and conferences at the Bat Galim Naval Base. The facility, holds some 150 soldiers, including a stage and screening room.<sup>45</sup>

9) Sports Facility in Kiryat Shemona

According to JNF's website, in 2013 the Balaban family, and friends of KKL-JNF from Canada, contributed towards building a multipurpose sports and fitness facility at the Kiryat Shemona Hesder Yeshiva and participated in the cornerstone ceremony. The members of the Balaban family told the audience the facility was intended to support service in the IDF as follows: "...It is an honor for us that students here in select units of the IDF, serving the community and studying Torah, will be able to play and exercise in this court. The installation of the sports facility would not just be for fun but for sports and physical fitness for their service in the IDF".<sup>46</sup>

## Summary

While the Organization stated it maintained direction and control over the resources used to support indigent workers, we were not provided with sufficient documentation to

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<sup>43</sup> <https://hanof.kkl.org.il/KKLProjectPool/ProjectPoolDonatedProjects.aspx?WebIndex=5> (accessed April 18, 2018)

<sup>44</sup> Ibid

<sup>45</sup> Ibid

<sup>46</sup> <http://www.kkl-jnf.org/about-kl-jnf/kl-jnf-in-public-discourse/in-the-press/july-sept-2013/kyriat-shmona-canada-sport/> (accessed April 10, 2018)

support this position. Further, the Organization's representations did not demonstrate it maintained continued direction and control over its activities, and over the JNF's use of its resources, and that its activities furthered its charitable purposes.

In summary, it is our position that the Organization did not devote its resources to charitable activities carried on by the Organization itself, based on its:

- a) Lack of direction and control over the use of resources/resourcing non-qualified donees; and
- b) Conduct of non-charitable activities

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

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

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

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

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

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

therein, until the expiration of six years from the end of the last taxation year to which the records and books of account relate.”

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

- i. it is the responsibility of the registered charity to prove that its charitable status should not be revoked;<sup>47</sup>
- ii. a registered charity must maintain, and make available to the CRA *at the time of an audit*, meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required documentation and records subsequent thereto;<sup>48</sup> and
- iii. the failure to maintain proper books, records, and records of account in accordance with the requirements of the Act is itself sufficient reason to revoke an organization's charitable status in the case of material or repeated non-compliance.<sup>49</sup>

The audit identified that the Organization did not maintain adequate books and records in accordance with the Act. The following inadequacies were identified:

- The Organization did not meet the requirements of the Act at paragraph 230(2), which states that information must be kept “in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under this Act.” Although certain documents' titles had been translated to English, the body of the text was in Hebrew and details were limited to names of projects, and the Organization's statement that workers were paid. As such, we were unable to verify the projects, and other details relating to whether the Organization's resources were devoted to its own charitable activities by JNF.
- Where its intermediary disbursed its funds, the Organization is required to support those expenses with source documentation. For example, if JNF used the Organization's funds to pay indigent workers, the Organization was required to support such payments with source documentation. The listing of wages paid to the workers that was provided to us is not sufficient documentation to support the Organization's related expenses. Additional books and records of support, such as cancelled cheques, bank accounts (to reconcile the wages paid to the withdrawals from the bank), or government supplementary slips (similar to a

<sup>47</sup> See *Canadian Committee for the Tel Aviv Foundation*, 2002 FCA 72 at paras 26-27, [2002] 2 CTC 93.

<sup>48</sup> *Canadian Committee for the Tel Aviv Foundation*, 2002 FCA 72 at para 39, [2002] 2 CTC 93.

<sup>49</sup> See *Prescient Foundation v MNR*, 2013 FCA 120 at para 51, [2013] FCJ no 512.

Canadian T4 document) are required. Without any documentation supporting the flow of funds from JNF to the workers, it appears funds were transferred to JNF without any verification of how the Organization's funds were disbursed.

- The agency agreement and supporting documentation provided did not establish that the Organization's activities were effectively authorized, controlled and monitored by the Organization.
- The expense reports submitted under Exhibit D-11 of the Organization's representations listed the following expenses: travel, hotel, meals, gas, telephone, mileage, miscellaneous and entertainment, which were charged to the Organization. No supporting documentation was provided to verify that these expenses were related to the conduct of charitable activities.

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

Under paragraph 168(1)(e) of the Act, the registration of a charity may be revoked if it fails to comply with or contravenes subsection 230(2) of the Act dealing with books and records. It is our position that the present case consists of material non-compliance. For this reason, it appears to us that there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(e) of the Act.

#### The Organization's options:

##### a) No response

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

##### b) Response

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

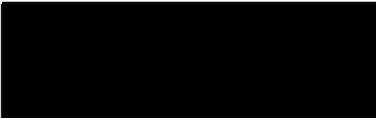
- no compliance action;

- 26 -

- issuing an educational letter;
- resolving the issues through a Compliance Agreement;
- applying penalties or suspensions or both, as described in sections 188.1 and 188.2 of the Act; or
- issuing a notice of intention to revoke the registration of the Organization in the manner described in subsection 168(1) of the Act.

If you have any questions or require further information or clarification, please do not hesitate to contact me at the numbers indicated below. My manager, Jennifer Fraser, may also be reached at 613-670-9504.

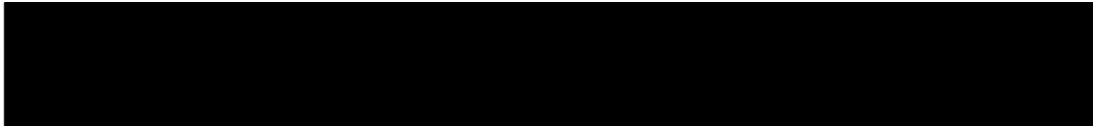
Yours sincerely,



Sandra Burke  
Operations and Policy Support  
Compliance Division  
Charities Directorate

Telephone: 613-670-9498  
Toll Free: 1-800-267-2384  
Facsimile: 613-946-6484  
Address: Ottawa, ON K1A 0L5

C.C.:

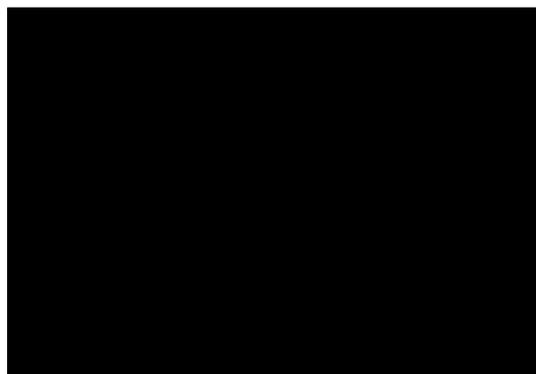


September 12, 2016

Pierre Thibodeau

Audit Division, Montréal District Office

305 René-Lévesque Blvd. West  
7th Floor Section 445-1-3  
Montréal, QC H2Z 1A6



Dear Mr. Thibodeau:

Re: Response to Audit of the Jewish National Fund of Canada (Keren Kayemeth Le'Israel) Inc.

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This letter responds to the audit letter (the "**Audit Letter**"), dated May 12, 2016, from the Canada Revenue Agency (the "**CRA**") to the Jewish National Fund of Canada (Keren Kayemeth Le'Israel) Inc. ("**JNF**" or the "**Charity**"). The Audit Letter addresses the activities of the Charity from January 1, 2011 to December 31, 2012 (the "**Audit Years**").

This letter is divided into the following parts:

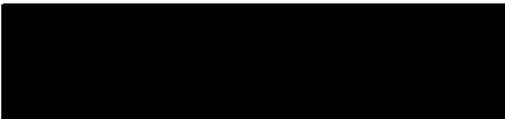
- I. Summary of Submissions
- II. Background
- III. Law of Charitable Purpose and Activities Relevant to the Charity
- IV. Law of Direction and Control Relevant to the Charity
- V. Detailed Response – Submissions in Response to the Audit Letter
- VI. Concluding Submissions



Attached to this letter are Schedules, Exhibits, and a Book of Authorities. The Indices to the Exhibits and the Book of Authorities are appended to this letter. The Exhibits to this letter are organized according to the following categories:

- A.     Constatng Documents
- B.     Agreements and Accords
- C.     Governance Documents
- D.     Communications with the CRA
- E.     Documents Relating to Charitable Activities
- F.     Financial Records
- G.     Income Tax Documents
- H.     Employment of Indigent Workers
- I.     Other Employment Matters
- J.     Visits to Israel
- K.     Advertising and Promotional Materials

For certain documents, we have only attached a sample of the available information. These exhibits have been marked as Samples. We are happy to provide the CRA with more documentation as required.



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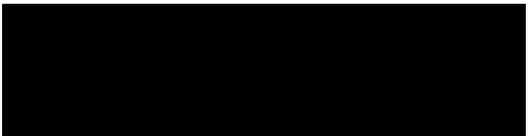
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## **I. SUMMARY OF SUBMISSIONS**

### **A. Summary of the Audit Letter**

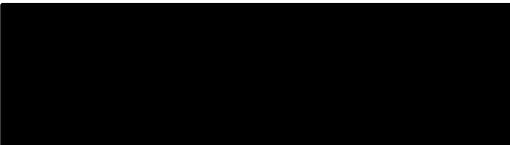
In summary form, the main claims contained in the Audit Letter are as follows:

1. The Charity is not devoting its resources exclusively to activities in support of a charitable purpose.
2. The Charity did not exercise continuous direction and control over the use of its funds by Keren Kayemeth Le'Israel for specified projects.
3. The activity of paying the salaries of poor and hard-to-hire workers in Israel does not constitute operating for charitable purposes.
4. The Charity did not maintain adequate books and records to substantiate that its resources were devoted to its own charitable programs, and did not maintain expense reports with sufficient details to demonstrate the claimed travel expenses were conducted in pursuit of the Charity's charitable purposes.

### **B. Summary of the Charity's Submissions**

In summary form, the main responses of the Charity to the claims in the Audit Letter are as follows:

1. The Charity devotes all of its resources to the relief of poverty, a judicially-recognized charitable purpose, by ensuring the employment of indigent workers in Israel who are hard-to-hire or unemployable (the "**Indigent Workers**") by paying their salaries to work on projects selected by the Charity that are charitable in nature (the "**Selected Projects**").
2. The Charity exercised continuous direction and control over the use of its funds through its agency relationship with Keren Kayemeth Le'Israel ("**KKL**" or the "**Agent**"), its Board-appointed committee, the Jewish National Fund of Canada - Israel Committee ("**CANISCOM**"), and rigorous direct supervision of both the Agent and the Selected Projects by the Charity's employees and senior management. The Charity's funds were used to secure paid employment on the Selected Projects for the Indigent Workers.
3. The Charity operates exclusively for charitable purposes. The Charity's primary purpose is the relief of poverty. To further this charitable purpose, the Charity ensures the employment of the Indigent Workers by paying their salaries to work on the Selected Projects.
4. The Charity maintained sufficient books and records in Israel to substantiate that its funds were devoted to its sole charitable program, which is ensuring the employment of the Indigent Workers on the Selected Projects by paying their salaries. The Charity also maintained sufficient records of its expenses in Canada.



## II. BACKGROUND

### A. Introduction

This section of the letter describes the context of the Charity's work, the agency relationship between the Charity and the Agent, the role of CANISCOM, and the structure and operations of the Charity.

The principal conclusion of this part of the letter is that the Charity maintains direction and control of its funds through its agency relationship with the Agent, and is therefore in compliance with the law and CRA guidance in this regard.

### B. Context – Judaism and Israel

#### 1. Judaism

Judaism is a rich religious tradition with complex and diverse norms informing all aspects of life. The attachment of the people of Israel (i.e., the Jewish people) to the land of Israel is a foundational value of profound religious and historical importance. In much Jewish religious writing and in the understanding of the vast majority of Jews, this attachment, in its many forms and expressions, is a basic tenet of Judaism.<sup>1</sup> This attachment therefore informs many of the charitable activities of the Charity in a foundational way.

To understand Judaism as a religion, one must begin by appreciating its complexity and its multi-dimensional nature. Judaism is grounded in a fundamental set of religious values and ethics, principles and teachings, which together form the foundation of the religion. It is these same values that inspire and guide the work of the Charity. In particular, the Charity emphasizes the Jewish values of charity and giving, such as *Tzedaka*<sup>2</sup>, meaning "righteousness and social justice", and *Tikkun Olam*<sup>3</sup>, which means "repairing the world", and the value of community among all Jews, such as *Klal Yisrael*<sup>4</sup>, meaning "the community of Israel", and *Kol Yisrael arevim zeh bazeh*<sup>5</sup>, meaning that "all Jews are responsible for one another".

Judaism is neither practised nor observed in one monolithic universal way. Indeed, from the perspective of religious practice, there are many forms or degrees of Judaism. Judaism, particularly in North America, has differentiated into a series of denominations or movements which reflect a continuum of religiosity or degree of traditional ritual observance. For some, the practice of Judaism must be guided by a strict code of law known as "Halacha", which prescribes clear behavioural expectations governing

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<sup>1</sup> *Re Stone*, [1970] 91 WN Covers (NSW) 704 (New South Wales SC).at 709.

<sup>2</sup> "Glossary", Jewish Virtual Library (website), online: <<http://www.jewishvirtuallibrary.org/jsource/gloss.html>>.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> "All of Israel are Responsible for One Another". My Jewish Learning (website), online: <<http://www.myjewishlearning.com/article/all-of-israel-are-responsible-for-one-another>>.



all aspects of life, from the very simple daily routines, to laws governing food, to the observance of holidays and other communal or family celebrations.<sup>6</sup> For others on the more liberal end of the continuum, Judaism is an evolving civilization that adapts its level and type of observance to its social and communal context. The more liberal Judaism would permit a more contemporary interpretation of the basic religious texts. There are significant differences among the denominations. Probing deeper into any one of these would reveal a rich diversity within the movements. Judaism, by definition, interacts with its larger social environment and has been influenced by the countries in which Jews have lived.<sup>7</sup> Many local cultural traditions have crept into its prayer liturgy and customs. Paradoxically, there are also groups or Jewish religious sects that have preserved a way of life more consistent with years gone by and have kept themselves quite separate from the larger society in which they live.

To further understand Judaism as a religion, it is not sufficient to merely appreciate that there are denominations and different degrees of observance. It must also be understood that the religion of Judaism incorporates a culture, a people, and an identity. It must be understood that Israel, the land and the people, are fundamental to, and at the core of, Judaism.<sup>8</sup> From the weekly Sabbath prayer for the safety and security of the State of Israel, which is recited by all congregations and denominations, to the strong ties expressed by religious Zionist movements, to the ancient biblical references and modern day commitment to the land of Israel, to the spiritual link to Jerusalem which appears in life cycle events such as weddings, or at holiday services such as Passover – these are all expressions in one form or another of the centrality of the land and people of Israel within Judaism. For example, at the festive meal during the holiday of Passover, the last words in the recitation of the story of the Jews' exodus from Egypt are "Next Year in Jerusalem", signifying the dream of Jews everywhere, and for centuries, to celebrate the next Passover in Jerusalem, in Israel.<sup>9</sup> This commitment to the land of Israel thus predates the founding of the State. It is expressed as a prayer and a longing for a Jewish homeland and a return to Zion that is integral to Jews everywhere. The founding of the State in the post-Holocaust era provided the Jewish people with a homeland and an opportunity for self-determination and self-governance.

Israel's history has been punctuated by major achievements in all aspects of development – business, technology, science, arts, and culture. Since its establishment, it has also been faced with growing as a state in a high conflict region, where its right and capacity to exist is constantly questioned and threatened. In its short history of 61 years, Israel has fought 7 wars (1948, 1956, 1967, 1973, 1981, 2006 and 2008) and has lived from the 1950s on through extended periods that were characterized by acts of

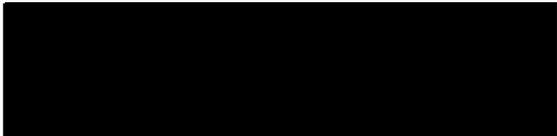
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<sup>6</sup> Richard B. Aiken, "What is Halacha?". (2015), Orthodox Union (website), online: <<https://www.ou.org/torah/halacha/halacha-lmaasch/what-is-halacha/>>.

<sup>7</sup> Daniel J. Elazar, "The Jewish People as the Classic Diaspora: A Political Analysis", Jerusalem Center for Public Affairs (website), online: <<http://www.jcpa.org/dje/articles2/classicdias.htm>>.

<sup>8</sup> *Re Stone, supra* note 1 at 709.

<sup>9</sup> Gilad Barach, "The Meaning of "Next Year in Jerusalem"" (18 April 2014), Kol Hamevaser (website), online: <<http://www.kolhamevaser.com/2014/04/the-meaning-of-next-year-in-jerusalem/>>.



terror directed at civilian populations and other related acts of aggression.<sup>10</sup> It has resettled and integrated new immigrants from many countries and cultures who have undertaken to make *Aliyah*, a profound expression of their commitment to Judaism and to Israel. Israel provided a haven to those fleeing persecution and anti-Semitism and assisted those seeking refuge and simultaneously facing the enormous challenge of building a new life in a new and complex environment. Israel continues to do so to this very day.

## **2. The Jewish Diaspora**

The Jewish Diaspora refers to Jews who live outside the land of Israel as a result of expulsion, emigration, and religious conversion.<sup>11</sup> The Diaspora is said to have begun around 597 B.C.E. when the inhabitants of the Kingdom of Judah (part of today's Israel) were conquered and exiled to Babylon (now southern Iraq), and the First Temple was destroyed. As a result of this exile, a Jewish way of life outside the land of Israel began to develop. This way of life was largely marked by the study of the law (Torah) and synagogue observance. In the year 540 B.C.E., the exiled inhabitants were granted permission to return to their homeland, and a large number did. Upon their return, the Second Temple, established as the centre of the national and religious life of Jews throughout the world, was built.

The conquest of the land of Judah by Alexander the Great had an even greater influence on the Jewish Diaspora. Under Greek rule, in an attempt to assimilate the Jewish people to a Greek way of life, the Jewish people were prohibited from practising their religion, and the Second Temple was desecrated.

The first Jewish-Roman war, referred to as the Great Revolt, ended with the destruction of Jerusalem and the Second Temple and the massacre and enslavement of a large part of the Jewish population. As a result, many Jews were scattered throughout the world or sold into slavery. The persecution, expulsion, and dispersion of Jews throughout the world continued in Post-Roman times and the majority of Jews today form the Diaspora.

Today, the largest numbers of Jews live in Israel, the United States, France, Canada and the United Kingdom.<sup>12</sup> As they did throughout the centuries of exile, the Jews of the Diaspora continue to maintain strong connections to Israel, regarding it as their homeland and considering it to be a central part of their religious identity. They maintain a close fraternal concern for their co-religionists who live there.

## **C. The Charity**

### **1. Constating Documents of the Charity**

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<sup>10</sup> Ariel Cohen, "Israel's wars as told through the headlines" (22 April 2015), The Jerusalem Post (website), online: <<http://www.jpost.com/Israel-News/JPost-history-398565>>.

<sup>11</sup> 50. Richard Gottheil and Theodore Reinach, "Diaspora", Jewish Encyclopedia (website), online: <<http://www.jewishencyclopedia.com/articles/5169-diaspora>>.

<sup>12</sup> Daniel J. Elazar, "The Jewish People as the Classic Diaspora: A Political Analysis", Jerusalem Center for Public Affairs (website), online: <<http://www.jcpa.org/dje/articles2/classicdias.htm>>.



The Charity was incorporated on November 1, 1961. At the time of its incorporation, the objectives of the Charity were as follows:

To create, provide, enlarge and administer a fund to be made up of voluntary contributions from the Jewish Community and others to be used for charitable purposes.<sup>13</sup>

In 1967, the Charity engaged in extensive discussions with the predecessor of the CRA, the Department of National Revenue, regarding its objectives and the manner in which it would pursue these objectives.<sup>14</sup> During these this exchange of letters (the "1967 Letters"), the CRA accepted the Charity's position that its activities would be charitable as long as its funds were used exclusively to relieve poverty by paying the salaries of Indigent Workers: the Charity informed the CRA that "[the] entire balance is sent to our Israel Committee who use it for the employment of indigent labourers – recent immigrants in the main – on various work projects, for which they receive daily stipends".<sup>15</sup> The CRA accepted this, replying in a letter dated August 25, 1967 that "[on] the basis of the information now supplied, we consider that the Jewish National Fund of Canada (Keren Kayemeth Le'Israel) Inc. qualifies as a charitable organization".<sup>16</sup>

The Mission Statement of the Charity is:

To provide funds to KKL (Keren Kayemeth Le'Israel) to redeem the Land of Israel.

To connect Canadian Jewry to their National Homeland and to their partnership in its development.

To emphasize the centrality of Israel to Jewish Life.<sup>17</sup>

This Mission Statement has no official status in the Charity, and was never passed by resolution of the Board. It serves as an informal statement of the Charity's mission to guide reflection and the actions of the Charity's supporters.

On May 26, 2014, the Charity was continued under the *Canada Not-for-profit Corporations Act*, SC 2009, c 23. The purpose of the Charity stated in its articles of continuance is:

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<sup>13</sup> Exhibit A(1) - Articles of Incorporation, Letters Patent, JNF Canada (November 14, 1961).

<sup>14</sup> Exhibit D(2) – 1967 Letters between Department of National Revenue and JNF Canada re qualification as a charitable organization (1967).

<sup>15</sup> See subsection II(B)(3)(b) below and see Exhibit D(2.2) and D(2.5): letter dated July 21, 1967 and letter dated August 25, 1967.

<sup>16</sup> *Ibid.*

<sup>17</sup> Exhibit C(1) – Mission Statement of JNF Canada



To create, provide, enlarge and administer a fund to be made up of voluntary contributions from the Jewish Community and others to be used for charitable purposes.<sup>18</sup>

## 2. Governance of the Charity

As required by the Charity's by-laws at the time (the "By-Laws"), the Charity was governed during the Audit Years by a forty-two member Board of Directors (the "Board"), ten Officers, and an Executive Committee.<sup>19</sup> In 2015, the By-Laws were replaced with new by-laws (the "2015 By-Laws").<sup>20</sup> The 2015 By-Laws are substantially the same as the By-Laws during the Audit Years. Unless specific reference is made to the 2015 By-Laws or current policy, this section describes the governance of the Charity during the Audit Years.

### a) The Board of Directors

The Board supervised and controlled all of the activities of the Charity during the Audit Years. The Board was elected from regions in Canada in prescribed proportions.<sup>21</sup> The Board met a minimum of three times a year, including the Annual General Meeting (the "AGM"), with a required quorum of twelve Directors and three Officers. Under the By-Laws, the AGM was required to be held at the head office of the Charity, elsewhere in Canada, or in Israel.<sup>22</sup> There is currently a developing practice to hold the AGM in Israel every two or three years, although this practice was not in effect during the Audit Years.

During the Audit Years, the following matters were the responsibility of the Board of Directors and could not be delegated:

1. The approval of the Annual Budget;
2. The approval of any items of expense which would exceed the Annual Budget;
3. Engaging and terminating the Executive Vice-President;
4. The approval of the Audited Financial Statements;
5. Any material change in the relationship with the Agent;

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<sup>18</sup> Exhibit A(3) – Form 4031 – Articles of Continuance and Form 4002 - Initial Registered Office Address and First Board of Directors for JNF Canada (May 26, 2014).

<sup>19</sup> Exhibit C(2) and C(3) - Board of Directors of JNF Canada (2011) and (2012).

<sup>20</sup> Exhibit A(4) - By-Law No. 1 of JNF Canada (May 17, 2015).

<sup>21</sup> Exhibit A(2) – National By-Laws of JNF Canada (November 26, 2010), at s 6(c).

<sup>22</sup> Exhibit A(2) – National By-Laws of JNF Canada (November 26, 2010), at s 6(f).

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6. The establishment of any new national fund-raising project, program, and method of payment or collection technique;
  7. The termination of any established national fund-raising program;
  8. The approval of the sale of any asset outside of the ordinary course of the affairs of the Charity; and
  9. The engagement of any consultants not specifically foreseen in the previous Annual Budget.<sup>23</sup>

b) The Officers

During the Audit Years, there were ten Officers of the Charity, including the President, Executive Vice-President, four Vice-Presidents, a Secretary, a Treasurer, and two Directors-at-Large.<sup>24</sup> All Officers except the Executive Vice-President were elected at the AGM for a term of three years, provided that no person served the same office for more than two consecutive three year terms. The Executive Vice-President (in this letter referred to as the "CEO"), a paid employee of the Charity, was hired by the Executive Committee.<sup>25</sup>

The President presided over all meetings of members, Directors and the Executive Committee. The CEO managed the daily affairs of the Charity. The Treasurer had custody of the corporate funds and securities, and kept full and accurate accounts of receipts and disbursements in books belonging to the Charity. The Treasurer was charged with disbursing the funds of the Charity as ordered by the Board. The Treasurer was also tasked with presenting an account of all of his or her transactions as Treasurer and the financial position of the Corporation to the President, Executive Committee, and Directors. The Vice-Presidents and Secretary performed such duties as imposed on them by the President or the Board.<sup>26</sup>

c) The Executive Committee

The Executive Committee consisted of the ten Officers of the Charity. The Executive Committee met a minimum of once every two months. The Executive Committee determined the process of hiring the

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<sup>23</sup> Exhibit A(2) – National By-Laws of JNF Canada (November 26, 2010), at s 6(m).

<sup>24</sup> Exhibit A(2) – National By-Laws of JNF Canada (November 26, 2010), at s 7.

<sup>25</sup> Under the 2015 By-Laws, the position of Executive Vice-President was replaced with the position of Chief Executive Officer, a paid employee with the same duties, powers and responsibilities as the Executive Vice-President. To maintain consistency between the past activities of the Charity and the future plans, this letter will refer to the role previously titled the Executive Vice-President and currently titled the Chief Executive Officer as the CEO.

<sup>26</sup> Exhibit A(2) – National By-Laws of JNF Canada (November 26, 2010), at s 8.



CEO, who was a full time member of the Executive Committee with no voting privileges. The Executive Committee was vested with the powers of the Board between meetings.<sup>27</sup>

d) The Nominations Committee

The Nominations Committee was a subcommittee of the Board established for the purposes of placing in nomination the names of new Officers and other subcommittees, including CANISCOM. The Nominations Committee was chaired by the immediate past President of the Board, as well as two current Officers and at least four other Directors.<sup>28</sup> The Nomination Committee organized and conducted the process of nominating Directors and CANISCOM, who were then elected at the AGM in accordance with the By-Laws.

e) Standing and Ad Hoc Committees

Under the By-Laws, the Charity also had other standing committees, such as the Finance & Audit Committee and the Education Committee, although no national Education Committee existed during the Audit Years.<sup>29</sup> The President had the power to appoint other standing or ad hoc committees as he or she considered necessary.

f) Regional Councils

Regional Councils were set up in each prescribed Region in the same manner that Directors were elected at the national level. The degree of autonomy of each Regional Council was determined by the Board or the Executive Committee.<sup>30</sup>

g) Staff

In 2011, the Charity employed 33 full-time staff and 15 part-time staff, and in 2012 employed 33 full-time and 12 part-time staff, including the senior management of the Charity. These employees maintained and managed the operations of the Charity. The senior management of the Charity included:



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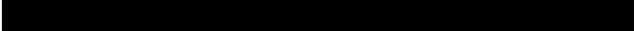
<sup>27</sup> Exhibit A(2) – National By-Laws of JNF Canada (November 26, 2010), at s 9.

<sup>28</sup> Exhibit A(2) – National By-Laws of JNF Canada (November 26, 2010), at s 10.

<sup>29</sup> Exhibit A(2) – National By-Laws of JNF Canada (November 26, 2010), at s 11.

<sup>30</sup> Exhibit A(2) – National By-Laws of JNF Canada (November 26, 2010), at s 15.

<sup>31</sup> Exhibit I(9) – Resume of 

<sup>32</sup> Exhibit I(8) – Resume of 



The Charity's employees were responsible for the daily administration and management of the Charity, marketing and fundraising for the Charity, and supervising the Agent's progress on the Charity's projects in Israel.

### 3. Background and History of the Charity

#### a) Background

The Charity is and was during the Audit Years a charitable organization focused on charitable projects in the land of Israel, fundraising from a population of approximately 358,000 Jews and members of the non-Jewish community. The Charity's message, directed primarily towards individuals, is that it is an agency that contributes to social development of Jewish people in the land of Israel. This underlying objective, the redemption of the land of Israel, has its roots long before the existence of the state of Israel, and has been an actively pursued goal of Canadian Jewry since the early 1920s.<sup>35</sup>

The Charity's primary purpose is to relieve poverty in Israel, a purpose derived from the rabbinic concept of *tikkun olam*, a Hebrew term that means "repair the world" and has come to connote social action and the pursuit of social justice.<sup>36</sup> By helping the poor and most distressed individuals in the land of Israel, the Charity creates a strong bond between Canadian Jews and their religious homeland.

An important objective of the Charity is to provide an opportunity for Canadian Jews to form a meaningful and sustained connection with the land of Israel, the religious homeland of the Jewish people. By funding and supervising specific projects in Israel, the Charity is able to connect Canadian donors to the finished projects, strengthening their connection to their religious homeland. During the Audit Years and currently, the Charity sends employees to Israel to select projects, solicits donors for its Selected Projects, attributes credit for these projects to Canadian donors, and supervises the progress and execution of these Selected Projects by the Agent. A crucial aspect of these activities is ensuring that the Charity's funds are exclusively used to relieve poverty of the Indigent Workers by ensuring their employment on the Selected Projects by paying their salaries.

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<sup>33</sup> Exhibit I(4) – Resume of [REDACTED]

<sup>34</sup> Exhibit I(12) – Resume of [REDACTED]

<sup>35</sup> "History", JNF Canada (website), online: <<http://site.jnf.ca/index.php/about-jnf/history/>>.

<sup>36</sup> "Tikkun Olam: Repairing the World", My Jewish Learning (website), online: <<http://www.myjewishlearning.com/article/tikkun-olam-repairing-the-world/>>.



The Charity was involved in thirty-six Selected Projects in 2011 and forty Selected Projects in 2012.<sup>37</sup> The Selected Projects range from building gardens in medical centres and planting endangered species of trees to building playgrounds for children with physical disabilities and constructing emergency housing for victims of domestic violence. The Selected Projects are open to the public – they do not serve exclusively the Jewish community in Israel, but all inhabitants of the land of Israel.

The fundraising activities of the Charity also promote this connection with Israel – for example, a major fundraising event every year is the Negev Dinner, held by many communities across Canada to honour one of their prominent citizens. These events, named after the Negev desert region in Israel, raise awareness of the Charity's work in Israel, promote the profile of the Charity within the community, honour an individual or group whose connection to their community and Israel is notable, and are the largest single source of fundraising in each community.<sup>38</sup> While the fundraising efforts are well attended by the Canadian Jewish community, many prominent non-Jewish Canadians attend these events, donate to the Charity, and are even chosen as honourees.

As a part of the Charity's drive to connect Canadian Jews with Israel, fundraise for projects, and then supervise those projects, the Charity also organizes regular trips to Israel for donors, staff, and management. Trips organized for current and potential donors ("**Mission Trips**") are paid for by the donors themselves, not the Charity.<sup>39</sup> These trips are primarily designed to encourage donors to contribute to the Charity, and no tax receipts are issued for these trips. The Charity organizes a trip to Israel for its employees every year where the employees of the Charity visit the Charity's completed and on-going projects ("**Staff Trips**").<sup>40</sup> Staff are strongly encouraged to go on a Staff Trip once every three years. The CEO and other senior management attend annual conferences to meet other leaders of charities affiliated with the Agent from around the world to discuss best practices and techniques for future projects ("**KKL Conferences**").<sup>41</sup> Senior management also regularly go to Israel to examine

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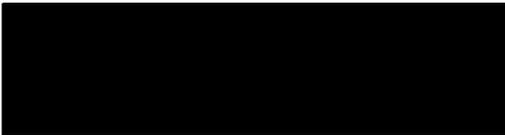
<sup>37</sup> See Schedule A for a list of the Selected Projects of 2011, categorized by the charitable purpose that each Selected Project advances. See Schedule B for the same list for 2012. Note that the lists in Schedules A and B differ from the list of Activities in the Annual Books (Exhibits C23 and C24). This is because Schedules A and B refer only to the Selected Projects that the Charity supported during the Audit Years. The Annual Books include projects that the Charity has finished or not yet begun supporting.

<sup>38</sup> See Exhibits K(6) – K(15) – Event Programs, Negev Dinner [various cities] (2011) and (2012).

<sup>39</sup> See Exhibits J(3) – J(11).

<sup>40</sup> Exhibit J(13) – Flight receipts, email confirmations, and accounting records from JNF Canada staff trips to Israel (2011-2012).

<sup>41</sup> There are two major conferences which alternate each year: Marketing Conferences and KKL World Leadership Conferences. Marketing Conferences focus on marketing and branding, and are generally attended by senior management and executive staff, while KKL World Leadership Conferences are focused on strategy and future projects and are attended by leaders and key donors from different offices worldwide. See Exhibit J(1) – Israel Trip Itinerary, World Leadership Conference 2011, 110 years KKL-JNF, 100% Israel (March 27 – April 1, 2011).



potential and on-going project sites (“**Senior Management Inspections**”).<sup>42</sup> These inspections occur six to eight times per year and involve extensive coordination with the Agent’s Canada Desk.

b) Communications with the CRA and the Government of Canada

As a charitable organization, the Charity has had extensive communications with the CRA over its fifty-year existence. Recently, to comply with new legislation, the Charity was continued under the *Not-for-profit Corporations Act* in 2014<sup>43</sup> and filed the new 2015 By-Laws.

(1) The 1967 Letters

The Charity has sought to follow the guidance and direction of the Government of Canada and the CRA throughout its existence. In 1967, the Charity engaged in extensive communications with a predecessor to the CRA, the Department of National Revenue, regarding its objects and charitable activities.<sup>44</sup> During a series of exchanged letters, the Charity informed the CRA that their charitable expenditures would be used to provide for the employment of indigent labourers. In particular, the Charity informed the CRA of the following:

Permit me to establish each of these points in turn:

I. Exclusively Charitable

Between 5% and 8% of the funds we raise in Canada are used for Bible Instruction and Hebrew Religious Instruction in Hebrew Schools and Youth Organizations across Canada. In addition to this effort being a good and valid undertaking in and of itself, it also is a means of assuring us an intelligent and informed group of supporters in the next generation – an investment in our future you might say. The entire balance is sent to our Israel Committee who use it for the employment of indigent labourers – recent immigrants in the main – on various work projects, for which they receive daily stipends, in the neighbourhood of \$5.00 per diem.<sup>45</sup>

[Emphasis added]

The Charity’s letter to the CRA went on to address the issue of direction and control:

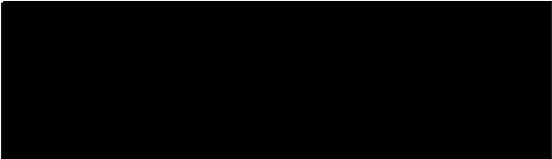
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<sup>42</sup> Exhibit J(12) – List of JNF Canada Senior Staff who attended Israel trips (2011-2016); and Exhibit J(13) – Flight receipts, email confirmations, and accounting records from JNF Canada staff trips to Israel (2011-2012).

<sup>43</sup> Exhibit A(3) – Form 4031 – Articles of Continuance and Form 4002 – Initial Registered Office Address and First Board of Directors for JNF Canada (May 26, 2014).

<sup>44</sup> Exhibit D(2) – 1967 Letters between Department of National Revenue and JNF Canada re qualification as a charitable organization (1967).

<sup>45</sup> Exhibit D(2.2) – Letter from JNF Canada to Department of National Revenue re JNF Canada’s fulfillment of the requisite principles of a Canadian charitable organization (July 21, 1967).



## 2. Effective Control

Our Israel Committee is called "JNF CANISCOM" which is short for "Jewish National Fund of Canada-Israel Committee". The Co-Chairmen of JNF CANISCOM are two Canadians now resident in Israel: [REDACTED] They and their committee serve voluntarily, without fee whatsoever (the same is true of the members of our Board of Directors in Canada) but they employ a full-time professional – [REDACTED] is on our Canadian payroll, the appropriate tax deductions are made, and at year end [REDACTED] receives a TP-4 slip. Funds going to Israel are sent to a bank account under the control of JNF CANISCOM, and this committee supervises the expenditure of all funds.<sup>46</sup>

In the CRA's reply, the Registrar-Examiner of Charitable Organizations stated that "we now have received satisfactory evidence and assurances that the activities presently carried on in Israel are and will continue to be carried out in a way which meets the requisites of those principles".<sup>47</sup> In a further letter, after a brief exchange regarding the nature of the Charity's educational expenditures at the time, the Registrar-Examiner stated that "[on] the basis of the information now supplied, we consider that the Jewish National Fund of Canada (Keren Kayemeth Le'Israel) Inc. qualifies as a charitable organization".<sup>48</sup>

The Charity no longer carries out Bible Instruction or Hebrew Religious Instruction in Canada, although it does educate Canadian youth about the history and importance of the land of Israel for the same purpose of "assuring [the Charity] an intelligent and informed group of supporters in the next generation". In the half century since these letters were exchanged with the CRA, the Charity has followed the guidance of the CRA by ensuring the employment of the Indigent Workers on the Selected Projects, forming CANISCOM to supervise and oversee its affairs in Israel, and only sending funds to the Agent in Israel via a bank account under the control of CANISCOM. Until the receipt of the Audit Letter, the Charity had not been informed of any change in CRA policy regarding the relief of poverty by ensuring the employment of the Indigent Workers.

### (2) The 1989-1992 Letters

On August 21, 1989, the Charity received a letter from a predecessor of the CRA informing it than an audit of the Charity indicated that the Charity may be acting in contravention of the *Income Tax Act*.<sup>49</sup>

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<sup>46</sup> Exhibit D(2.2) – Letter from JNF Canada to Department of National Revenue re JNF Canada's fulfillment of the requisite principles of a Canadian charitable organization (July 21, 1967).

<sup>47</sup> Exhibit D(2.3) - Letter from Department of National Revenue to JNF Canada re requisite principles for a Canadian charitable organization to pursue charitable activities outside of Canada (August 21, 1967).

<sup>48</sup> Exhibit D(2.5) - Letter from Department of National Revenue to JNF Canada re decision to qualify JNF Canada as a charitable organization (August 25, 1967).

<sup>49</sup> Exhibit D(3.1) - Letter from Revenue Canada Taxation to JNF Canada re audit of JNF Canada for 1984 and 1985 (August 21, 1989).

[REDACTED]

The Charity and their lawyers replied to the CRA in September 1989, explaining the Charity's activities to relieve the poverty of the Indigent Workers.<sup>50</sup> On January 13, 1992, the CRA sent the Charity's lawyers a list of questions regarding the Charity's charitable activities.<sup>51</sup>

The Charity hired the chartered accountant firm [REDACTED] to investigate the transfer of funds from the Charity to Israel, and the firm provided the Charity with a letter describing the process on June 26, 1992.<sup>52</sup> Subsequent to this letter, the CRA stopped questioning the Charity's activities. Until the receipt of the Audit Letter in 2016, no further correspondence was received from the CRA regarding the Charity's charitable activities or the Indigent Workers. The Charity's understanding was that their responses to the CRA and the investigation by [REDACTED] had satisfied the CRA's concerns.

c) Co-operation with the Agent

The Charity and the Agent have a long-standing relationship and share many of the same goals. The earliest officially recorded contact between the Agent & Canadian Jewry was in 1906 when the Director of the Agent urged the formation of an affiliated group in Canada. Since the incorporation and registration of the Charity in 1961, the Charity has worked closely with the Agent to execute projects in Israel.

The Charity is sympathetic and endorses the programs and projects of the Agent, but maintains absolute control over which projects it supports and how its funds are used. To recognize and pay honour to Canadian donors to the Charity, the Charity and the Agent have an understanding that the Agent will use attractive projects to pay homage to the donor, even though the funds donated were not used to acquire the land or capital property, which does not belong to the Charity. On large projects, the Charity often shares credit for a completed charitable project with the Agent and affiliated charities from around the world.

The Charity keeps in daily contact with the Agent's Canada Desk to ensure that its funds are being used exclusively for the payment of salaries of the Indigent Workers and only advances funds for this

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<sup>50</sup> Exhibit D(3.2) - Letter [REDACTED] of JNF Canada, to [REDACTED] re allocation of funds to indigent workers and JNF Canada's means of overseeing work in Israel (September 18, 1989); and Exhibit D(3.3) - Letter [REDACTED] to Revenue Canada Taxation re response to August 21, 1989 audit letter (September 20, 1989).

<sup>51</sup> Exhibit D(3.5) - Letter from Revenue Canada Taxation to [REDACTED] re request for documents and further information in support of September 20, 1989 response to audit letter (January 10, 1992).

<sup>52</sup> Exhibit F(1) - Auditor's letter to JNF Canada re review of how funds transferred to Israel by JNF Canada were used (June 26, 1992).

[REDACTED]

purpose to the Agent upon confirmation of project progression, either by the Charity's employees visiting the project site or by receiving a progress report from the Canada Desk.<sup>53</sup>

## **D. The Agent**

### **1. History**

The Agent was originally formed in 1901 with the mission to "redeem the land of Israel".<sup>54</sup> For many years, before Israel became a state, the Agent would purchase land in the geographic area constituting the historical land of Israel and hold it in trust for the Jewish people. Once Israel was declared a state, the Agent continued its mission to "redeem the land" by building charitable projects across the land of Israel, with a focus on public works such as water reservoirs, bridges, roads, and planting trees. In 1953, the Agent was re-organized as an Israeli non-profit organization. The Agent owns approximately 13% of the total land in Israel, has developed 250,000 acres of land, and planted over 240 million trees in Israel.<sup>55</sup>

As the needs of the inhabitants of the land of Israel have changed, so have the activities of the Agent. Public utility tasks such as roads and bridges have largely been taken over by the State of Israel, and the Agent has turned towards charitable purposes such as environmental conservation, the preservation of historical sites, education, and community economic development. This has involved assisting refugees, building parks, schools, synagogues, and hospitals, among many other projects for the public benefit.

### **2. Function and Activities**

The Agent's activities in Israel are undertaken with the assistance of many affiliated organizations from across the world, including the Charity. One of the major functions of the Agent is to assist these non-Israeli organizations with their charitable activities in Israel.

In the case of the Charity, this has meant the establishment of an office of the Agent's employees who manage and run the operations of the Charity in Israel (the "Canada Desk"). In the Audit Years, the Canada Desk was composed of three employees of the Agent.<sup>56</sup> The Canada Desk manages the use of the Charity's funds for the Charity's projects and coordinates with other contributors to the charitable projects, such as the owners of the capital property, building materials, or service providers. The Canada Desk reports to the Charity and CANISCOM throughout the year, providing progress updates on the

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<sup>53</sup> Exhibit E(1) – Sample email of project progress update, re ALUT Stage 2 (March 2011); and Exhibit E(2) – Sample email attachment of project plans, re ALUT Stage 2 (March 2011).

<sup>54</sup> "About KKL-JNF", Keren Kayemeth LeIsrael (website), online: <<http://www.kkl-jnf.org/about-kkj-jnf/>>.

<sup>55</sup> "About KKL-JNF", Keren Kayemeth LeIsrael (website), online: <<http://www.kkl-jnf.org/about-kkj-jnf/>>.

<sup>56</sup> Exhibit I(2) – Job description for KKL Canada Desk position; Exhibit I(7) – [REDACTED] Canada Desk, Director; Exhibit I(3) – Biography of [REDACTED] KKL Executive Director of Resource and Development Division; and Exhibit I(13) – Resume of [REDACTED] KKL Director of Resource Recruitment Division.



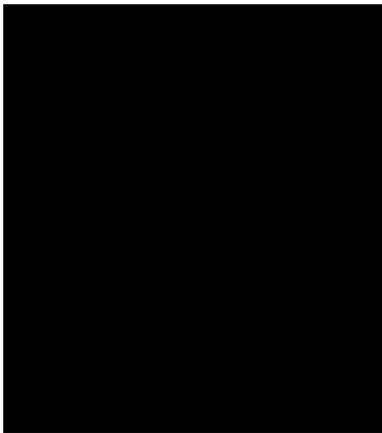
Charity's progress and requesting funds to pay the Indigent Workers.<sup>57</sup> The Canada Desk also assists the Charity in coordinating visits to Israel by staff, donors, and senior management.

In 2010, the Agent and the Charity entered into a formal written contract where the Agent was required to provide work for the Indigent Workers (the "Agency Contract").<sup>58</sup> Although unsophisticated, this Agency Contract is the written representation of the agency agreement between the Agent and the Charity, whereby the Agent assists the Charity by providing work for the Indigent Workers. Under the Agency Contract, the Charity supervises the Agent through CANISCOM and a paid official of the Charity. Currently, the role of the paid official of the Charity supervising the Agent has been upgraded to multiple employees, including the CEO, the Chief Financial Officer (the "CFO"), and the Director of Marketing.

#### E. CANISCOM

CANISCOM, a Board-nominated committee composed of former Canadian residents living in Israel, is the official representative of the Charity in Israel.<sup>59</sup> The role of CANISCOM is to supervise the work done on behalf of the Charity by the Agent in Israel.

The members of CANISCOM are elected every three years. In 2011, the following individuals were selected:



As Canadians resident in Israel, the members of CANISCOM have strong connections to Canada and the Charity. During the Audit Years, [REDACTED] served as the chairman of CANISCOM. [REDACTED] is

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<sup>57</sup> Exhibit F(8), F(9), and F(10) – Sample – Email confirmation[s] of remittance to CANISCOM account (October 3, 2011), (April 4, 2012), and (October 12, 2012).

<sup>58</sup> Exhibit B(3) - Agreement between JNF Canada Inc. and KKL of Jerusalem, Israel, signed December 2009, effective January 1, 2010.

<sup>59</sup> Exhibit C(6) – Minutes of the National Board of Directors of JNF Canada, meeting (January 5, 1966), at 6-7.

[REDACTED]

a chartered accountant<sup>60</sup> [REDACTED] was previously the CEO of the Charity [REDACTED] independent of [REDACTED] role with CANISCOM, was also an employee of KKL during the Audit Years.<sup>61</sup>

CANISCOM oversees the Charity's Israel-based bank account (the "CANISCOM Account"). When the Charity advances funds against progress on projects being executed by the Agent, funds are sent from Canada to the CANISCOM Account, and then released from the CANISCOM Account to the Agent on the Charity's authorization. The CEO or the CFO of the Charity approve all payments out of the CANISCOM account. The Agent provides the chairman of CANISCOM with the bank reconciliation at the end of the year to review and sign.<sup>62</sup>

At least once a year, CANISCOM visits the sites of certain Selected Projects during a formal meeting and meets throughout the year on an informal basis. Minutes of the formal meetings are sent to the Charity.<sup>63</sup> Under the Agency Contract, CANISCOM supervises one paid employee of the Charity who works with the Agent. During the Audit Years, CANISCOM worked with multiple paid employees of the Charity, including the CEO, CFO, and the Director of Marketing, as well as other employees on an *ad hoc* basis. These employees interacted with the Canada Desk on a daily basis.<sup>64</sup>

## **F. Agency Relationship**

The Charity's purpose is to relieve poverty in Israel. It furthers this purpose by paying the salaries of the Indigent Workers who work on the Selected Projects in Israel. During the Audit Years, the Agent was engaged to execute this, using the Charity's funds to pay the salaries of the Indigent Workers.

### **1. The Agency Contract**

Pursuant to the Agency Contract dated December 20, 2009, the Agent was the agent of the Charity in Israel and provided work for Indigent Workers on behalf of the Charity from January 1, 2010 to December 31, 2011. Pursuant to article 1 of the contract, the Agency Contract was automatically renewed until December 31, 2013, thus covering both of the Audit Years.<sup>65</sup>

### **2. Communications between the Charity and the Agent**

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<sup>60</sup> Exhibit I(11) - [REDACTED]

<sup>61</sup> Exhibit I(06) - [REDACTED]

<sup>62</sup> Exhibit H(37) and H(38) - Monthly expenditure reports for [2011 and 2012], re salaries paid to indigent workers, sent from KKL Employment Committee to [REDACTED] (sent on November 26, 2013).

<sup>63</sup> Exhibit C(4) - Minutes of the Caniscom (Canada Israel Committee) meeting (July 3, 2011); and Exhibit C(5) - Minutes of the Caniscom (Canada Israel Committee) meeting (June 14, 2012).

<sup>64</sup> Exhibit F(21) - JNF Canada phone records and bills (2012).

<sup>65</sup> Exhibit C(3) - Agreement between JNF Canada Inc. and KKL of Jerusalem, Israel, signed December 2009, effective January 1, 2010.



The agency relationship between the Charity and the Agent must be seen through the lens of the Agent's worldwide network. The Agent did charitable work in Israel in partnership with and on behalf of numerous foreign organizations, as well as on its own behalf. As an Israeli organization, the Agent was able to identify, supervise, and execute numerous projects in Israel. Using this expertise, the Agent assisted non-Israeli organizations, including the Charity, in their charitable activities in Israel.

The Agent and the Charity were in daily contact, primarily between the members of the Agent's Canada Desk and the employees of the Charity. This communication was primarily by phone and email, but also occurs during the Charity's Mission Trips, Staff Trips and Senior Management Inspections. Many of the Charity's employees maintain written and oral fluency in Hebrew, and the Canada Desk employees were fluent in English.

The Agent reported to the Charity on the progress of projects and on the receipt and use of the Charity's funds to pay the Indigent Workers.<sup>66</sup> The Charity advances funds to the Agent on the basis of project progression.<sup>67</sup>

The Charity had the power to request documents, translations, or other required information from the Agent with little notice. This was generally done through phone calls or emails to the Canada Desk employees, who would then mail or email the requested documents or information.

The Charity also kept regular in-person contact with the Agent by sending employees and senior management to Israel. During Staff Trips, Mission Trips, Senior Management Inspections, and KKL Conferences, employees and representatives of the Charity were in frequent contact with the Canada Desk and the senior management of the Agent. In particular, during Senior Management Inspections, the senior management of the Charity worked together closely with the Canada Desk when inspecting potential project sites and the on-going Selected Project and regularly met with the senior management of the Agent. The Canada Desk employees accompany the Charity's senior management for the entire duration of their stay in Israel. This regular communication between the Charity and the Agent allowed the Charity to keep close supervision and direction over the use of its funds in Israel.

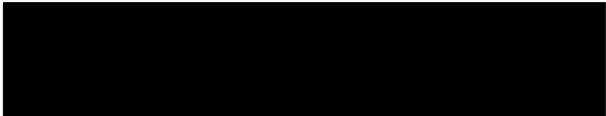
The Charity was also in regular contact with the Agent's Finance Department, primarily through the Charity's CFO. The Finance Department executes the transfer of funds from the CANISCOM Account and would provide the CFO with confirmation and financial information relating to the CANISCOM Account on request.<sup>68</sup>

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<sup>66</sup> Exhibit H(37) and H(38) – Monthly expenditure reports for [2011 and 2012], re salaries paid to indigent workers, sent from KKL Employment Committee to [REDACTED] (sent on November 26, 2013).

<sup>67</sup> Exhibit E(3) – Sample email confirming transfer of funds to KKL, re Moshav Rehov project (April 2011).

<sup>68</sup> Exhibit F(7) – Email to [REDACTED] JNF Canada and attached summaries of receipts of transfers to Israel (KKL) and internet bank statements for 2011 and 2012 (October 30, 2014).



The CEO confers with the Agent's leadership and senior management throughout the year. These communications generally relate to the "big picture", strategic concerns of the Agent and the Charity, whereas the Canada Desk and the Finance Department communications relate to the day-to-day administration of the charitable activities and Selected Projects of the Charity.

### **3. The Role of CANISCOM**

During the Audit Years, CANISCOM was the representative of the Charity in Israel and its main function was to facilitate the supervision of the Agent by the Charity.

CANISCOM oversaw the CANISCOM Account, through which funds from Canada are transferred to Israel. In the Audit Years, the Charity maintained quarterly reports of all funds sent to the CANISCOM Account.<sup>69</sup>

Every year, CANISCOM holds annual meetings where it visits project sites of certain Selected Projects and reviews project progress, sending the minutes of the meeting to the Charity.

In 2011, CANISCOM held a meeting on July 3, 2011. The minutes of the meeting were sent to the Charity in Canada.<sup>70</sup> CANISCOM visited and reviewed four in-progress projects: the Restorers of Jerusalem, Rabin Park, Ramot Forest, and Mount Scopus.

In 2012, CANISCOM held a meeting on June 14, 2012. The minutes of the meeting were sent to the Charity in Canada.<sup>71</sup> CANISCOM reviewed financial reports and visited the sites of several projects including projects in the area of Sederot, a water reservoir, a new forest, and a new park being established by the Charity.

### **G. Direction and Control of the Charity's Operations in Israel**

The Charity's primary activity in Israel was ensuring the employment of the Indigent Workers. To accomplish this, the Charity found worthy projects that require labour that was suitable for the Indigent Workers and committed funds to pay the salaries of the Indigent Workers on these projects.

This had a dual function – first, by committing to pay their salaries, the Indigent Workers were employed when they otherwise would not have been, thus gaining income and important work experience in Israel. Second, by committing to pay the salaries of Indigent Workers on only particular projects, the Selected Projects – all worthy and charitable endeavours that contribute to the well-being

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<sup>69</sup> Exhibits F(12) and F(13) – Quarterly Report[s], Quarter [2 and 3], re transfer of funds to CANISCOM account (June 30, 2011) and (September 30, 2011); Exhibits F(14), F(15), F(16), and F(17) – Quarterly Report[s], Quarter [1-4], re transfer of funds to CANISCOM account (2012).

<sup>70</sup> Exhibit C(4) – Minutes of the Caniscom (Canada Israel Committee) meeting (July 3, 2011).

<sup>71</sup> Exhibit C(5) – Minutes of the Caniscom (Canada Israel Committee) meeting (June 14, 2012).

[REDACTED]

of all of the residents of the land of Israel – were able to go forward. Without the support of the Charity, many of the Selected Projects would not have been completed.

The Charity had a rigorous process of project selection, project design, and project supervision over the life of each of the Selected Projects.

### **1. Project Selection**

The Charity made the final decision in choosing the Selected Projects. Projects come to the attention of the Charity in one of three ways: (1) organizations in need (the “Israeli Charities”) request support from the Charity directly, (2) the Agent identifies Israeli Charities in need of assistance, or (3) donors approach the Charity with suggestions.

In all situations, the Charity’s staff and senior management investigated the project and assessed the needs of the Israeli Charity. This was done primarily through Senior Management Inspections and communications with the Canada Desk. Senior management of the Charity – generally the CEO – visit Israel six to eight times a year to meet with partners in Israel to discuss and see potential projects.

Once a project was selected by the Charity, the Israeli Charity would provide the Agent with a project submission that verified that the Israeli Charity was a charitable organization of good standing under Israeli law and that outlined the proposed project.<sup>72</sup> A committee of the Agent reviewed the project submission and ensured that all necessary paperwork under Israeli law was completed before any funds were sent. These submissions and paperwork were available to the Charity on request.

Once a Selected Project was verified by the Agent, the CEO and Directors of the Charity found donors to fund the salaries of the Indigent Workers working on the Selected Project.

### **2. Project Design and Implementation**

The CEO wrote a commitment letter to the Agent identifying the project and the amount of funds that the Charity was committing to the Indigent Workers employed for the Selected Project (a “Commitment Letter”).<sup>73</sup> This amount was based on budgets provided by the Israeli Charity or the Agent.

Upon the receipt of the Commitment Letter, the Agent created a unique project number to identify the project and any funds dedicated to the project.

While the Charity generally worked with the Agent directly, there were times when the Agent was unable to complete the project directly. In these situations, the Agent would hire a contractor to

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<sup>72</sup> Exhibit E(6) – Third Party Contractor contract, Edible Gardens project (2011).

<sup>73</sup> Exhibit F(11) – Sample letters from the Charity to the Agent re committing funding to specific projects (2013-2015).

[REDACTED]

complete the Selected Project. The Agent would solicit tenders from contractors, sign a contract on behalf of the Charity with a contractor and then keep in communication with the selected contractor throughout the process. In this situation, it was the contractor who employed the Indigent Workers and paid them with the Charity's funds.

a) Reports and documentation regarding Indigent Workers

For all of the Charity's projects in Israel, the Charity impressed on the Agent or the contractor the importance of employing Indigent Workers. This was primarily accomplished through the Employment Bureau, a department of the Ministry of Economy of the Israeli Government. The Agent approached the Employment Bureau, who scheduled interviews with suitable indigent candidates. The Employment Bureau enrolled employees who

1. were not able to find work themselves;
2. are non-professionals;
3. reside in areas with a limited number of positions applicable to their professional level;
4. have exhausted all of their unemployment benefits and are being paid income support by the National Insurance Institute<sup>74</sup>;
5. are immigrants from Ethiopia or Russia; and
6. are minorities for which this type of employment is the only one available.

Not all of the Indigent Workers met each one of these criteria, but this list was used to aid the Agent in selecting poor and hard-to-hire workers to employ. See Exhibit H03 for a letter from the Agent's Head of Field Employees to the manager of the Agent's Finance Department that confirms this process.

**3. Project Supervision**

a) Visits to Israel

The Charity directly supervised its projects through its regular Senior Management Inspections and Staff Trips to Israel.

Senior Management Inspections: Senior management of the Charity, generally the CEO, visited Israel six to eight times a year. These Senior Management Inspections not only allowed the Charity to examine and evaluate new potential projects, but also review the progress of on-going projects.<sup>75</sup>

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<sup>74</sup> Income support from the National Insurance Institute (*Bituah Leumi*) is subject to numerous restrictions, including a calculation of income and assets and a requirement that the individual report to the Employment Bureau for a job but is unable to acquire even low-paid employment:

"Conditions of entitlement", National Insurance Institute of Israel (website), online:

<<https://www.btl.gov.il/English%20Homepage/Benefits/Income%20Support%20Benefit/ConditionsofEntitlement/Pages/default.aspx>>.

<sup>75</sup> Exhibits J(12) – List of JNF Canada Senior Staff who attended Israel trips (2011-2016).



Inspected were completed at least once a quarter, and the senior management were accompanied by Canada Desk employees for the entire duration of their stay in Israel.

Staff Trips: The employees of the Charity also visited Israel regularly. It is the Charity's policy that every staff member visits Israel at least once every three years. During Staff Trips, the Charity's employees visit on-going project sites. This gave employees a stronger connection to the results of the Charity's work and allowed them to more effectively manage the Selected Projects from Canada and work with the Agent to achieve the Charity's goals. While these Staff Trips were not a condition of employment and some employees did not attend for health and family reasons, 95% of employees have complied with the policy.<sup>76</sup>

b) CANISCOM

The Charity directly supervises its projects through CANISCOM.

As the representative of the Charity in Israel, CANISCOM oversaw the Charity's agency relationship with the Agent through annual visits to in-progress project sites and by working with the paid employees of the Charity who manage the CANISCOM Account. CANISCOM reported to the Board or the Executive Committee, and CANISCOM's annual visits to project sites were recorded and the minutes sent to the Executive Committee.

c) The Agent's Canada Desk and Finance Department

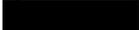
The Charity indirectly supervised the Selected Projects through the Agent, with whom the Charity had daily contact.

The Charity's main contacts were the Agent's Finance Department and Canada Desk. The Charity's staff and the Canada Desk were in daily contact. As described below, any request for funds to pay the Indigent Workers came from the Canada Desk to the Charity. The Charity released funds through the CANISCOM Account on the basis of the progress of the Selected Project.

The Canada Desk maintained records of the Charity's committed projects, funds received from the Charity, and disbursements to the Israeli Charities as they are made. The Charity could request any documents or translations from the Canada Desk with little notice. The Finance Department of the Agent sent reports to the Charity verifying the funds received to date and payroll costs of the Indigent Workers.<sup>77</sup>

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<sup>76</sup> Exhibits J(1) – J(11) – [Visits to Israel].

<sup>77</sup> Exhibit H(37) and H(38) – Monthly expenditure reports for [2011 and 2012], re salaries paid to indigent workers, sent from KKL Employment Committee to  (sent on November 26, 2013).

[REDACTED]

Once the Canada Desk or the Charity's employees confirmed that a project has been completed, arrangements were made to erect a plaque as agreed upon with the Canadian donor.<sup>78</sup>

The Canada Desk followed up with the Israeli Charities regarding the Charity's projects and visited the Selected Projects regularly to check progress. Israeli Charities provided the Agent with progress reports and statements of costs incurred to date on each project.

d) Control over the flow of funds from the Charity to the Indigent Workers

The Charity exerted close control over the multi-step process of paying the Indigent Workers. Funds were sent from the Charity's bank account in Canada to the CANISCOM Account. The Agent had signing authority over the CANISCOM Account. When funds were received in the CANISCOM Account, the Agent's Finance Department sent the Charity a confirmation report.<sup>79</sup> These funds were segregated from the Agent's own funds. The Charity maintained quarterly records of the CANISCOM Account.<sup>80</sup> Before releasing the funds for use to pay the Indigent Worker's employed on a Selected Project, the Agent was required to provide a progress report to the Charity unless the Charity's employees had confirmed project progress in person during a visit to Israel.<sup>81</sup> Further, the Agent was only authorized to release the funds after receiving authorization from the Charity.<sup>82</sup> The Agent then used the funds to pay the salaries of the Indigent Workers.

In the case of a contractor other than the Agent, once the Agent received the authorization letter, the Agent released the funds to the Israeli Charity, who transferred the funds to the contractor, who paid the Indigent Workers. On the receipt of funds from the Agent, the Israeli Charity sent a confirmation slip.<sup>83</sup>

e) Accessibility of information regarding Indigent Workers by the Charity

The Agent recorded and maintained all information regarding the hiring of Indigent Workers. These records were available upon request by the Charity.<sup>84</sup> The Agent also recorded hours worked per Indigent Worker per project<sup>85</sup> and the monthly salaries paid to each Indigent Worker.<sup>86</sup> This information

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<sup>78</sup> Exhibit J(14) – Photographs from JNF Canada trips to Israel and donor plaques.

<sup>79</sup> Exhibit F(7) – Email to [REDACTED] JNF Canada and attached summaries of receipts of transfers to Israel (KKL) and internet bank statements for 2011 and 2012 (October 30, 2014).

<sup>80</sup> Exhibits F(12) and F(13) – Quarterly Report[s], Quarter [2 and 3], re transfer of funds to CANISCOM account (June 30, 2011) and (September 30, 2011); and Exhibits F(14), F(15), F(16), and F(17) – Quarterly Report[s], Quarter [1-4], re transfer of funds to CANISCOM account (2012).

<sup>81</sup> Exhibit E(1) – Sample email of project progress update, re ALUT Stage 2 (March 2011); and Exhibit E(2) – Sample email attachment of project plans, re ALUT Stage 2 (March 2011).

<sup>82</sup> Exhibit E(3) – Sample email confirming transfer of funds to KKL, re Moshav Rehov project (April 2011).

<sup>83</sup> Exhibit E(7) – Sample Israeli charity confirmation of receipt of funds from KKL (2015); and Exhibit E(8) – Sample Israeli charity confirmation of receipt of funds from KKL, translation (2015).

<sup>84</sup> Exhibit H(2) – Records of 3 different indigent workers providing examples of the procedures and forms required for hiring indigent workers.

<sup>85</sup> Exhibit H(7) – Summary of hours worked per worker per project.

[REDACTED]

was recorded in Hebrew, and while it is not feasible to translate all documents into English on a regular basis, the Charity could request that documents be translated by the Agent. Furthermore, many employees of the Charity during the Audit Years understood Hebrew, allowing the Charity to fully understand untranslated documents.

#### **4. Co-operation with the Agent and affiliated charities**

As described above, the Charity and the Agent worked together closely through the entire process of project selection, project design, and project supervision. The Charity selected projects, fundraised money, and then engaged the Agent to employ Indigent Workers to work on the Selected Projects. These projects were often funded by several organizations, with other foreign charities or the Agent itself providing funds to buy supplies or capital property. In all cases, the Charity exclusively supplied funds to pay the salaries of the Indigent Workers.

Every year, the Agent holds a KKL Conference for the Charity and other affiliated charities. At these conferences, the leaders of the various charitable organizations discuss future projects and best practices.<sup>87</sup>

#### **5. Fundraising**

A major part of the Charity's activities in Canada is to fundraise. Fundraising is done by promoting specific projects.<sup>88</sup> The Charity and the Agent use the same branding, as do the other JNF affiliated charitable organizations worldwide.<sup>89</sup> The Charity also has an agreement with the Agent to give credit to the Charity or to particular Canadian donors for specific projects in Israel despite the fact that the Charity does not own the project site or anything constructed on the project site.

The Charity holds Mission Trips where current or potential donors visit completed projects in Israel to see the impact of the Charity's work. The Charity does not raise money directly from these trips but uses them to encourage donors to donate more in the future. No receipts are issued for these visits.

#### **H. Conclusion**

The purpose of this part of the letter is to describe the governance and operations of the Charity and the governance and operations of the agency relationship in sufficient detail to show that the Charity definitely does maintain direction and control of its resources as required by law and by CRA guidance.

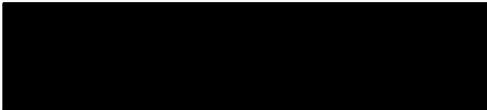
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<sup>86</sup> Exhibits H(13) – H(36) – Chart[s] of individual indigent worker salary payments [2011-2012].

<sup>87</sup> Exhibit J(1) – Israel Trip Itinerary, World Leadership Conference 2011, 110 years KKL-JNF, 100% Israel (March 27 – April 1, 2011).

<sup>88</sup> See Exhibit K(17) - Arava Flyer (2012).

<sup>89</sup> See Exhibits K(20)-K(24) – [advertisements referring to Blue Box Collection (2011-2012)].



### III. LAW OF CHARITABLE PURPOSE AND ACTIVITIES RELEVANT TO THE CHARITY

In this part of the letter we describe the key elements of the law and CRA guidance as they apply to the Charity's situation. In particular, this part reviews the law of charitable purposes and activities, and how it applies to the Charity. The first section of this part reviews the law of charity, exploring the roots of the common law definition and then elaborating on each of the four *Pemsel* heads. The second section applies that law to the circumstances of the Charity. It concludes by demonstrating that the Charity's principal activity—the relief of poverty by ensuring the employment the Indigent Workers—is exclusively charitable as a matter of law. It also demonstrates that all or substantially all of the Charity's projects conducted in the Audit Years were exclusively charitable.

#### A. The Definition of "Charity" for the Purposes of the Income Tax Act

##### 1. General Approach to Definition of Charitable Purposes under Canadian Law

###### a) Introduction

The law of charity contains a vast jurisprudence on the legal definition of its core concept of "charity". This is perhaps one of the richest veins of jurisprudence in the English common law. No other legal system in the world approaches the topic of "charity" with as much doctrinal rigour and learnedness as does Anglo-Canadian common law.

It is fair to say, in broad summary of that law, that there are two main approaches to defining charity, the approach based on the *Commissioners for the Special Purposes of the Income Tax v Pemsel*<sup>90</sup> and the approach based on the *Statute of Elizabeth*<sup>91</sup>. Both are basically related, so it would be a mistake to think of either as discrete. The Supreme Court of Canada's decisions in *Vancouver Society of Visible Minority and Immigrant Women v Minister of National Revenue*<sup>92</sup> and *Amateur Youth Soccer Association v Canada Revenue Agency*<sup>93</sup> together now lay down the definitive formulation of the approach to the definition of "charity" in Canada. First, we examine the two main approaches. Then, we look at the Supreme Court of Canada decisions.

We believe that this introduction is necessary because there is a modern tendency to think of the four heads of charity, discussed in more detail below, as an exhaustive definition or system of classification of "charity", when in fact, they are simply convenient categories for classifying the rich jurisprudence. What really matters, the jurisprudence shows, is the approach.

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<sup>90</sup> [1891] AC 531 (HL) ("*Pemsel*"). See Book of Authorities.

<sup>91</sup> 1601 (UK), 43 Eliz 1, c 4 ("*Statute of Elizabeth*"). See Book of Authorities.

<sup>92</sup> [1999] 1 SCR 10 ("*Vancouver Society*"). See Book of Authorities.

<sup>93</sup> [2007] 3 SCR 217 ("*AYSA*"). See Book of Authorities.

b) Statute of Elizabeth

One source for the legal definition of “charitable purposes”, especially dominant until the 1950s and still used by some courts today, is the preamble to the *Statute of Charitable Uses*<sup>94</sup>, more commonly known as the *Statute of Elizabeth*. The preamble is a non-exhaustive list of projects classified by the law, at the time of its enactment, as “charitable”:

Whereas lands . . . goods . . . chattels . . . and money, have been . . . given . . . by Sundry . . . well-disposed persons . . . for . . . The relief of aged, impotent and poor people; the maintenance of sick and maimed soldiers and mariners; the maintenance of schools of learning, free schools and scholars in universities; the repair of bridges, ports, havens, causeways, churches, sea banks and highways; the education and preferment of orphans; the relief, stock or maintenance of houses of correction: the marriage of poor maids. The supportation, aid and help of young tradesmen, handicraftsmen and persons decayed; the relief or redemption of prisoner or captives; the aid or care of any poor inhabitants . . .<sup>95</sup>

As is well known, the preamble of the *Statute of Elizabeth* was never intended to provide a comprehensive definition of “charity”. It was intended only to define the jurisdiction of a commission established under the statute to investigate and enforce “all and singular such gifts, allocations, assignments for any of the charitable and godly purposes before [in the Preamble] rehearsed”.<sup>96</sup> The formal title of the statute described its purpose as: “An Act to redress misemployment of Lands, Goods, and Stock of Money heretofore given to certain Charitable Uses”. The charitable trusts that were the target of the statute were twofold: charitable trusts in favour of the poor and charitable trusts to support public works. These trusts were singled out for legislative action because they had become the object of much “squandering and defalcation” “by reason of frauds, breaches of trust and negligence in those that should . . . employ the same”.<sup>97</sup> at a time when government was interested in acting to help alleviate the social consequences of poverty and to improve the public infrastructure. There was, thus, much that was thought at the time of the statute’s enactment to have been charitable—most importantly religion that was intentionally left off the list. In cases unrelated to the statute, English courts at the time continued to use a more general and inclusive common law definition that had been developed by the Court of Chancery. That definition included the advancement of religion as a charitable object and equated “charity” with a broadly inclusive notion of “public benefit”.

Generally, the approach of the modern courts, which rely on the statute as their starting point, has been to ask whether an activity falls within the spirit and intendment of this statutory preamble, or, failing that, whether it is analogous to one of the enumerated purposes, and, in either case, whether it is beneficial to the community. Alternatively, but to the same effect, courts ask whether the purpose under

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<sup>94</sup> *Supra* note 91.

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*

<sup>97</sup> *Ibid.*

consideration falls within the equity of the statute.

An excerpt from Lord Reid's decision in *Scottish Burial Reform and Cremation Society v Glasgow Corporation*<sup>98</sup> provides a useful summary of the approach under the statute and its current status in English law:

The preamble specifies a number of objects which were then recognised as charitable. But in more recent times a wide variety of other objects have come to be recognised as also being charitable. The courts appear to have proceeded first by seeking some analogy between an object mentioned in the preamble and the object with respect to which they had to reach a decision. And then they appear to have gone further and to have been satisfied if they could find an analogy between an object already held to be charitable and the new object claimed to be charitable. And this gradual extension has proceeded so far that there are few modern reported cases where a bequest or donation was made or an institution was being carried on for a clearly specified object which was for the benefit of the public at large and not of individuals, and yet the object was held not to be within the spirit and intendment of the *Statute of Elizabeth I*.<sup>99</sup>

c) Pemsel Test

The more common approach in the case law is to start with the test laid down by Lord Macnaghten in *Commissioners for the Special Purposes of the Income Tax v Pemsel*. In his speech in that case, referred to above, Lord Macnaghten said:

How far then, it may be asked, does the popular meaning of the word "charity" correspond with its legal meaning? "Charity" in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads.<sup>100</sup>

This list of four things, essentially (and legally) charitable, is, in various forms, also found in several statutes across the common law world.

In drawing up the *Pemsel* list, Lord Macnaghten appears to have thought that he was merely classifying the items on the much lengthier *Statute of Elizabeth* list.

A statement from Lord Wilberforce's speech in *Scottish Burial Reform and Cremation Society* provides a useful summary of the *Pemsel* approach:

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<sup>98</sup> [1968] AC 138 (HL) ("*Scottish Burial Reform and Cremation Society*"). See Book of Authorities.

<sup>99</sup> *Ibid* at 147.

<sup>100</sup> *Supra* note 90 at 583.

[REDACTED]

Lord Macnaghten's grouping of the heads of recognised charity in *Pemsel's* case is one that has proved to be of value and there are many problems which it solves. But three things may be said about it, which its author would surely not have denied: first that, since it is a classification of convenience, there may well be purposes which do not fit neatly into one or the other of the headings; secondly, that the words used must not be given the force of a statute to be construed; and thirdly, that the law of charity is a moving subject which may well have evolved even since 1891.<sup>101</sup>

d) The Current Canadian Approach: *Vancouver Society*

When decided in 1999, *Vancouver Society* was the first decision of the Supreme Court of Canada on the definition of "charity" in 25 years. There are majority and dissenting opinions in this case in which the Justices disagree as to the appropriate application of the general test of charitable status. This disagreement is not of any present concern, however, as there is substantial agreement on the correct formulation of the general approach. Hence, it is useful for present purposes to examine the decision of both the minority (Gonthier J, McLachlin and L'Heureux Dubé JJ, concurring) and the majority (Iacobucci J, Cory, Major and Bastarache JJ, concurring) Justices.

Gonthier J first examined the nature of the tests he was required to apply. He observed that the list in the preamble was not intended and never has been taken, as exhaustive. Although the *Pemsel* classification was intended to be exhaustive, it left much room in the fourth residual category for development. The *Pemsel* test, he said, was a classification of convenience and as such was not meant to be read as a statute. Rather, it was sufficiently flexible to allow courts to "modernize" the definition of charity, to adapt it to changing social needs.<sup>102</sup> Neither approach, he said, provides a definition, only a description. Neither the approach in *Pemsel* nor that in the *Statute of Elizabeth* states why the items identified are charitable - both merely assert that they are. He then went on to identify the twofold substance of charity "long embedded in the case law": "voluntariness" or "altruism" and "public welfare in an objectively measurable sense".<sup>103</sup> To satisfy the traditional tests and the tests under the Act, an organization purporting to be charitable must be exclusively charitable in this sense (although incidental and ancillary purposes are permitted) and it must be for the benefit of an appreciably important class of the community. The latter requirement, in turn, means that there must be an objectively measurable and socially useful benefit and that benefit must be available to a sufficiently large section of the public.<sup>104</sup>

The first three heads of *Pemsel*, he said, provide three presumptively valid heads of charity, while the fourth is a residual category with recognized subcategories. Courts reason by analogy using the first three heads and look to the preamble of the *Statute of Elizabeth* as a source for analogies in the fourth. They ask whether the proposed object is within the spirit and intendment of the preamble or the

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<sup>101</sup> *Supra* note 98 at 154.

<sup>102</sup> *Supra* note 92 at para 36.

<sup>103</sup> *Ibid* at para 37.

<sup>104</sup> *Ibid* at paras 148 and 174.



decisions developed under it. With respect to the fourth, only some purposes beneficial to the public, i.e., only those within the spirit and intendment of the preamble, are charitable at law. The task is a difficult one but courts must attempt to conform to precedent – the decided cases – in a way that will allow the law of charity to develop in a principled way.

Applying this approach to any case, one must examine whether an organization's purposes are charitable and whether its activities are sufficiently related to its purposes to be considered to be in furtherance of them. Activities which are political or commercial in purpose may be pursued only if they are merely a means to a charitable purpose. They must be merely ancillary or incidental to the sole permissible purpose – charity. The point at which they become an end in themselves is the point at which the organization loses its qualification as charitable. The connections between the activity and the purpose must be direct in the sense of coherent and not necessarily immediate. He summarized as follows:

Thus, in my view, the proper approach is to begin by: (a) identifying the primary purposes of the organization; and then (b) determining whether the purposes are charitable. If one concludes that the purposes are not charitable, then the organization is not charitable and the inquiry ends there. However, if the organization's primary purposes are charitable, we must then go a further step, and consider (c) whether the other purposes pursued by the organization are ancillary or incidental to its primary purposes; and (d) whether the activities engaged in by the organization are sufficiently related to its purposes to be considered to be furthering them. If positive responses are made to these two latter inquiries, then the organization should be registered as a charitable organization.<sup>105</sup>

Iacobucci J. started with a discussion of the test in *Pemsel*, which he said had been adopted and applied many times in Canada. He endorsed Lord Wilberforce's dictum in *Scottish Burial Reform and Cremation Society* quoted above to the effect that the *Pemsel* classification is a classification of convenience.<sup>106</sup> That test required that the purpose be for the benefit of the community or of an appreciably important class and that the purpose have the "generic character" of charity.<sup>107</sup> In the same paragraph, he acknowledges that this public character attaches to "all the heads of charity, although sometimes the requirement is attenuated under the head of poverty". In applying the test, the focus must be on purposes, not activities. Thus, (a) the purpose of the organization must be charitable and must define the scope of the activities engaged in by the organization and (b) all of the organizations' resources must be devoted to these activities unless the organization falls within the specific exemptions.

Within this framework, and in the absence of a legislative reform providing guidelines, "the best way to

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<sup>105</sup> *Ibid* at para 63.

<sup>106</sup> *Ibid* at para 146.

<sup>107</sup> *Ibid* at para 148.

[REDACTED]

discern the quality of an organization's purposes was to proceed by way of analogy to the purposes already found to be charitable by the common law ...with an eye to society's current social, moral, and economic context".<sup>108</sup> To qualify under the Act, the organization must be exclusively charitable. However, where it devotes part of its resources to other political or commercial purposes or activities that are merely ancillary and incidental to its charitable purpose, it will still qualify either at law or pursuant to specific provisions of the Act.

Following the holding in *Towle Estate v Minister of National Revenue*<sup>109</sup>, Iacobucci J stated that "even the pursuit of a purpose which would be non-charitable in itself may not disqualify an organization from being considered charitable if it is pursued only as a means of fulfilment of another, charitable, purpose and not as an end in itself."<sup>110</sup> In effect, the pursuit of ancillary and incidental objectives does not jeopardize the finding that the organization is charitable.

e) Summary of the Canadian Approach

In determining the validity of a charity under the *Income Tax Act*, a court must first identify the purposes of an organization and then examine whether the organization's purpose is charitable. This requires that the primary purpose satisfy two requirements:

- (1) The Pemsel Test: First, the purpose must fit under one of the four heads of *Pemsel*.<sup>111</sup> Courts will reason by analogy using the first three heads, and look to the *Statute of Elizabeth* as a source for analogies in the fourth<sup>112</sup>, but "the pursuit of analogy should not lead the courts astray. [Their] eye must always be on the broader principles"<sup>113</sup> of "voluntariness" or "altruism" and "public welfare in an objectively measureable sense".<sup>114</sup>
- (2) The Public Benefit Test: Second, the purpose must provide a sufficiently *public* benefit, that is, it must "be for the benefit of the community or of an appreciably important class of the community".<sup>115</sup> If the benefit is for private citizens, then the purpose does not qualify as charitable. In the case of relief of poverty, this requirement may be relaxed.<sup>116</sup>

Once the court has determined that the organization's *purpose* is charitable, it will then examine whether the organization's activities are sufficiently connected to, and in furtherance of, these

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<sup>108</sup> *Ibid* at para 159.

<sup>109</sup> [1967] SCR 133. See Book of Authorities.

<sup>110</sup> *Vancouver Society*, *supra* note 92 at 158.

<sup>111</sup> *Ibid* at para 148.

<sup>112</sup> *Ibid* at para 51.

<sup>113</sup> *Ibid*.

<sup>114</sup> *Ibid* at para 37.

<sup>115</sup> *Ibid* at para 147.

<sup>116</sup> *Ibid*.

purposes.<sup>117</sup> The court must evaluate the charitable nature of the activities by reference to their degree of relationship with the charitable purposes which they purport to advance.<sup>118</sup> Under the definition of "charitable organization", the *Income Tax Act* requires that "all of the resources of [the organization] are devoted to charitable activities carried on by the organization itself".<sup>119</sup> Iacobucci J. reviewed this exclusivity requirement with regards to the use of resources by the organization and stated that the "ITA, therefore, clearly requires that all of the purposes and activities of the foundation or organization be charitable".<sup>120</sup>

However, purposes and activities that are ancillary or incidental to the organization's primary purposes may be acceptable in certain circumstances: "even the pursuit of a purpose which would be non-charitable in itself may not disqualify an organization from being considered charitable if it is pursued only as a means of fulfilment of another, charitable, purpose and not as an end in itself."<sup>121</sup>

For the Charity to conform to this law, it must have a charitable purpose that is accepted under the jurisprudence, and its activities must further that purpose or be ancillary or incidental to the primary purpose.

f) Charities that Benefit Foreigners

Activities undertaken to benefit foreigners are no less charitable than the same activities undertaken to benefit residents of a donor's country. It is also clear that a charity may carry on its charitable activities directly or through an agent or contractor or by way of a joint venture or partnership.

Both Canadian and U.K. case law recognize without difficulty the charitable nature of activities that benefit foreigners. In *Lewis v Doerle*, the Ontario Court of Appeal considered the validity of a gift of land in Toronto in trust "to promote, aid, and protect citizens of the United States, of African descent, in the enjoyment of their civil rights".<sup>122</sup> MacLennan J.A. relied on a U.K. case, *Curtis v Hutton*, in which the proceeds of land in England were given to a charity in Scotland, holding that "it made no difference where the charitable trust was to be executed."<sup>123</sup>

The question of whether a charitable trust is valid where there is no local benefit and only benefit to residents of a foreign country was considered by the Ontario Court of Appeal in *Re Levy Estate*.<sup>124</sup> The trust arose on the death of Fred Levy, who bequeathed the residue of his estate to the State of Israel for charitable purposes to be determined by the trustees. Blair J.A. reviewed and considered a number of

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<sup>117</sup> *Ibid* para 56.

<sup>118</sup> *Ibid* para 58.

<sup>119</sup> *Income Tax Act*, RSC 1985, c 1 (5th Supp), s 149.1(1). See Book of Authorities.

<sup>120</sup> *Vancouver Society*, *supra* note 92 at para 154.

<sup>121</sup> *Ibid* at para 158.

<sup>122</sup> [1898] 25 OAR 206 at para 1. See Book of Authorities.

<sup>123</sup> *Ibid*; considering *Curtis v Hutton* (1808), 14 Ves 537. See Book of Authorities.

<sup>124</sup> [1989] OJ No 660 (ONCA). See Book of Authorities.

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U.K. and Ontario cases dealing with the question of whether there needs to be a local benefit for a charitable trust to be valid, as follows [emphasis added]:

10 To hold that Canada as well as another country must benefit from the bequest in this case would be to depart from a long-established principle exemplified in Canadian and English decisions. In *Parkhurst v. Roy* (1880), 27 Gr. 361; affirmed 7 O.A.R. 614, a bequest by a resident of Ontario to the Government and Legislature of the State of Vermont to establish charitable trusts as directed in the will was upheld. In *Re Oldfield* (No. 2), [1949] 2 D.L.R. 175, [1949] 1 W.W.R. 540, 57 Man. R. 193, the Manitoba Court of King's Bench held that a bequest to maintain a municipal cemetery in France was a valid charitable bequest whether regarded as for the advancement of religion or for a purpose beneficial to the community. In *Re Masoud*, [1961] O.R. 583, 28 D.L.R. (2d) 646 (H.C.J.), a bequest of money for the purpose of building and maintaining a school in Syria was held to constitute a good charitable gift by the High Court of this province.

11 These decisions are consistent with those of the English courts which were cited with approval and discussed in both *Oldfield* and *Masoud*, supra. They include *Re Robinson*, [1931] 2 Ch. 122, where a bequest "to the German Government ... for the benefit of its soldiers disabled in the late war" and in *Re Vagliano* (1905), 75 L.J. Ch. 119, where a bequest "for charitable objects in the Island of Cephalonia" were both upheld. The bequests in all the cases mentioned were held to create valid charitable trusts notwithstanding that the power to administer the charitable activity was located in a foreign country and even where the duty of the trustee was imposed upon a foreign government as in *Parkhurst*, *Robinson* and *Oldfield*, supra.

12 The law, which appeared well settled, was put in some doubt by certain dicta of the English Court of Appeal in *Camille and Henry Dreyfus Foundation Inc. v. Inland Revenue Com'rs*, [1954] 1 Ch. 672 (C.A.). The Dreyfus Foundation, a charitable foundation incorporated and operating in the United States, received royalty income from a United Kingdom corporation. It was assessed for United Kingdom income tax and claimed the exemption provided by the *Income Tax Act, 1918* (U.K.), c. 40, s. 37, for payments to a "body of persons or trusts established for charitable purposes only". The decision turned on the narrow issue of the proper construction of the exempting provision in the statute which the Court of Appeal held applied only to charitable organizations "established" in the United Kingdom.

[...]

14 The more fundamental question, raised by Lord Evershed, was whether the charity must benefit the United Kingdom as well as the foreign country in which it operates. In particular, he wondered whether some of the charitable purposes described in the preamble to the *Statute of Elizabeth* such as "the setting out of soldiers" or the construction of public works in another country could benefit the United Kingdom. He recognized that this question had not been raised before and said at p. 684:



I cannot, however, find that the meaning and scope of the requirement of a "benefit to the community" have ever been judicially considered from this point of view. On the contrary, there are undoubtedly instances of trusts being held or regarded as charitable which were exclusively for the benefit of objects outside the United Kingdom. *Income Tax Special Purposes Commissioners v. Pemsel* ... is indeed one of them.

It may be that, on very broad and general grounds, relief of poverty or distress in any part of the world, or the advancement of the Christian religion in any part of the world, would be regarded as being for the benefit of the community in the United Kingdom. I see, however, formidable difficulties where the objects of the trust were, say, the setting out of soldiers or the repair of bridges or causeways in a foreign country. To such cases the argument of public policy (meaning United Kingdom public policy) might be the answer.

15 Jenkins L.J. referred to the argument, to which he said he could "give very little weight", that the effect of a charitable exemption was to cast a heavier burden on United Kingdom taxpayers which could only be justified if the charity was for the benefit of the United Kingdom. He then went on to cast doubt on, if not reject, the broader proposition that a valid foreign charitable gift must benefit the United Kingdom community as well as the foreign community. He said at pp. 704-5:

It is, of course, axiomatic that no object is held charitable under our law unless it is for the benefit of the community, or, as is sometimes said, for the benefit of the public or a section of the public. One might expect that the community, or public or section thereof, some benefit to whom is held to be an essential ingredient in all charity, should be the community, or public or section thereof, existing in our own country, and not a foreign community or foreign public. But the authorities do not bear this out, for, as Mr. Talbot has shown, there are many instances in which purposes have been recognized as charitable notwithstanding that they were to be pursued wholly abroad. This appears from *In re Robinson* and the cases there cited, and, indeed, an instance of it is provided by *Pemsel's* case itself.

It does not necessarily follow that all purposes which, if carried out in, and for the benefit of the inhabitants of, the United Kingdom, would be charitable under our law, are recognized as charitable when carried out in, and for the benefit of the inhabitants of, a foreign country. Indeed, there are some which could not well be so recognized, for instance, a trust for the improvement of the efficiency of the army of a foreign State ... It is here only necessary for me to observe that it

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cannot be maintained that no purpose is recognized as charitable under our law unless it is carried out in, and for the benefit of the public, or some section of the public, of the United Kingdom. This, I think, suffices to dispose of the general proposition I am now considering as an aid to the construction of section 37.<sup>125</sup>

As superficially persuasive as Jenkins L.J.'s reasoning appeared, in *Levy Estate* Blair J.A. of the Court of Appeal rejected this view, declaring the relevant portion of the judgment of the U.K. Court obiter dicta and further stating that in any case U.K. law is not binding on a Canadian Court. Blair J.A. went on to state at paragraph 20 that:

Although the courts of this province have always given great weight to the views of members of the English Court of Appeal, the suggestion that gifts for foreign charities should also benefit Canada should not be adopted by this court. The principle that gifts, which are valid for charitable purposes in Canada are equally valid for the same charitable purposes abroad, is deeply embedded in our jurisprudence and also reflects the multinational [and] multicultural origins of Canadians. Gifts by our people for charitable purposes in their countries of origin are not uncommon. They have been accompanied, in recent years, by generous responses to appeals from international charitable organizations for the relief of suffering abroad and for assistance to less developed countries. It is not open to the courts, in my opinion, to declare that, for reasons of tax equity or some other principle of public policy, charitable activities carried on outside Canada should now be deprived of their charitable status because they do not benefit the Canadian community as well as a foreign community. Parliament or the legislature, not the courts, should make this kind of policy decision.<sup>126</sup>

Thus, in our respectful view, Canadian case law is definitive on the question of whether international charity that does not benefit Canadians per se is charitable. The definitive answer is "yes".

The CRA opined on the validity of international charity in CRA Guidance CG-002, "Canadian Registered Charities Carrying Out Activities Outside Canada"<sup>127</sup>, stating that the Act permits registered charities to carry out charitable purposes both inside and outside Canada. Furthermore, under CG-002, charities may do so by making gifts to qualified donees and by carrying on their own charitable activities directly or through an agent or contractor, and by way of a joint venture or partnership.

g) The Charitable Goods Policy

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<sup>125</sup> *Ibid* at paras 10-12, 14, 15.

<sup>126</sup> *Ibid* at para 20.

<sup>127</sup> (8 July 2010) ("CG-002"). See Book of Authorities.

[REDACTED]

In *Canadian Magen David Adom for Israel v MNR*<sup>128</sup>, the Court of Appeal reviewed an internal CRA staff memorandum dated December 11, 1985, identifying what the Court referred to as the “charitable goods policy”.<sup>129</sup> The memorandum explains that certain goods and services are, by their very nature, charitable:

RE: Transfer of Goods and Services to Non-Qualified Donees

Section 149.1 of the Income Tax Act allows a registered charity to operate in two different ways: other [sic] by devoting its resources to charitable activities carried on by itself and/or by gifting to qualified donees. The inference sometimes drawn from this is that therefore gifts or other transfers to non-qualified donees can never be made by registered charities.

Such, of course is not the case. Gifts—and other transfers of goods and services—are often made by registered charities to non-qualified donees in complete compliance with the Act. Scholarships to students, assistance to the needy, salaries for the charity’s employees, and payments for goods received are all examples of transfers of resources to non-qualified donees which are quite legitimate. They are transfers made in furtherance of charitable purposes and, more importantly, the expenditures are, themselves, evidence of charitable activities. The issue therefore, when determining whether a particular expenditure, activity or practice can be viewed as a charitable activity carried on by the activity [sic] or an inappropriate expenditure, depending on the nature of the transfer (i.e. cash, goods, services), who the recipient is and on the control exercised by the charity in the particular case at hand.

Where the recipient is an employee or agent of the charity who is obliged under the terms of a contract to use the resources that are transferred in the manner stipulated by the charity, objections should not be raised.

Equally acceptable are transfers of goods and services that are directed to a particular use by the very nature of the goods and services so transferred. Examples of such transfers include:

- transfers, by a research organization, of books and scientific reports to anyone interested (including foreign governments, libraries, schools, etc.),
- transfers of books—on a subject of particular interest to an educational charity—to public libraries in major cities all over the world,
- transfers of medical supplies to a refugee camp,

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<sup>128</sup> 2002 FCA 323 (“*Magen David Adom*”). See Book of Authorities.

<sup>129</sup> *Ibid* at para 19.

- 
- transfers of food, blankets, etc. to a charity coping with a natural disaster.
  - transfers of drugs, medical equipment, etc. to poorly equipped hospitals.
  - transfers of personnel to schools or hospitals (on loan).

There will, of course, be suspicious transfers which will require obtaining as much information as possible to avoid approving sham transactions. Since the issue is really one of interpretation of the facts in a particular case and not a "policy" issue, it is impossible to give precise guidelines to cover all situations.

However, some general comments, in addition to the examples given above, can be made. An applicant, whose only activity is to support (especially by cash) another organisation, could be viewed with suspicion. Generally, gifts of cash to another organization would indicate that the applicant was not operating within the requirements of the Act. Gifts of cash to an individual would less likely give rise to such concerns, in that individuals, unlike organizations, can themselves be objects of charity whose needs can [sic] be alleviated by cash. For example, giving money to poor person [sic] will relieve their poverty, but giving money to an organization acting on behalf of poor people will not directly relieve their poverty (assuming there is no agency relationship). Of course there are exceptions, such as the funding of individual (independent) missionaries (refer Staff memorandum 11.1.f).

Transfers of goods or services can more easily be viewed as charitable activities per se. The transfer of a piece of equipment that is meant to be used only for charitable purposes to an organization that will clearly use it for such purposes is likely to be a charitable activity. The examples given earlier would be applicable here.

However, a gift of cash to such an organization merely on the basis of an understanding or assumption that the money will be used for charitable activities would likely be in contravention of the Act. There may be applicants or charities who cannot or will not accept such a distinction, and will argue that if a gift of goods or services is charitable, then so is a gift of cash. Our response should be that the transfer is only acceptable where it can reasonably be viewed as a direct charitable activity itself. In many instances (though [sic] not all) a transfer of cash will only indirectly promote a charitable purpose whereas a transfer of goods or services will more [sic] often directly accomplish a charitable purpose.

Aside from being in keeping with the wording of the Act, this approach allows us some flexibility. We can thus avoid having to take the rigid position that either all gifts to non-qualified donees are never acceptable, or that all such gifts are acceptable if they somehow eventually serve a charitable purpose.

Finally, it should be noted that our determination should not be influenced by whether or not the non-qualified donee is a Canadian or foreign entity. Where the transfer is to a

foreign non-qualified donee who is an agent of the charity or who is a partner of a joint venture, or involves capital property, reference should be made to Staff Memo III.1.c.

## 2. The Relief of Poverty as a Charitable Purpose

### a. Definition of Relief of Poverty

Charity, in a narrow vernacular sense, means assisting people in need. The relief of poverty is perhaps the most fundamental of all charitable purposes – charity is assisting people in need, and the relief of poverty is assisting people in *financial* need.<sup>130</sup> Furthermore, the degree of financial need must be serious but “does not mean the very poorest, the absolutely destitute; the word ‘poor’ is more or less relative”.<sup>131</sup> Jessup J.A. is quoted in *Jones v T Eaton Co* as stating that “[p]overty is a relative term which extends to comprise person in moderate means”.<sup>132</sup>

In *Re Cole*, an English court held that providing entertainment for children in a home did not constitute a charitable activity.<sup>133</sup> In contrast, in the Canadian case *Brown v Brown*, a gift to a poor house to provide “luxuries for the inmates of the said poor house in addition to the regular supplies to the said inmates” was accepted as a charitable gift.<sup>134</sup>

In a more recent Canadian case, the Court noted that the “‘relief of the poor’ must be read in the context of our complex, multicultural society and current concerns about relieving poverty. Its meaning must extend beyond the provision of necessities of life to include services designed to equip clientele to overcome difficult circumstances so often linked with poverty”.<sup>135</sup>

Relief of poverty is one of the core purposes in the narrow sense of charity, but it is not the only one. Aiding the emotionally, physically, mentally, and spiritually distressed are other important goals. The common characteristic of all these purposes is the provision of help to people in circumstances of suffering and distress caused by or contributed to by, or which may cause or contribute to, economic or material deprivation. In Canada, courts have tended to include all these purposes under *Pemsel*'s first category—relief of poverty—even though relief of poverty is not necessarily an apt description of the intentions of many of these projects. A few courts have regarded all these purposes, except the relief of poverty, as coming under the fourth head—other purposes beneficial to the community—on the understanding that the relief of poverty requires a substantial element of economic deprivation in the proposed beneficiaries, but such economic deprivation will not necessarily be present where the

<sup>130</sup> Hubert Picarda, *The Law and Practice Relating to Charities* 4th ed (Haywards Heath, West Sussex: Bloomsbury Professional Ltd, 2010) at 42, citing *IRC v Baddley* [1955] AC 572 at 607 (“Picarda”). See Book of Authorities.

<sup>131</sup> *Stouffville Assessment Commissioner v Mennonite Home Association*, [1973] SCR 189 at para 21. See Book of Authorities.

<sup>132</sup> [1973] SCR 635 at para 25. See Book of Authorities.

<sup>133</sup> [1958] Ch. 877. See Book of Authorities.

<sup>134</sup> (1900), 32 OR 323 (Ont HC). See Book of Authorities.

<sup>135</sup> *Family Services Association of Metropolitan Toronto v Ontario Regional Assessment Commissioner, Region No. 9*, (1995), 23 OR (3d) 382 (Ont. Gen Div) at para 52. See Book of Authorities.

[REDACTED]

beneficiaries of the charity are distressed or disadvantaged emotionally, physically, mentally, or spiritually. Some courts have avoided the difficulty of classifying these purposes under the *Pemsel* test altogether by resorting directly to the list in the preamble to the *Statute of Elizabeth*. As well as specifying the poor, the preamble mentions aged and impotent people, and sick and maimed soldiers and mariners. The problem, addressed in the case law, is how to categorize certain activities which no one doubts are charitable, but few seem to know for certain how they are charitable, or by virtue of what definitive test.

Hospitals present a useful illustration of the difficulty. The Privy Council, in *Re Resch's Will Trusts*<sup>136</sup>, addressed the issue of classifying the activities of a private hospital in the following passage:

A gift for the purposes of a hospital is *prima facie* a good charitable gift. This is now clearly established both in Australia and in England, not merely because of the use of the word "impotent" in the preamble .... though the process of referring to the preamble is one often used for reassurance, but because the provision of medical care for the sick is, in modern times, accepted as a public benefit suitable to attract the privileges given to charitable institutions.<sup>137</sup>

In this passage, hospitals are said to be *prima facie* charitable. They are put in the fourth category and reference is made to the *Statute of Elizabeth*. Gifts for the benefit of orphans have presented similar difficulties in classification. The relief of poverty is certainly an element in many such gifts, but so are the advancement of education and the relief of the emotional distress caused by the lack of a home and parents. Similarly, gifts for the support of the aged may often have an element of poverty relief in them, but this facet is often far less pronounced than the objective of simply providing comfort to people in their declining years.

Whatever the source of the classification difficulty in the law, it is clear that the law recognizes that support and assistance to emotionally, physically, mentally, and spiritually distressed people is charitable and that the law recognizes that a vast range of social welfare activities – such as hospitals and orphanages in the two examples – are clearly charitable, even though they do not fit neatly into any single *Pemsel* category, such as the relief of poverty, or are not listed *per se* in the *Statute of Elizabeth* list, which must always be read by analogy.

Much of the Charity's work in Israel and elsewhere outside of Canada is aimed at supporting people in emotional, physical, mental, and spiritual as well as economic need. This is what is meant by the Charity as "promoting social welfare".

As elaborated below, immigrant aid is also captured under this concept. In the case of immigrants, the misery and distress are real and can have serious economic consequences. The cause is deep-seated.

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<sup>136</sup> [1969] 1 AC 514 (JCPC). See Book of Authorities.

<sup>137</sup> *Ibid* at 540.



originating in cultural, linguistic and social factors, and not primarily lack of economic resources, although that is typically also present and invariably serves to exacerbate the alienation, misery and distress. The Charity submits that the law does not require that efforts to relieve the misery and distress caused by immigration must be focussed exclusively or narrowly on people in dire economic circumstances or who are literally “penniless” or that some economic screening test is required to identify suffering people. There is no doubt that aid to people in distress caused by natural disasters does not require a screening process to identify the persons among the victims of the disaster who are truly poor. As with the case of natural disasters, in the case of immigration, the distress is caused by the circumstances and is pervasive. The need for relief is urgent. Families – parents and children - require immediate assistance.

Similarly, the Charity submits that people living in areas that are subject to civil strife and terrorist attacks or violent anti-Semitism are also appropriate objects of charitable assistance. Their emotional, physical, mental, and spiritual needs are urgent because the threat to normal family life is pervasive.

As with all of the *Pemsel* heads, a charity for the relief of poverty must still meet the requirement of public benefit. For a charitable purpose falling under the first of the three *Pemsel* heads, it is a rebuttable presumption that there is a public benefit.<sup>138</sup> Furthermore, the requirement for public benefit is “attenuated under the head of poverty”.<sup>139</sup>

b. Providing Employment to Indigent Workers as the Relief of Poverty

The Department of National Revenue accepted that that providing employment to poor and hard-to-hire workers was a charitable activity in the 1967 Letters exchanged between the Department of National Revenue and the Charity.<sup>140</sup> There is no case law that directly supports or rejects this position. However, case law on the law of charity, case law on the activity of providing employment, and certain government positions suggest that this is the correct interpretation.

(1) *Vancouver Society*

There is no case law that directly addresses the issue of relieving poverty by ensuring the employment of poor and hard-to-hire workers by paying their salaries, but it should satisfy the general tests for charity laid out by Iacobucci J. and Gonthier J. in *Vancouver Society*.

Gonthier J. splits the activities from the purpose and examines them separately. He requires that the identified primary purpose of the organization be charitable, which requires looking to the four heads of charity from *Pemsel*. The relief of poor and hard-to-hire workers easily fits within the first head of *Pemsel*, the relief of poverty. The activities of the charity must then be sufficiently related to the

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<sup>138</sup> *Vancouver Society*, *supra* note 92 at para 41.  
<sup>139</sup> *Ibid* at para 147.  
<sup>140</sup> Exhibit D(2) - 1967 Letters between Department of National Revenue and JNF Canada re qualification as a charitable organization (1967)



organization's purposes to be considered to be furthering them, with the exception of ancillary or incidental activities. Ensuring the employment of poor and hard-to-hire workers by paying their salaries is connected to and furthers the purpose of relieving the poverty of these poor and hard-to-hire workers by providing them with income, connection to their community and work experience in Israel.

Iacobucci J. requires that the court ask whether the purpose in question has the "generic character" of charity. This character is discerned by perceiving an analogy with those purposes already found to be charitable at common law, and which are classified for convenience in *Pemsel*. Exclusively charitable activities are those that directly further charitable purposes and not other non-charitable purposes, although the accomplishment of non-charitable purposes that are merely ancillary or incidental to the pursuit of the main purpose is acceptable.

The relief of poverty for poor and hard-to-hire workers has the "generic character" of charity, as it is analogous to the purpose of the relief of poverty already found at common law. If there was any question of whether hard-to-hire and poor immigrant workers are suitable objects for the relief of poverty, the Supreme Court laid it to rest in *Vancouver Society* when Iacobucci distinguished the Ethnic Minority Training and Employment Project registered by the Charity Commissioners for England and Wales from a general relief of immigrants, stating that:

Refugees and asylum seekers are distinguishable from immigrants generally, for the reasons outlined above. Nonetheless, this organization also aids "migrants and others". However, it strongly qualifies this through reference to those from the Horn of Africa and those whose circumstances are such that they face "permanent exclusion from the job market". To my mind, these factors go to the relief of poverty.<sup>141</sup>

[Emphasis added]

The activity of ensuring the employment of poor and hard-to-hire workers by paying their salaries directly furthers this charitable purpose, making it an acceptable charitable activity.

Ensuring the employment of poor workers not only relieves their poverty, but also results in work accomplished by the poor workers. This is only an issue if the work is non-charitable in nature – if the work furthers other charitable purposes (such as the preservation of the environment), then the activity is still exclusively charitable. However, even if the work accomplished was not charitable in nature, it should be considered as merely ancillary and incidental to the main purpose of the activity, which is relieving poverty. As a result, the activity of ensuring the employment of poor and hard-to-hire workers by paying their salaries is an exclusively charitable activity.

(2) *Gull Bay*

Furthermore, although there is no specific jurisprudence that directly addresses the point of ensuring the employment of poor and hard-to-hire workers by paying their salaries, a Canadian court has ruled on the

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<sup>141</sup> *Supra* note 92 at para 185.



similar issue of providing employment in the context of a non-profit organization on an aboriginal Reserve.

In *Gull Bay Development Corp. v R*<sup>142</sup>, the plaintiff corporation was incorporated for the purpose of promoting the economic and social welfare of the members of an Indian reserve.<sup>143</sup> The activities of the corporation “include the establishment of a viable commercial logging operation to provide employment for members of the Reserve, the training of Indian students from the Reserve to work both as loggers and as managers in the office facilities, the carrying out of maintenance work on the recreational and administrative buildings and facilities on the Reserve” [emphasis added], and various other activities for the benefit of the Reserve community.<sup>144</sup>

At issue was whether the plaintiff corporation could be tax exempt, as it was carrying on a commercial business on the reserve. The Court found that “[by] 1972 membership on the Reserve was depleting and alcohol, vandalism and rape were prevalent”, and that the community had acquired a bad reputation.<sup>145</sup> The Chief of the Reserve in 1972 “wanted to create some work in the community” and formed the corporation “as a vehicle to provide employment”.<sup>146</sup>

The Court concluded that:

whether by the application of paragraph 149(1)(f) [of the *Income Tax Act* of the time, referring to charitable organizations] or of paragraph 149(1)(l) [referring to non-profit organizations] the plaintiff’s appeal should be maintained. The Corporation is operated “exclusively” for the purpose set out in paragraph 149(1)(l) pursuant to its charter, even though it may raise funds for this purpose by its commercial lumbering enterprise.<sup>147</sup>

While *Gull Bay* does provide helpful guidance from a Canadian court on the subject, the facts are not exactly the same as those at issue. The corporation in *Gull Bay* was a non-profit organization, not a charitable organization, and the issue was not its charitable activities but whether it was carrying on a commercial business. Furthermore, the context of *Gull Bay* taking place on an aboriginal Reserve must be considered. Despite this, the case is highly analogous to that of the Charity and provides the only judicial guidance on the subject of providing employment. As with *Gull Bay*, there is no private benefit to the Charity’s activities. Both have a primary purpose of relieving poverty by providing employment to the poor and hard-to-hire members of a community and the underlying works accomplished by the organizations are charitable in nature.

(3) Charity Commissioners and the CRA

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<sup>142</sup> [1983] ACF No. 1133 (“*Gull Bay*”). See Book of Authorities.

<sup>143</sup> *Ibid* at para 1.

<sup>144</sup> *Ibid* at para 3.

<sup>145</sup> *Ibid* at para 8.

<sup>146</sup> *Ibid* at para 8.

<sup>147</sup> *Ibid* at para 29.



In CRA Guidance CG-014, "Community Economic Development Activities and Charitable Registration"<sup>148</sup>, the CRA clearly states that "the courts have not recognized "providing employment" or "helping people find employment" as charitable purposes in and of themselves when the beneficiary group is the general public" although it could be accepted if it met certain conditions (see below).<sup>149</sup> Similarly, in the 1999 document RC4143, "Registered Charities: Community Economic Development Programs"<sup>150</sup>, the Canada Customs and Revenue Agency wrote "providing employment is not a charitable purpose in its own right, though on occasion it can be a way to achieve a charitable purpose", citing the Charity Commissioners Reports of 1980 and 1983.<sup>151</sup> The Charity Commissioners are the body that supervises charities in England and Wales, and the CCRA notes in their 1999 guidance that this is relevant for Canadian charity law purposes.

While the 1980 Charity Commissioners Report focused largely on training workshops for youth<sup>152</sup>, the 1983 Report discusses the issue of providing employment without any educational purpose:

(i) Relief of the Unemployed

12. The relief of poverty among unemployed persons is a clear charitable purpose and in so far as an institution assists people to find employment or to train or re-train them for employment as a means of relieving their poverty, there is no difficulty in the institution obtaining registration as a charity. The establishment in life of young persons is a charitable purpose as is the apprenticing of young persons and the provision of the tools of their trade. Moreover the provision of vocational training is a charitable purpose in itself, and where young people are concerned the provision of opportunity to experience regular work for a limited time might well be a method of training them for life as well as relieving them of poverty, even if the work is of an unskilled nature giving little in the way of vocational training. It is less easy, however, to conclude that the purposes of an institution are charitable where it is to employ persons without any educational purpose in view for work which is not itself directed to the achievement of any charitable purpose. But this difficulty does not arise where the work is directed to some charitable purpose in, for example, the field of social welfare or the improvement of the environment. Trusts to conduct study and research into unemployment, its causes and possible remedy would also be charitable provided that the results are to be made public.<sup>153</sup>

[Emphasis added]

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<sup>148</sup> (26 July 2012) ("CG-014"). See Book of Authorities.

<sup>149</sup> *Ibid* at paras 11, 17, 18.

<sup>150</sup> (23 December 1999) ("RC4143"). See Book of Authorities.

<sup>151</sup> *Ibid* at 4.

<sup>152</sup> *Report of the Charity Commissioners for England and Wales for the Year 1980* (London: House of Commons Parliamentary Papers, 1981), at 27. See Book of Authorities.

<sup>153</sup> *Report of the Charity Commissioners for England and Wales for the Year 1983* (London: House of Commons Parliamentary Papers, 1984), at 8. See Book of Authorities.

[REDACTED]

As discussed below, there is little judicial support specifically for providing employment as a charitable activity, but the UK Charity Commissioners and the CRA have both published guidance that suggests that providing employment to the poor is a valid charitable *activity* that furthers either the purpose of relieving poverty or a purpose under the fourth *Pemsel* head.

#### (4) Conclusion

In general terms, we submit that the Department of National Revenue's position in the 1967 Letters on the law of charity is still valid today: providing employment to poor and hard-to-hire labourers by paying their salaries is an exclusively charitable activity that furthers the charitable purpose of the relief of poverty, or, in the alternative, a purpose under the fourth *Pemsel* head such as community and economic development, the relief of distressed persons or the relief of vulnerable immigrants.

As an activity, paying the salaries of poor labourers directly furthers the relief of poverty by ensuring that poor labourers are gainfully employed and remunerated, are able to integrate with society, and gain valuable work experience. This meets the general criteria for charitable purposes and activities as elaborated in *Vancouver Society*. It is also highly analogous to the decision of *Gull Bay* where the Federal Court accepted the activity of providing employment for members of a Reserve by a non-profit organization, and is in line with the reasoning of the UK Charity Commissioners in the Reports cited by the CCRA.

### 3. The Advancement of Religion as a Charitable Purpose

In this subsection of the letter, we discuss the meaning of "religion" in the law of charity and provide support for our view that the Land of Israel (as opposed to the State of Israel), and the continued existence, identity, and solidarity of the Jewish people are core religious principles of the Jewish religion flowing in part from, but not exhaustive of, the religious values mentioned in the Charity's mission statement and discussed above, and that these, among other Jewish religious values, are recognized in the law of charity as charitable purposes.

The precise scope of what constitutes religion or the advancement of religion for the purposes of charity law is difficult to establish, and as a consequence courts tend to err on the side of a liberal interpretation of what counts as a religion. This liberal approach stems from the reluctance of courts to doubt the authenticity of any person's religious convictions, the risk of chauvinism and the potential harm to individual identity of mistaken evaluations of a religion.

A leading formulation of what counts as "religion" for the purposes of the law of charity is set out in *Keren Kayemeth Le Jisroel Ltd. v I.R.C.*<sup>154</sup> In that case, Lord Hanworth M.R. wrote:

The promotion of religion means the promotion of spiritual teaching in a wide sense, and the maintenance of the doctrines upon which it rests, and the observances that serve to

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<sup>154</sup> [1931] 2 KB 465 ("*Keren Kayemeth, KB*"). See Book of Authorities.

[REDACTED]

promote and manifest it.<sup>155</sup>

Lord Hanworth's comments may refer to proselytizing, but should not be so narrowly construed. They definitely include educating the faithful and the not-so-faithful by adherents of the faith. This conclusion is reinforced by the fact that Lord Hanworth states that the promotion of religion also means the maintenance of religious doctrine.

In *United Grand Lodge of Ancient Free & Accepted Masons of England v Holborn Burrough Councils*<sup>156</sup>, Donovan J. wrote:

To advance religion means to promote it, to spread its message ever wider among mankind; to take some positive steps to sustain and increase religious belief; and these things are done in a variety of ways which may be comprehensively described as pastoral and missionary.<sup>157</sup>

In *Cocks v Manners*,<sup>158</sup> Vice-Chancellor Wickens wrote:

It is said, in some of the cases, that religious purposes are directly or indirectly towards the instruction or the edification of the public...<sup>159</sup>

Based on the foregoing cases, it is uncontroversial that the common law recognizes the charitable nature of religious instruction and spiritual teaching, and confirms that religious education is a key aspect of the charitable goal of the advancement of religion.

Although, as a general rule, tuition fees are not charitable donations, the CRA recognizes an administrative exception for religious instruction or spiritual teaching. CRA Information Circular IC75-23<sup>160</sup> states as follows at paragraph 3:

If [a religious school] teaches exclusively religion and thereby operates solely for the advancement of religion, payments for students attending that school are not considered to be tuition fees but will be considered as valid donations and, providing the school is a registered Canadian charitable organization, official receipts for charitable donations may be issued for such payments.

IC75-23 goes on in paragraphs 5 through 12 to outline a means by which payments to schools that offer

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<sup>155</sup> *Ibid* at 477.

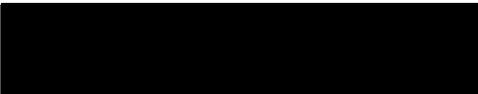
<sup>156</sup> [1957] 1 WLR 1080 (QB) ("*United Grand Lodge*"). See Book of Authorities.

<sup>157</sup> *Ibid* at 1090.

<sup>158</sup> [1871] LR 12 Eq 574 ("*Cocks*"). See Book of Authorities.

<sup>159</sup> *Ibid* at 585.

<sup>160</sup> "Tuition Fees and Charitable Donations Paid to Privately Supported Secular and Religious Schools" (29 September 1975) ("IC75-23"). See Book of Authorities.



both secular and religious education can be parsed so as to allow a charitable contribution to be recognized in relation to the religious component of the curriculum.

We submit that these statements of the definition of “religion”, for the purposes of the law of charity, establish that the Jewish religious values mentioned in the introduction to this section are “religious” for the purposes of the law of charity. The following sections provide further support for this submission.

**4. The Advancement of Education as a Charitable Purpose**

The concept of education for the purposes of the law of charity cannot be stringently confined or easily defined. What counts as “education” for the purposes of the law of charity certainly extends beyond classroom teaching from textbooks. The definition of education under the Canadian law of charity has been addressed and expanded in both the majority and minority decisions of the Supreme Court of Canada in *Vancouver Society*. Both decisions note that a restrictive definition of education is of little use in modern Canadian society. The decisions adopt a broad view of education and accept that the advancement of education can include informal educational initiatives, as long as the educational initiatives are not solely aimed at advancing one particular point of view. It is clear based on this decision that Canadian jurisprudence has moved towards a more expansive definition of education. The discussions of the definition of education in both decisions in that case are worth quoting in full.

In his dissenting opinion, Gonthier J. discussed the meaning of education as follows:

72 As Iacobucci J. notes, the “advancement of education” head of the *Pemsel* classification has traditionally been given a relatively restrictive interpretation in Canada. Stone J.A. stated in *Positive Action Against Pornography*, supra, at pp. 348-49, that “advancement of education” is limited to “formal training of the mind [or] the improvement of a useful branch of human knowledge”, and thus on the facts of that case, the mere “presentation to the public of selected items of information and opinion” did not meet this test. Stone J.A.’s approach was also followed in *Briarpatch Inc. v. The Queen*, 96 D.T.C. 6294 (F.C.A.), at p. 6295. More recently, in *Interfaith Development Education Association, Burlington v. M.N.R.*, 97 D.T.C. 5424, at p. 5425, the Federal Court of Appeal reiterated its observation that ‘[t]he authorities are clear that ‘advancement of education’ receives a restricted meaning in the law of charity in Canada’. As such, the court in that case upheld Revenue Canada’s refusal decision.

[...]

74 I agree with my colleague’s proposal to adopt a more modern conception of “advancement of education”, although my own view is that the “more inclusive” approach he favours was already latent in the authorities.

[...]

[REDACTED]

75 When reviewing the authorities which have defined the scope of the concept of "advancement of education", one must be careful to appreciate the context in which each particular definition has been advanced. So, for example, it has been a recurring theme of the jurisprudence in this area that the advancement of education must be clearly distinguished from the pursuit of political purposes: *Positive Action Against Pornography*, supra, at pp. 348-49. It is perhaps unsurprising that in making this distinction, Stone J.A. should emphasize that the mere "presentation to the public of selected items of information and opinion on the subject of pornography" could not be considered charitable. In so doing, Stone J.A. stressed the formal and systematic nature of education. Like Iacobucci J., I suspect that the true ground of decision was not that the mode of education selected by the organization in that case was too informal, but rather that the organization was seeking to advance a particular point of view, and gain adherents to it, instead of educating members of the public about a certain subject matter and allowing them to come to their own conclusions.

76 These relatively narrow conceptions of "advancement of education", though perhaps appropriate for the particular contexts in which they were adopted, seem to me inappropriate as general definitions for the law of charity. The situation, as I see it, is not so much a need to engage in a wholesale redefinition of "education", but instead to recognize that many existing definitions have erred on the side of caution due to the circumstances in which they were promulgated. Like Iacobucci J., I believe that a truer picture of the proper scope to be given to education is contained in *Inland Revenue Commissioners v. McMullen*, [1981] A.C. 1 (H.L.), at p. 15. There, Lord Hailsham emphasized that the definition of charity is not static, and that this was particularly the case with the "advancement of education" head of the *Pemsel* classification. The scope of that category changes and evolves. I am not persuaded that the existing approach to the scope of the "advancement of education" head of the *Pemsel* classification is warranted in the closing years of the twentieth century. Nor, I should add, is that approach necessarily faithful to the authorities.

77 I agree with the definition of education proposed by Iacobucci J., at para. 169:

'Thus, so long as information or training is provided in a structured manner and for a genuinely educational purpose -- that is, to advance the knowledge or abilities of the recipients -- and not solely to promote a particular point of view or political orientation, it may properly be viewed as falling within the advancement of education.'

78 I also agree with my colleague's concern that in order to be educational under this head, an organization must pursue "actual teaching" or a "learning component" (para. 171). However, the Court must maintain as clear a boundary as possible between charitable and non-charitable purposes. One reason why the authorities have attempted to circumscribe narrowly the scope of the "advancement of education" head is out of concern that if very informal educational activities were to be considered charitable, it

might prove difficult to prevent the relentless expansion of the scope of the category on any principled basis. The more that purposes stray from traditional conceptions of education, the more difficult it will be to engage in the task of distinguishing charitable from non-charitable purposes. I share Lord Hailsham's concern (expressed in *McMullen*, supra, at p. 17) that the concept of education is not amenable to "indefinite extension". Whatever the outer boundaries of the concept, however, they are not traversed on the facts of the present appeal.<sup>161</sup>

Speaking for the majority in *Vancouver Society*, Iacobucci J. stated as follows:

161 In Canada, "advancement of education" has been given a fairly restricted meaning. As noted by Stone J.A. in *Positive Action Against Pornography*, supra, at pp. 348-49, it has generally been limited to the "formal training of the mind" or the "improvement of a useful branch of human knowledge", and even that has been considered an expansion of the traditional view, which admitted only of the former.

[...]

164 However, while the Federal Court of Appeal may have followed its own jurisprudence, it is not clear to me that this Court should as well. I think that Stone J.A.'s statement that "the *presentation* to the public of selected items of information" is not educational must be read in light of his conclusions with respect to the fourth head of charity, namely that the material being disseminated exhibited a strong anti-pornography bias. Clearly such biased material, in most cases, would disqualify an organization from the second head of charity without necessitating an inquiry into whether the organization pursued some kind of formal training of the mind, broadly understood.

165 I do not endorse Robertson J.A.'s approval, in *Briarpatch*, supra, of the definition of "education" found in *Maclean Hunter*, supra.

[...]

166 For these reasons, I believe that the law regarding the educational head of charity should be modified and in that respect it is worth considering the slightly more expansive approach taken by the English courts. Although Stone J.A. alluded to this in *Positive Action Against Pornography*, the full inclusiveness of this approach certainly did not find its way into Canadian law by virtue either of that judgment or of its progeny. In *Inland Revenue Commissioners v. McMullen*, [1981] A.C. 1, at p. 15, the House of Lords recognized that

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<sup>161</sup> *Vancouver Society*, supra note 92 at paras 72, 74-78.

[REDACTED]

'both the legal conception of charity, and within it the educated man's ideas about education, are not static, but moving and changing. Both change with changes in ideas about social values. Both have evolved with the years. In particular in applying the law to contemporary circumstances it is extremely dangerous to forget that thoughts concerning the scope and width of education differed in the past greatly from those which are now generally accepted. (See also *Re Hopkins' Will Trusts*, [1964] 3 All E.R. 46 (Ch. D.), and *Scottish Burial Reform*, supra.)'

167 This judicial attitude has led, for example, to the characterization as charitable of a trust for the support of an amateur soccer league, on the grounds that it promoted the physical education and development of students as an adjunct to their formal education (*McMullen*), as well as a trust for the promotion of conferences on a wide variety of academic subjects: *Re Koeppler Will Trusts*, [1986] Ch. 423 (C.A.). Even in Canada, the law has occasionally recognized non-traditional educational activities as charitable, such as a summer camp where children were taught about their heritage and ancestral culture: *Re Societa Unita and Town of Gravenhurst* (1977), 16 O.R. (2d) 785 (H.C.), aff'd (1978), 6 M.P.L.R. 172 (Ont. Div. Ct.).

168 In my view, there is much to be gained by adopting a more inclusive approach to education for the purposes of the law of charity. Indeed, compared to the English approach, the limited Canadian definition of education as the "formal training of the mind" or the "improvement of a useful branch of human knowledge" seems unduly restrictive. There seems no logical or principled reason why the advancement of education should not be interpreted to include more informal training initiatives, aimed at teaching necessary life skills or providing information toward a practical end, so long as these are truly geared at the training of the mind and not just the promotion of a particular point of view. Notwithstanding the limitations posed by the existing jurisprudence, to adopt such an approach would amount to no more than the type of incremental change to the common law of which this Court has approved in such decisions as *Watkins v. Olafson*, 1989 CanLII 36 (S.C.C.), [1989] 2 S.C.R. 750, and *Salituro*, supra.

169 To limit the notion of "training of the mind" to structured, systematic instruction or traditional academic subjects reflects an outmoded and under inclusive understanding of education which is of little use in modern Canadian society. As I said earlier, the purpose of offering certain benefits to charitable organizations is to promote activities which are seen as being of special benefit to the community, or advancing a common good. In the case of education, the good advanced is knowledge or training. Thus, so long as information or training is provided in a structured manner and for a genuinely educational purpose -- that is, to advance the knowledge or abilities of the recipients -- and not solely to promote a particular point of view or political orientation, it may properly be viewed as falling within the advancement of education.

170 As the Ontario Law Reform Commission pointed out in its *1996 Report on the Law of Charities*, knowledge can take many forms. It can be theoretical or practical,



speculative or technical, scientific or moral. Moreover, it can be sought in many different ways, and for many different reasons, whether for its own sake or as a means to an end. Viewed in this way, there is no good reason why non-traditional activities such as workshops, seminars, self-study, and the like should not be included alongside traditional, classroom-type instruction in a modern definition of "education". Similarly, there is no reason to exclude education aimed at advancing a specific, practical end. In terms of encouraging activities which are of special benefit to the community, which is the ultimate policy reason for offering tax benefits to charitable organizations, there is nothing to be gained, and much to be lost, by arbitrarily denying benefits to organizations devoted to advancing various types of useful knowledge.

171 That is not to say that education should be broadened beyond recognition, however. Even while advocating a more inclusive approach to education, the Ontario Law Reform Commission also cautioned against treating as educational those activities which, although they advance legitimate goods, do not include any actual teaching or learning component. The concern is that, in certain cases, activities which fit awkwardly with the concept of education -- such as, for example, a trust to assist the publication of unknown authors -- seem to have been accorded charitable status under that category nonetheless, mainly because they did not fall within any of the other categories. I would agree with that caution. To my mind, the threshold criterion for an educational activity must be some legitimate, targeted attempt at educating others, whether through formal or informal instruction, training, plans of self-study, or otherwise. Simply providing an opportunity for people to educate themselves, such as by making available materials with which this might be accomplished but need not be, is not enough. Neither is "educating" people about a particular point of view in a manner that might more aptly be described as persuasion or indoctrination. On the other hand, formal or traditional classroom instruction should not be a prerequisite, either. The point to be emphasized is that, in appropriate circumstances, an informal workshop or seminar on a certain practical topic or skill can be just as informative and educational as a course of classroom instruction in a traditional academic subject. The law ought to accommodate any legitimate form of education.<sup>162</sup>

As described by Iacobucci J., the advancement of education is no longer strictly limited to a classroom setting. It embraces a wide variety of knowledge and training so long as there is a "legitimate, targeted attempt at education others, whether through formal or informal instruction, training, plans of self-study or otherwise".<sup>163</sup>

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<sup>162</sup> *Vancouver Society*, *supra* note 92 at paras 161, 164-171.

<sup>163</sup> *Ibid* at para 171.



## 5. Other Purposes Beneficial to the Community

The fourth *Pemsel* head is "other purposes beneficial to the community". Gonthier J cites *Native Communications of British Columbia v MNR*<sup>164</sup> as the leading Canadian authority and offered a simple analysis of the fourth head:

When considering a purpose under the fourth head of the *Special Commissioners of Income Tax* classification, the courts must determine whether the purpose may be placed within the language of the preamble, or whether an analogy may be made with a purpose contained in the preamble. Courts have then taken the next step, and drawn new analogies to purposes themselves already deemed analogous to those contained in the preamble. Thus, the courts begin with the language of the preamble, but do not limit themselves to it.<sup>165</sup>

The fourth *Pemsel* head encompasses a broad variety of purposes, only some of which are relevant to the Charity. This subsection will examine the following purposes:

- a. Immigrant Aid
- b. Preservation of the Environment
- c. Promotion of Health
- d. Public Works
- e. Community Economic Development

### a. Immigrant Aid

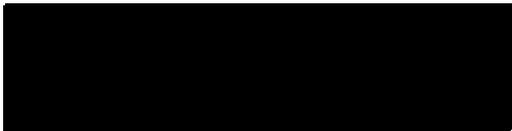
Ample authority exists to support the proposition that immigrant aid is a valid charitable purpose. In *Vancouver Society*, Gonthier J. canvassed extensive case law concerning immigrant aid, as follows:

82 The intervener Canadian Centre for Philanthropy showed the way forward by bringing to our attention that assisting the settlement of migrants, immigrants and refugees, and their integration into national life, is a charitable purpose already recognized under the fourth head of the *Special Commissioners of Income Tax* classification. In my view, the Society's purpose is subsumed within this subcategory. Although my colleague Iacobucci J. is not persuaded, there appears to me to be considerable authority in support of this position.

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<sup>164</sup> [1986] 2 CTC 170 (FCA). See Book of Authorities.

<sup>165</sup> *Vancouver Society*, *supra* note 92 at para 44.



83 An early Australian decision, *Wallace, Re*, [1908] V.L.R. 636 (Australia S.C.), upheld the validity of a trust to pay passage money to immigrants from an English town to Melbourne under the relief of poverty head. However, Hood J. also ventured the proposition, at p. 640, that in view of Australian immigration legislation, “a bequest in aid of immigration might probably be for the direct benefit of this community”, although we would now shrink from endorsing his view that “such a bequest would ... have to be much more guarded than the present one is in point of both mental and physical qualification of the immigrants”. I find my colleague’s explanation of Hood J.’s obiter dictum to be unpersuasive. Hood J.’s suggestion, at p. 640, that “there are divergent opinions on the subject” as to whether assistance to immigrants is a charitable purpose was merely an acknowledgement that others might disagree with his decision. My colleague rightly emphasizes that the existence of a public benefit is a necessary but not sufficient condition to finding a charitable purpose, but nothing in *Wallace*, or indeed, in the manner in which I rely on that case here, denies that well-established proposition.

84 I agree with my colleague that the mere existence of legislation in a field is not conclusive evidence that an organization pursuing a purpose in accordance with that legislation is pursuing a public benefit as that latter term is understood in the law of charity. However, I see no evidence that Hood J. relied upon the mere existence of Australian immigration legislation as conclusive on the issue of public benefit. Rather, Hood J. viewed the immigration laws as persuasive, though not conclusive, evidence favouring the recognition of assistance to immigrants as a charitable purpose. In so doing, he treated the existence of legislation in the same field as a relevant, though not a decisive, consideration. I see no problem with that: it is precisely what the Federal Court of Appeal did in *Everywoman's Health Centre Society*, supra, at pp. 67-68.

85 In *Stone, Re* (1970), 91 W.N. Covers (N.S.W.) 704 (New South Wales S.C.), a trust to assist migration was held to be charitable. Helsham J. observed, at p. 718, that “[a] trust to further the purposes of a body whose objects and activities are the encouragement and settlement of migrants generally in pursuance of a policy of the community and in co-operation with government instrumentalities would in this country be given the stamp of legal charity.” In making this statement, Helsham J. relied (as Iacobucci J. notes) upon *Verge v. Somerville*, supra, where the resettlement of demobilized members of the armed forces who had returned home from abroad — or more specifically, “restoring them to their native land and there giving them a fresh start in life” — was upheld as charitable. That case concerned citizens in the armed forces, but an obvious analogy may be made with immigrants. In each case, individuals need assistance in integrating into national life. Iacobucci J. draws a much narrower interpretation of the holding in *Stone* than the passage just cited would warrant. He does not accept that the passage applies to immigration in general because there is no religious dimension to immigration in general, nor are immigrants returning to their native country. I am not convinced that *Stone* can be distinguished on this basis. Certainly, Helsham J. did not predicate his decision to uphold the trust at issue in *Stone* upon any of three narrow considerations invoked by Iacobucci J.



86 In *Verge v. Somerville*, the Judicial Committee of the Privy Council did not predicate its decision upon the unique hardships endured by soldiers. In any event, Iacobucci J.'s suggestion ignores the reality that many immigrants have themselves suffered serious hardship. Let me pursue the analogy between returned soldiers and immigrants directly. Soldiers return home after a lengthy period of time spent abroad. They may require assistance in integrating back into national life: employment and training opportunities, counseling, support groups, and the like. The same is true with many immigrants. In fact, soldiers may have an easier time of it, as they are unlikely to face language or cultural barriers, and are also likely to have friends and family already in Canada to assist them in the task of reintegration. Nonetheless, the life that the soldier left behind before going abroad may well be gone forever, and he or she may require assistance to making the transition to a new life upon his or her return.

87 Similarly, the relief and assistance of refugees was recognized as a charitable purpose in *Cohen. Re.* [1954] N.Z.L.R. 1097 (New Zealand S.C.), where a bequest to a society whose principal objects were to assist Jewish refugees to establish themselves in New Zealand was upheld under both the first and fourth heads of the Special Commissioners of Income Tax classification. Again, in *Morrison, Re* (1967), 111 Sol. Jo. 758, 117 New L.J. 757 (Eng. Ch. Div.), the assistance of refugees was recognized as a charitable purpose. Obviously, not all immigrants are refugees, but the two groups often share the same needs. Distinctions may, of course, be drawn between immigrants and refugees. The process of analogical reasoning, however, requires us to focus upon whether there are any relevant differences between the two. I can see none that are germane to the present discussion.

88 In *Cohen*, Hay J. expressly acknowledged that although no previous case had determined that assistance to refugees was recognized as a charitable purpose, an analogy could be made with the demobilized soldiers under consideration in *Verge v. Somerville*. Hay J. appears to have premised his analogy upon the proposition that both refugees and soldiers are uprooted and are in need of being settled. This is also an apt description of the circumstances of many immigrants, who may have come to Canada to leave economic and social deprivation behind them. In any case, the reason that an individual has left his or her home to come to Canada may have little to do with the difficulties that the individual faces here. Some refugees, and some immigrants, may have little difficulty integrating into the job market. But many immigrants and refugees do not find the transition to their new home to be a seamless one. They may need assistance to meet the challenges of an unfamiliar society.

89 Canadian authority recognizes assisting immigrants to obtain employment as a charitable purpose. In *Re Fitzgibbon* (1916), 27 O.W.R. 207, a bequest to an organization known as the "Women's Welcome Hostel" was upheld. The bequest created an annual prize to be given to a girl who had spent time at the hostel, which was an institution for the assistance of immigrant girls, and who had subsequently joined and remained with a single employer for three years or more. Middleton J. observed at p. 210 that "[t]his

[REDACTED]

institution is undoubtedly a charitable institution, for the laudable purpose of aiding and assisting emigrant girls coming to Canada with a view of obtaining employment." Because the object of the bequest was to further the aims of the institution, which was itself charitable, it was upheld. I might add that no suggestion was made in the case that this purpose fit under the relief of poverty head of the Special Commissioners of Income Tax classification, and I do not read the decision as not following the Special Commissioners of Income Tax approach. Middleton J. did rely on *Mariette, Re*, [1915] 2 Ch. 284 (Eng. Ch. Div.), which admittedly had an educational dimension. However, the charitable status of the hostel was not directly at issue in *Fitzgibbon*. *Mariette* was cited only in support of the proposition that a gift to a charitable institution is itself a charitable gift, even if the gift might not be valid if given to a non-charitable organization. It is uncontroversial that the institution at issue in *Fitzgibbon* had an educational element, very much like *Society* under consideration in this appeal, but that does not refute Middleton J.'s characterization of the institution's purpose.

90 Directly on point, the Internal Revenue Service in the United States has ruled (U.S. Rev. Rul. 76-205 in Internal Revenue Cumulative Bulletin 1976-1 at p. 154) that a non-profit organization whose objects are to assist immigrants to that country "in overcoming social, cultural and economic problems by either personal counseling or referral to the appropriate public or private agencies" is charitable under the applicable section (s. 501(c)(3)) of the Internal Revenue Code. The ruling held that:

The organization was formed to aid immigrants to the United States in overcoming social, cultural, and economic problems by either personal counseling or referral to the appropriate public or private agencies. The organization has found that immigrants may be subject to discrimination and prejudice, often arrive without friends or relatives, possess a limited knowledge of English, and lack an awareness of employment opportunities. To help overcome these handicaps, the organization offers instruction in English by its multilingual staff, job counseling, and social and recreational functions that permit a mingling of immigrants with each other and with United States citizens.

By counseling immigrants, the organization is instructing the public on subjects useful to the individual and beneficial to the community, and is, therefore, furthering an educational purpose. Personal counseling has been recognized as a valid method of instruction for educational organizations... In addition, by offering instruction in English, by assisting immigrants in finding helpful agencies, by aiding immigrants to attain full citizenship, and by providing opportunities for immigrants to meet and discuss problems with each other and United States citizens, the organization is also eliminating prejudice and discrimination. [Citation omitted.]

91 The organization was upheld as pursuing a mixture of purposes, some of which were grounded in the advancement of education head, and some of which were grounded



in the elimination of discrimination and prejudice. Yet it cannot be denied that the purpose of the organization itself was to aid immigrants in integrating into national life, and it is that purpose to which I draw the analogy here. I fully agree that not all of the difficulties faced by immigrant women in obtaining employment stem from prejudice and discrimination: but it is undoubted that some of them do. Indeed, the greatest barrier to the integration of immigrant and visible minority women into the workforce is probably not racial or other animus: rather, it is the unintended exclusionary effects of facially neutral practices. My colleague recognizes that "making contacts and obtaining information pose difficulties with respect to gaining employment" (para. 187). Such difficulties, and others, are inherent in moving to a new country. That is why assisting immigrants in overcoming those particular difficulties is charitable.

92 Likewise, the Charity Commissioners for England and Wales have registered an organization (Ethnic Minority Training and Employment Project, Reg. No. 1050917, registered November 22, 1995) whose objects are [emphasis added]:

"to assist refugees, asylum seekers, migrants and others who recently arrived in the United Kingdom, in particular those from the Horn of Africa, who through their social and economic circumstances are in need and unable to further their education or gain employment, and who may be at risk or [sic] permanent exclusion from the labour market; to educate and train such refugees, asylum seekers, migrants and others by providing information, guidance, learning opportunities, and work experience which will enable them to acquire and develop vocational skills and secure employment, or further their education [sic]."

93 My colleague suggests that that organization's purpose is better conceived as being for the relief of poverty. I concede that there is a certain degree of overlap: but for assistance in obtaining employment, it would not be surprising if many immigrants fell into poverty, or remained there, as the case may be. However, I see no reason why assisting immigrant women to obtain employment could be considered a charitable purpose only to extent that it relieves poverty. Poverty, as my colleague rightly suggests, is a relative term. In any case, the suggestion that a charitable purpose must be related to the relief of poverty was rejected in *Special Commissioners of Income Tax*. The reality is that immigrants may face a number of obstacles to their integration into Canadian society, social, vocational, cultural, linguistic, or economic. It would be futile to focus on one obstacle to the exclusion of the others. Like the English organization, the Society provides assistance, guidance, and learning opportunities. It assists immigrants in developing and acquiring vocational skills, so that they may obtain employment.

94 My colleague argues that none of the cases I discuss above support my finding that assisting immigrant women to integrate into Canadian society by helping them to obtain employment is a charitable purpose under the fourth head of the *Special Commissioners of Income Tax* classification and rejects the suggestion that that purpose is charitable and may be analogized to other recognized charitable purposes. In each case,



he either denies its authority or would interpret it very narrowly. My colleague implicitly suggests that the approach I adopt to the evolution of the law of charity represents "a fundamental turning in direction" (para. 179). I respectfully disagree. My approach, as I have endeavoured to demonstrate, is rooted in the existing jurisprudence. It is consonant with the broader principles I have set out, and indeed, with the analogical approach which I share with my colleague. "with an eye to society's current social, moral, and economic context" (para. 159).

95 The unifying theme to these cases, in my view, is the recognition that immigrants are often in special need of assistance in their efforts to integrate into their new home. Lack of familiarity with the social customs, language, economy, job market, educational system, and other aspects of daily life that existing inhabitants of Canada take for granted may seriously impede the ability of immigrants to this country to make a full contribution to our national life. In addition, immigrants may face discriminatory practices which too often flow from ethnic, language, and cultural differences. An organization, such as the Society, which assists immigrants through this difficult transition is directed, in my view, towards a charitable purpose. Clearly, a direct benefit redounds to the individuals receiving assistance from the Society. Yet the nation as a whole gains from the integration of those individuals into its fabric. That is the public benefit at issue here. I have no hesitation in concluding that the Society's purpose is charitable under the second or fourth heads of the Special Commissioners of Income Tax classification.

96 Accordingly, in my view, this appeal does not require us to consider the applicability of the Native Communications Society of British Columbia case. The present appeal may be disposed of without having to determine whether or not immigrant women are in any way analogous to native people, because the Society's purpose fits within a recognized subcategory of the fourth head of the Special Commissioners of Income Tax classification.

97 Immigrants make up a broad class of people. Some immigrants, my colleague suggests, will have gained admission to this country on the basis of their education, experience, training, and skills. Their applications for entry will have been evaluated, in large measure, on the basis of their perceived ability to integrate into Canadian society. Presumably, immigrants in this category will have little or no need of assistance in integration into Canadian society. Given the existence of this category of immigrants, my colleague states that an organization that provides assistance to immigrants in general could not be exclusively charitable. With respect, I disagree. Reduced to its essentials, the contention is that an organization which seeks to assist a class of people cannot be charitable where some members of that class do not require the assistance that the organization seeks to provide. With respect, the proposition is unsustainable. Few charities could meet such a stringent test. Some immigrants will have no need for the Society's services: some immigrants will have need of some of the Society's services, but not others. Yet that recognition provides no basis upon which to argue that the Society is

[REDACTED]

not charitable. Those who have no need of the Society's services will presumably not seek them out."<sup>166</sup>

The reasons for judgment of Gonthier J. in *Vancouver Society* were, of course, dissenting reasons with which L'Heureux Dubé J. and McLachlin J. (as she then was) concurred. The majority judgment dismissing the taxpayer's appeal was written by Iacobucci J. The basis of Mr. Justice Iacobucci's decision was that the purposes of the applicant were too vague and indeterminate because they accommodated activities – the provision of a job skills directory and the establishment of support groups for professionals – aimed at helping immigrant women to find employment, which he held was not a charitable purpose. Although Mr. Justice Iacobucci's reasons for judgment argue against immigrant aid in general constituting a charitable purpose, the actual decision is based on this much narrower proposition. Further, his reasons provide explicit support for our submission that supporting immigration of Jews to Israel is a charitable purpose.

Beginning at paragraph 181 of his reasons for judgment, Iacobucci J. addresses some of the authorities relied upon by Gonthier J., as follows:

181 In *Stone, Re* (1970), 91 W.N. Covers (N.S.W.) 704 (New South Wales S.C.), the Supreme Court of New South Wales held that the promotion of Jewish settlement in Israel was charitable under the fourth head of charity. In finding the trust charitable under this head, Helsham J. referred to the case of *Verge v. Somerville*, supra, which held that a trust to help resettle ex-servicemen in their native land and give them a "fresh start" was for a charitable purpose. He does not discuss why the resettlement of soldiers is analogous to Jewish settlement in Israel, but I find the context for this analogy to be provided by Helsham J.'s earlier discussion of the argument that this was also a trust for the advancement of religion. Although Helsham J. rejected this argument, following a previous House of Lords decision, he did discuss at length the religious duty of the Jewish people to return to the Promised Land. To my mind, it is this aspect of return, combined with the persecution of the Jewish people that culminated in the establishment of the State of Israel, that makes this trust analogous to that in *Verge v. Somerville*, supra. However, I do not think that the analogy embraces the more general case of helping any immigrants to settle in a new land. Immigrants, considered generally, are not returning either to their native country or their spiritual home. Nor have they necessarily been subjected to the hardships of soldiers or the persecution of members of the Jewish faith. I note that Helsham J. does make a broader claim, at p. 718, referring to "the encouragement and settlement of migrants". However, I am struck by the lack of reasoning to support this statement, and would therefore confine the decision to the context of Jewish settlement in Israel.

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<sup>166</sup> *Vancouver Society*, supra note 92 at paras 82-97.

[...]

184 I would also distinguish the case at bar from *Cohen, Re*, [1954] N.Z.L.R. 1097 (New Zealand S.C.). There the court found that a trust for the assistance of refugees was charitable under both the first and fourth heads. It held, at p. 1101, that “the establishment in a new country of persons uprooted from and compelled to flee their own homes” was analogous to the repatriation of returned soldiers at issue in *Verge v. Somerville*, *supra*. The relief of refugees was also upheld as charitable in *Morrison, Re* (1967), 111 Sol. Jo. 758, 117 New L.J. 757 (Eng. Ch. Div.). While it is true that refugees and immigrants may share many interests and needs, it is the fact that refugees are “compelled to flee their own homes” in the face of persecution that makes their situation analogous to that of soldiers returning from war.<sup>167</sup>

Thus, although Iacobucci J.’s view was that the cases relied upon by Gonthier J. were distinguishable, Iacobucci J. carved out a specific exception in relation to the Jews’ return to the Promised Land, being their spiritual home. Iacobucci J. also justified as charitable the support of Jewish immigration to Israel in light of the treatment of Jewish people as “persecution”. He described people fleeing persecution as “refugees” and then analogized refugees to soldiers returning home after war, as was the case in *Verge v. Somerville*.<sup>168</sup>

Iacobucci J.’s reasons for judgment also place some emphasis on Canadian immigration law. At paragraph 180, Iacobucci J. observes that Canadian immigration law purposely identifies prospective immigrants by applying a point system which evaluates an applicant’s ability to integrate socially and economically into Canadian life.<sup>169</sup> The situation in Israel since the founding of the State of Israel, as Iacobucci J. explicitly points out, is completely different.

b. Preservation of the Environment

The CRA accepts that undertaking activities to protect the environment can be a charitable purpose falling under the fourth head of charity.

In Summary Policy CSP-E08, “Environment”<sup>170</sup>, the CRA states that “[o]rganizations established to protect the environment, including its flora and fauna, can qualify for registration as a charity under the following category of charitable purposes: other purposes beneficial to the community in a way the law regards as charitable.”<sup>171</sup>

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<sup>167</sup> *Vancouver Society*, *supra* note 92 at paras 181, 184.

<sup>168</sup> [1924] AC 497 (New South Wales PC). See Book of Authorities.

<sup>169</sup> *Vancouver Society*, *supra* note 92 at para 180.

<sup>170</sup> (3 September 2003) (“CSP-E08”). See Book of Authorities.

<sup>171</sup> *Ibid.*



In CRA Guidance CG-011, "Promotion of Animal Welfare and Charitable Registration"<sup>172</sup>, the CRA takes the position that promoting the welfare of animals in the course of protecting the environment would fall under the fourth head of charity. More specifically, CG-011 states that "[a] charity that promotes animal welfare by protecting the environment, such as by preserving an ecosystem and its wildlife, may qualify for registration." In applying CG-011, the CRA states that it would adopt an extensive definition of animal to include "any member of the kingdom *animalia*, other than a human."<sup>173</sup>

While conservation of the environment is not the primary charitable purpose of the Charity, many of the Selected Projects have the effect of environmental conservation, a purpose that falls squarely within the CRA guidance on this topic.

Further, many of the Selected Projects involve the development of forests, planting trees, and cultivating green space. In *Re Cotton Trust for Rural Beatification*<sup>174</sup>, C.R. McQuaid J. held that the planting of trees, shrubs, and flowers in rural areas and around highways of Prince Edward Island fell under the fourth heading of charity. In that case, a trust established for the operation and maintenance of a horticultural nursery to produce trees and plants to be placed in public green space was held to be a charitable trust.

c. Promotion of Health

Under the common law, trusts for the promotion of health are charitable and within the spirit of the preamble to the *Statute of Elizabeth*.<sup>175</sup> The preamble specifically provides examples of charity which include the maintenance of sick and maimed soldiers and mariners. By analogy, a charitable purpose can be extended to gifts intended to preserve and promote health in the broader community. Courts in both the United Kingdom and Canada have held that health related causes such as the development and support of hospitals are valid charitable objectives. This was seen in *Re Galbraith Estate*<sup>176</sup>, where the Court held that a donor's bequest of money in support of a children's hospital was a valid charitable gift.

In *Galbraith*, the donor's next-of-kin challenged the donation on the grounds that it was not for a charitable purpose as they alleged that the donation was made to "perpetuate the memory" of the donor.<sup>177</sup> The next-of-kin further argued that the hospital was not engaged in charitable work, rendering the donor's bequest non-charitable. Dysart J. sided with the hospital and against the next-of-kin, finding that donations in support of hospitals are charitable. In explaining his reasoning, Dysart J. stated:

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<sup>172</sup> (19 August 2011) ("CG-011"). See Book of Authorities.

<sup>173</sup> *Ibid* at paras 1, 46 and 8.2.3.

<sup>174</sup> (1980), 118 DLR (3d) (PEI SC). See Book of Authorities.

<sup>175</sup> Picarda, *supra* note 130 at 145.

<sup>176</sup> (1938) 3 WWR 93 (Man KB) ("*Galbraith*"). See Book of Authorities.

<sup>177</sup> *Ibid* at para 4.

[REDACTED]

11 The *Verge v. Somerville* case, *supra*, settles the question that "a valid charitable trust may exist notwithstanding the fact that in its determination the benefit is not confined by the donor to the poor to the exclusion of the rich" — see p. 504.

12 A charitable gift, in order to be legally valid, must be of a public nature, designed to benefit the community or some substantial part of it: 4 *Halsbury*, 2nd ed., p. 110. In ascertaining whether the purpose is public or private, the salient point to be considered is whether the class to be benefited, or from which the beneficiaries are to be selected, constitute a substantial body of the public. The question whether the purpose of the will may operate for the public benefit is a question to be answered by the Court forming an opinion on the evidence before it: *ibid*.

[...]

16 Hospitals are included among charitable institutions. This is true at least in a general sense, and a gift to a hospital is in that sense a gift for a charitable purpose: 4 *Halsbury*, 2nd ed., pp. 334-5. And this is so although some of the work done by hospitals is done for compensation and upon a revenue basis. That a work may still be charitable, although in part self-supporting, is shown in the cases of *In re Estlin*; *Pritchard v. Thomas* (1903) 72 L.J. Ch. 687, 89 L.T. 88; *In re Clarke*; *Bracey v. Royal National Lifeboat Institution*, [1923] 2 Ch. 407, 92 L.J. Ch. 629; and *In re De Carteret*; *Forster v. De Carteret*, [1933] Ch. 103, 102 L.J. Ch. 52.<sup>178</sup>

Moreover, CRA Guidance CG-021<sup>179</sup> states the CRA's interpretation of the law's application as it relates to the promotion of health purposes in a charitable context. Guidance CG-021 acknowledges that the promotion of health purposes is recognized under Canadian law as falling under the fourth head of charity.<sup>180</sup>

d. Public Works

The category of public works includes the construction, development, repair, and maintenance of infrastructure projects for the benefit of the greater community. Roads, hospitals, water reservoirs, and sewage processing plants are only some examples of public works. Under the law of charity, gifts provided for use by the community at large have been given favourable consideration by the courts in their determination of whether the purpose of those gifts is charitable. Courts have held that public works projects have a charitable purpose as they fall under the fourth *Pensel* head.

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<sup>178</sup> *ibid* at paras 11, 12, 16.

<sup>179</sup> "Promotion of Health and Charitable Registration" (27 August 2013) ("CG-021"). See Book of Authorities.

<sup>180</sup> *ibid* at para 9.

[REDACTED]

The preamble to the *Statute of Elizabeth* expressly provides that public works such as highway and bridge repair are charitable purposes.<sup>181</sup>

In *Boyle v Battye*<sup>182</sup>, the British Columbia Supreme Court held that a donation for the purpose of the construction of a “non-sectarian community hall” in the town of Kaleden, British Columbia, was charitable under the fourth *Pemsel* head. It is not necessary that every possible use of gifted public works or facilities be known and stated, rather it is necessary that the dominant purpose of the development of the public works be for the benefit of the community. Macfarlane J. explained his reasoning on the topic as follows:

It is contended here that there is no definition of what a community hall is and that the testator does not say for whose benefit or how it is to be used. I think he means a hall to be used for the general benefit of the community. I think it unwise to require that every possible use or purpose should be specifically stated: See *In re Fallis Estate*, [1947] 2 W.W.R. 883, at 887, and cases there cited. I think I should look at the whole of the bequest and, if there I find the dominant purpose of the testator to be to benefit the Kaleden community as a whole, I think I should accept that.<sup>183</sup>

Similarly, in *Re Knowles Estate*<sup>184</sup>, the Ontario Court of Appeal determined that work to maintain and improve a municipal road and property in Dundas, Ontario, was done with the valid charitable purpose of benefitting the greater community. In that case, money was donated in the will of a deceased individual for the purpose of paving and “beautifying” a public road and the “beautification” of another public property. It was held that because the purpose of the donation was to provide a public benefit to the people of the town, it was a charitable donation.

Another case where a monetary gift in support of public works was found to be charitable is *Re Cotton Trust for Rural Beatification*.<sup>185</sup>

Additionally, CRA Summary Policy CSP-P20, “Public amenities”<sup>186</sup>, states that “[o]rganizations established to provide public amenities (for example, library, museum, gallery, botanical garden, public recreation grounds) can qualify for registration under the following category of charitable purposes: other purposes beneficial to the community in a way the law regards as charitable.”<sup>187</sup> The same policy

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<sup>181</sup> *Supra* note 91.

<sup>182</sup> [1948] 2 WWR 46 (BCSC). See Book of Authorities.

<sup>183</sup> *Ibid* at para 7.

<sup>184</sup> (1937), [1938] OR 369. See Book of Authorities.

<sup>185</sup> *Supra* note 174.

<sup>186</sup> (3 September 2003). See Book of Authorities.

<sup>187</sup> *Ibid*.

can be found to apply to charities that are established to preserve and restore significant heritage and historical sites.<sup>188</sup>

e. Community Economic Development

In Guidance GC-014<sup>189</sup>, the CRA recognizes that activities related to community economic development may be charitable when they directly further a charitable purpose. The following are examples of charitable purposes that can be furthered by CED activities:

- relieving poverty by relieving unemployment of the poor;
- advancing education by providing employment-related training; and
- benefiting the community in a way the law regards as charitable by:
  - relieving unemployment of individuals who are unemployed or facing a real prospect of imminent unemployment and are shown to need assistance;
  - relieving conditions associated with disability;
  - improving socio-economic conditions in areas of social and economic deprivation; and
  - promoting commerce or industry.<sup>190</sup>

The CRA goes on to state that

The courts have not recognized “providing employment,” or “helping people find employment” as charitable purposes in and of themselves when the beneficiary group is the general public. However, either providing employment, or helping individuals find employment, could be a charitable activity if it directly furthers one of the charitable purposes listed in paragraph 11 [quoted above].<sup>191</sup>

Reading these two paragraphs together, providing employment will be a charitable activity if it directly furthers the charitable purpose of relieving poverty by relieving unemployment of the poor.

Community economic development may also include activities that promote commerce or industry for the public benefit.<sup>192</sup> However, these activities must promote an industry or trade as a whole for the benefit of the public, not simply advance the interests of members of that industry.

**B. Application of the law of charity to the Charity**

The Charity submits that its primary purpose, the relief of poverty, was a charitable purpose that has been recognized in the common law, and that its primary charitable activity, ensuring the employment of the Indigent Workers by paying their salaries, furthered the Charity’s primary purpose and was therefore a valid charitable activity.

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<sup>188</sup> Canada Revenue Agency, Summary Policy CSP-1105, “Heritage Society” (3 September 2003). See Book of Authorities.

<sup>189</sup> “Community Economic Development Activities and Charitable Registration” (26 July 2012). See Book of Authorities.

<sup>190</sup> *Ibid* at para 11.

<sup>191</sup> *Ibid* at para 13.

<sup>192</sup> *Ibid* at para 77.



Furthermore, the Charity submits that the activity was exclusively charitable because the other purposes furthered by the activity of ensuring the employment of the Indigent Workers were charitable themselves, as the Selected Projects were charitable in nature.<sup>193</sup> In any event, these other purposes were incidental or ancillary to the main purpose of relieving of poverty, and thus would not taint the exclusive charitable nature of the activity even if the Selected Projects had not been charitable in nature. The Charity's activity was exclusively charitable because it exclusively furthered charitable purposes, and any non-charitable purposes furthered by the activity were strictly incidental or ancillary.

#### **1. The Relief of Poverty of the Indigent Workers: The Primary Purpose**

The Charity had a valid charitable purpose, and devoted its resources exclusively to an activity that furthers that purpose.

The Charity's objects from its incorporation in 1961 were, as identified by the CRA in the Audit Letter, vague and broad: "To create, provide, enlarge and administer a fund to be made up of voluntary contributions from the Jewish Community and others to be used for charitable purposes".<sup>194</sup> While there is nothing offensive to the law of charity in these objects, its vagueness is an anachronism that the Charity proposes to correct (see Part V below), and does not describe the charitable purpose of the Charity in sufficient detail. The Mission Statement, a document with no official status, is similarly vague and does not describe the charitable purpose in sufficient detail. The Charity proposes to rectify this by passing new Objects and a new Mission Statement.

The 1967 Letters exchanged between the Department of National Revenue and the Charity provide a better discussion of the charitable purpose of the Charity. As the Charity informed the Department of National Revenue in its letter dated July 21, 1967, "[ever] since the establishment of the State of Israel in 1948, however, monies raised in Canada were no longer used for land purchases, but were all earmarked for the relief of poverty among the many hundreds of thousands of refugees who streamed into the haven of Israel"<sup>195</sup>. The relief of poverty is the core of the Charity's purpose, one that is deeply linked to the Jewish religious concepts of *tikkun olam* and *tzedaka*.

As reviewed in subsection A(2) above, the relief of poverty is one of the fundamental charitable purposes recognized in the law of charity and is the first *Pemsel* head. The relief of poverty of the Indigent Workers was both a worthy cause and a valid charitable purpose. However, assisting the Indigent Workers would also fit under various other charitable purposes, including the relief of distressed persons, aiding immigrants, and community economic development.

The majority and minority decisions of Supreme Court of Canada in *Vancouver Society* create general tests for charitable purposes and activities. The Charity's purpose and activity meet the Iacobucci J. test, as the purpose of relieving poverty has already been found to be charitable at common law, and the

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<sup>193</sup> Schedule D at para 9.

<sup>194</sup> Exhibit A(1) - Articles of Incorporation, Letters Patent, JNF Canada (November 14, 1961), at 2-3.

<sup>195</sup> Exhibit D(2.2) - (2.2) Letter from JNF Canada to Department of National Revenue re JNF Canada's fulfillment of the requisite principles of a Canadian charitable organization (July 21, 1967).



activity of the Charity is exclusively charitable because ensuring the employment of the Indigent Workers by paying their salaries directly furthers a charitable purpose and no non-charitable purposes, except to the extent that the non-charitable purposes are ancillary or incidental to the pursuit of the relief of poverty. The Charity would also satisfy the Gothier J. test, because ensuring the employment of the Indigent Workers by paying their salaries is connected to and furthers the purpose of relieving the poverty by providing the Indigent Workers with income, connection to their community, and work experience in Israel.

Furthermore and as elaborated above, ensuring the employment of the Indigent Workers by paying their salaries is in line with the only jurisprudence on the issue of providing employment, *Gull Bay*, and follows the reasoning of the UK Charity Commissioners Reports cited by the CCRA.

## 2. The Selected Projects: Charitable, Incidental and Ancillary Purposes

The letter dated July 21, 1967 sent to the Department of National Revenue also explains the Charity's relationship with the Selected Projects:

I have put the word "planted" in quotation marks. You will recall that on the phone I referred to the practice of "planting" trees as a "gimmick". Actually, all monies raised by the Jewish National Fund of Canada are used to pay daily stipends to indigent workers. So we "plant" the trees to the extent that we give a tree certificate to the donor and use the money to give employment to the man who is doing the planting, but we do not pay for the seedlings, for the trucks that transport the men and the materials, nor do we pay for the professional staff that supervises the planting operations. All these latter costs are borne by the Keren Kayemeth Le'Israel of Jerusalem.<sup>196</sup>

The Charity's relationship with the final product of the Indigent Worker's labour was minimal, limited to credit for marketing purposes and has no legal standing. The Charity ensured that the Indigent Workers were employed by paying their salaries, but did not employ the Indigent Workers directly and had no legal or beneficial title to the work product of the Indigent Workers. The work product of the Indigent Workers during the Audit Years was the Selected Projects. As stated in the above excerpt from the 1967 Letters, attributing credit to the Charity and its donors is a gimmick designed to encourage donations and show appreciation for Canadian donors. The Charity, through the Agent, CANISCOM and its own employees, ensured that the work done by the Indigent Workers was legitimate and real, but at no point took ownership of the Selected Projects. As such, and as asserted above in subsection B-1, the work product of the Indigent Workers – the Selected Projects – was incidental and ancillary to the Charity's primary purpose, the relief of poverty of the Indigent Workers. The activity of ensuring the employment of the Indigent Workers by paying their salaries was thus exclusively charitable.

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<sup>196</sup> Exhibit D(2.2) - (2.2) Letter from JNF Canada to Department of National Revenue re JNF Canada's fulfillment of the requisite principles of a Canadian charitable organization (July 21, 1967).



Further, the Selected Projects were themselves charitable in nature, meaning that no non-charitable purposes were furthered by the Charity's activities. The Selected Projects were charitable both in a general and a specific sense.

Generally, the Selected Projects furthered the charitable purpose of the advancement of religion because of the religious underpinnings of the Charity.

As described above in subsection A-3, the leading case on the advancement of religion, *Keren Kayemeth Le Jisroel Ltd. v IRC*, notes that "the promotion of religion means [...] the maintenance of the doctrines upon which [the religion] teaching rests, and the observances that serve to promote and manifest it".<sup>197</sup>

Judaism is a complex and ancient religious tradition, and fundamental to this tradition is the attachment and support of the land and people of Israel. See section II(B) above for a detailed explanation of this tradition. Although certain sects may elevate the State of Israel itself to this hallowed status, the Charity's focus is not on the nation-state but on the *land* and the *people* of Israel, which forms the bedrock of the religious tradition.

For the deeply religious, performing *Aliyah* by immigrating to Israel is a religious duty and obligation that all Jews must perform by the end of their lives. Indeed, many of the Indigent Workers were those who had exercised their right under the Law of Return, an Israeli law that gives all Jews the right to return to Israel.<sup>198</sup> For other Jews who either interpret their obligation differently or whose religious belief does not compel them to leave Canada, the values of community among all Jews, such as *Klal Yisrael*, meaning "the community of Israel", and *Kol Yisrael arevim zeh lazeh*, meaning that "all Jews are responsible for one another", still holds strong and compels them to support the land and people of Israel. This is where the concept of "redeeming the land" of Israel developed. The Charity submits that all of the Selected Projects are to redeem the land of Israel and to support the community of Israel, and that to do this is a religious obligation on all Jews. Supporting the Selected Projects is thus the maintenance of a fundamental religious doctrine of Judaism and necessary to manifest religious worship. As a religious obligation, furthering the Selected Projects is furthering the charitable purpose of the advancement of religion.

Beyond the general purpose of the advancement of religion, each Selected Project is also itself of a charitable nature because it furthers a specific charitable purpose. Schedule A and B describe the Selected Projects from the years 2011 and 2012, respectively. They have been categorized by the nature and accomplishment of each project.

Each Selected Project furthers one of the following charitable purposes:

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<sup>197</sup> *Supra* note 154 at 477.

<sup>198</sup> Israel, Law of Return (1570-1950) (1950). See Book of Authorities.

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1. Preservation of the Environment;
  2. Promotion of Health
  3. Public Works
  4. Advancement of Education
  5. Promotion of Community Economic Development

These charitable purposes have been described above, in subsections III(A)(4) and III(A)(5). The Charity chooses the Selected Projects carefully, and submits that each and every Selected Project during the Audit Years was charitable in nature.

The Selected Projects do not taint the exclusively charitable status of the Charity's activity because they are ancillary and incidental to the primary purpose, the relief of poverty, and because the Selected Projects are charitable themselves, as they further the advancement of religion generally and numerous other accepted charitable purposes in each specific instance.

### **C. Conclusion**

The exact meaning of "charity" is not easily defined, but it is clear that a charity must engage exclusively in activities that further a charitable purpose, and a purpose will be charitable if it is analogous to purposes already found to be charitable in the common law, which may be classified under the four *Pemsel* heads of charity.

The Charity submits that its only activity – ensuring the employment of the Indigent Workers by paying their salaries – is in furtherance of a charitable purpose, the relief of poverty or, alternatively, community and economic development, the relief of distressed persons or immigrant aid. As *Pemsel* makes clear in a general sense and *Vancouver Society* makes specific, relieving the poverty of poor immigrants and economically vulnerable people is a charitable purpose. *Gull Bay*, although not exactly analogous, provides further support for the proposition that providing employment is an activity that furthers the relief of poverty as long as there is no private benefit. The UK Charity Commissioners Reports, while not law, also suggests that this as a valid interpretation of the law of charity.

Furthermore, the Charity submits that the Selected Projects are charitable in nature, under either the advancement of religion or one of the recognized charitable purposes examined above.

### **IV. LAW OF DIRECTION AND CONTROL RELEVANT TO THE CHARITY**

This part of the letter describes the law and CRA guidance on relationships between charities and non-charities in the conduct of charitable projects. The important question at hand is whether the Charity maintains direction and control commensurate with the resources it devotes to the activities carried out on its behalf by the Agent. In our submission, the discussion in Part II shows that it clearly does.



Through the Agent, the Charity exercises full direction and control over the use of its funds.<sup>199</sup>

**A. The Law Governing the Co-operation between Registered Charities and Non-Qualified Donees**

**I. General**

The CRA acknowledges in Guidance CG-002 – “Canadian Registered Charities Carrying Out Activities Outside Canada”<sup>200</sup> that registered Canadian charities can carry on their charitable activities through agents and contractors and can engage in joint ventures and partnerships with non-qualified donees. In particular, CG-002 recognizes that:

A charity may use an intermediary to carry out its activities. For this guidance, an intermediary is an individual or non-qualified donee that the charity works with to carry out its own activities. For example, a charity might do one of the following

- hire a company
- enter into an agreement with a non-profit organization to have the organization deliver specific charitable programs for the charity; or
- pool its resources with another organization to complete a project.

In certain limited circumstances, the CRA will consider a charity to be carrying out its own activities by transferring certain resources to a non-qualified donee. Before a charity carries out its own activities by transferring its resources to a non-qualified donee, the CRA expects *all* of the following conditions to apply:

- The nature of the property being transferred is such that it can reasonably be used only for charitable purposes [...]; please note that transfers of money are not acceptable, and always require ongoing direction and control.
- Both parties understand and agree the property is to be used only for the specified charitable activities.
- Based on an investigation into the status and activities of the non-qualified donee receiving the property (including the outcome of any previous transfers by the charity), it is reasonable for the charity to have a strong expectation that the organization will use the property only for the intended charitable activities.

Investigating the status and activities of an intermediary would typically include examining details such as the intermediary's stated goals and purposes, any previous

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<sup>199</sup> See Schedules C and D.

<sup>200</sup> *Supra* note 215.

relationship with the charity and other charities, its history and general reputation, and relevant media reports.

If any of the three conditions do not apply then a charity will only be able to meet the own activities test by directing and controlling the use of its resources as otherwise stated in this guidance.<sup>201</sup>

The use of international intermediaries by Canadian charities has been judicially considered by the Federal Court of Appeal. The Court considered transfers of funds to agents in foreign countries in the context of revocation proceedings against Canadian charities, holding that transfers of funds to agents are permissible if the agent's activities are authorized, controlled and monitored by the charity and the agent or its delegate carries on the work of the charity.

In the *Canadian Committee for the Tel Aviv Foundation v The Queen*<sup>202</sup>, the Court of Appeal stated its views as follows:

30 In my analysis, the Committee misconstrues the Minister's position. 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. In this case, the Agency Agreement was ignored by the Committee, and the Minister was not satisfied that the Committee's explanations of its conduct overseas were sufficient to overcome his conclusion that the Committee had no direction or control over how funds were spent by its agent. The evidence that was provided would suggest that the Committee was merely acting as a conduit for Canadian donors to overseas donees. For example, the evidence discloses that the Committee sent the majority of the funds it raised to its agent in Israel, but provided little documentary evidence of the Committee's control over how those funds were spent. The Committee submits that the written Agency Agreement was superseded by subsequent oral arrangements with its agent, and asserts that its directors had travelled to Israel on numerous occasions specifically to oversee and direct the agent's activities pursuant to those oral arrangements. Again, however, there is little evidence on the record from which this Court might conclude that the Committee was, in fact, exercising the control and direction it claims.

31 In my view, in light of this conflict between the Agency Agreement and alleged oral arrangements, and considering the many other concerns raised by the Minister, such as the improper recording of expenditures in the Committee's records, the agent's failure to keep a separate bank account, and the lack of documentary evidence of direction and control by the Committee, it was not unreasonable for the Minister to conclude that the

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<sup>201</sup> *Ibid* at para 5.2.

<sup>202</sup> 2002 FCA 72 ("*Tel Aviv Foundation*"). See Book of Authorities.

[REDACTED]

Committee was not in control or direction of its agent in Israel. His conclusion is all the more reasonable in light of the Committee's failure to comply with its 1996 Undertaking, whereby it undertook to abide by the terms of the written Agency Agreement.<sup>203</sup>

In *Canadian Magen David Adom for Israel v Minister of National Revenue*<sup>204</sup>, the taxpayer was a registered charity that transferred funds to an entity in Israel that provided, among other things, emergency medical supplies and ambulances in Israel. The Court referenced numerous pieces of correspondence between the appellant and the Minister in which the Minister stated that a charity cannot transfer funds unless the recipient is an employee, an agency, or a qualified donee,<sup>205</sup> establishing that it is permissible for a charity to transfer funds to its agent for charitable purposes. The Federal Court of Appeal endorsed that view in *Magen David Adom*:

66 . . . A charitable organization that wishes to operate in a location where it has no officers or employees must somehow act through a person in that location. That obviously could be done by establishing an agency relationship between the charity and the person. Evidence that such a relationship has been established by contract, and that the contract has been adhered to, might well be the most straightforward means of proving to the Minister that a person purporting to carry out the charitable activities of a charity in a particular location is in fact acting on behalf of the charity. It is possible that the same result might be achieved by other means. However, a charity that chooses [sic] to carry out its activities in a foreign country through an agent or otherwise must be in a position to establish that any acts that purport to be those of the charity are effectively authorized, controlled and monitored by the charity.<sup>206</sup>

The Federal Court of Appeal further considered the transfer of funds to agents of a charity in *Bayit Lepletot v Minister of National Revenue*<sup>207</sup>, holding as follows:

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. The question which remains in such a case, as it does here, is who is carrying on the charitable works. It was incumbent upon the appellant to show that they were being carried on its behalf.<sup>208</sup>

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<sup>203</sup> *Ibid* at paras 30-31.

<sup>204</sup> *Supra* note 128.

<sup>205</sup> *Ibid* at para 26.

<sup>206</sup> *Ibid* at para 66.

<sup>207</sup> 2006 FCA 128 ("*Bayit Lepletot*"). See Book of Authorities.

<sup>208</sup> *Ibid* at para 5. The FCA also considered whether the charity's work was conducted through a sub-agent, but found that there was no factual basis for so concluding. Thus, it remains open for a charity's agent to delegate its work to a sub-agent.



Thus, based on the foregoing jurisprudence and CRA guidance, it is clear that a charity may transfer funds to agents and contractors, engage in joint ventures with non-qualified donees, and engage in partnerships to further its charitable objectives, provided it maintains appropriate direction and control over its property, including legally enforceable contractual arrangements.

**2. Contractual Nature of Agency Relationships**

An agency relationship occurs where a person or legal entity, being the principal, appoints another person or legal entity, as agent, to act on the principal's behalf.<sup>209</sup> Despite the fact that the agent acts for the principal, the two entities remain distinct. The agent has the power to bind the principal in dealings with third parties. The principal is legally responsible for activities of the agent which are committed on behalf of the principal. The agent is only able to perform acts on behalf of the principal that the principal has the legal capacity to perform.

The agency relationship can be formed through express or implied agreement that one party should act on the other's behalf. When a principal either expressly or impliedly represents to an agent directly that the agent should represent the principal, this is called "actual authority".<sup>210</sup> Agents can also receive "apparent authority" to act for a principal, resulting from representations made by the principal to third parties.<sup>211</sup>

A party cannot unilaterally become an agent, and requires the will or conduct of the principal to trigger the agency relationship.<sup>212</sup> The appointment of an agent can be completed through a written or oral agreement, creating a contractual agency relationship.

Alternatively, an implied agency agreement can form naturally where the conduct of the principal is sufficient for a reasonable person to conclude that another party is the principal's agent.<sup>213</sup> The alleged agent must act in a way that is consistent with an indication that they have accepted the agency relationship. Further, an agency relationship can occur naturally through ratification. This happens where a party acts as agent without authority from the principal or beyond the scope of the authority granted in the agency agreement, and the principal subsequently endorses the agent's actions. This creates an agency relationship.



<sup>209</sup> F. M. B Reynolds, *Bowstead and Reynolds on Agency* 18th ed (London, ON: Sweet & Maxwell, 2006) at 1. See Book of Authorities.  
<sup>210</sup> *Ibid.*  
<sup>211</sup> *Ibid* at 5.  
<sup>212</sup> *Ibid* at 4.  
<sup>213</sup> Cameron Harvey, *Agency Law Primer* 3rd ed (Toronto: Thomson Canada Limited, 2003) at 7. See Book of Authorities.



### 3. “Direction and Control”

The courts have held that in an agency relationship in the context of charity law, the Canadian registered charity must have “direction and control” over its foreign agent’s activities. In *Canadian Committee for the Tel Aviv Foundation v The Queen*<sup>214</sup>, the Federal Court of Appeal accepted that direction and control were necessary elements of an agency relationship.

It is not necessary that the charity engage in day-to-day governance and micromanagement of the agent’s activities. In CRA Guidance CG-002, the CRA provides examples of decisions and issues that the charity should have “direction and control” over. This list includes:

- how the activity will be carried out;
- the activity's overall goals;
- the area or region where the activity is carried out;
- who benefits from the activity;
- what goods and services the charity's money will buy; and
- when the activity will begin and end<sup>215</sup>

A key component of exercising “direction and control” over an agent is engaging in monitoring and supervision over the agent. This includes receiving timely reports from the agent to ensure that the charity’s resources are being used as the charity intends. Guidance CG-002 continues to describe and provide an example of the agent’s reporting duties to the charity, as follows:

The intermediary should report back to the charity on any decisions made, so that the charity can make sure that the carrying out of the activity continues to comply with the Act. For example, an agent awarding scholarships for a charity should be able to provide a list of recipients. This will let the charity make sure the agent is not awarding scholarships only to friends and family of the agent. The charity can veto awards that are not appropriate, and so continue to meet the public benefit test.<sup>216</sup>

The CRA Guidance provides other mechanisms to ensure that the Canadian charity has “direction and control” over the agent. These mechanisms include reports of ongoing instructions or directions to the

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<sup>214</sup> *Supra* note 202.

<sup>215</sup> *Supra* note 127 at s 7.

<sup>216</sup> *Ibid.*

[REDACTED]

agent which can be diarized through minutes of meetings, e-mails, letters, etc. Further, the Guidance recommends distributing funds to the agent in instalments rather than in a lump sum. Similarly, the charity should make sure that it can distinguish the funding of its activities through the agent from the other activities of the agent.<sup>217</sup>

Moreover, the case *Bayit Lepletot v Minister of National Revenue* establishes that a Canadian charity can carry out its own charitable activities through a foreign agent, but that agent must be the actual person that conducts the charity's activities in the foreign country. However, the judgment in that case did allow for the charity's agent to sub-contract work to a sub-agent.

## **B. Analysis**

### **1. The Charity had an Agency Relationship with the Agent**

The Charity agrees with the CRA's assertion in the Audit Letter that during the Audit Years, the Charity had an agency relationship with the Agent.<sup>218</sup> This relationship is evident not only in the Agency Contract, but also through the actions of the Agent and the Charity during the Audit Years.

Over the decades long relationship between the Agent and the Charity, the Agent has always acted as the Charity's agent in Israel. The Agency Contract is a written representation of this relationship, and although unsophisticated and vague, it is a binding document.

The Charity relied on the Agent to enact its charitable activities in Israel, and the Agent followed through. The Charity requested documents and information from the Agent on a daily basis, and received the requested information in a timely manner. The Agent assisted the Charity in supervising the Selected Projects in Israel, and was always on call to assist the Charity.<sup>219</sup> These facts are all evidence of the agency relationship between the Charity and the Agent.

### **2. The Charity maintained Direction and Control over its resources**

The Charity maintained direction and control over its resources, and supervised the Agent and the Selected Projects very closely.

The Charity meets the criteria of the list from CG-002 replicated above: the Charity determined how the Indigent Workers would be paid, decided how to relieve the poverty of the Indigent Workers, chose the area in which the payment occurred, determined who was paid, and only released funds to pay the salaries of the Indigent Workers if the Charity determined that it was required and that real progress was

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<sup>217</sup> *Ibid* at ss 7.5, 7.6, 7.7.

<sup>218</sup> Exhibit D(10) - Letter from CRA to [REDACTED] (JNF Canada) re Audit of JNF Canada for 2011 and 2012 (May 12, 2016), at 5.

<sup>219</sup> See Schedules C and D.

[REDACTED]

occurring on the particular Selected Project.<sup>220</sup>

Looking at the broader results of the Charity's work, the Charity maintained direction and control over not just the paying of the Indigent Workers, but also the Selected Projects. The Charity made the final decisions over which projects were suitable for support, and the Selected Projects were a result of its own rigorous process of vetting, designing, supervising and fundraising.

Further, the Agent reported back to the Charity on all important decisions made with the Charity's funds. Of primary importance to the Charity was that the Indigent Workers were being paid, and the Charity received the payroll of the Indigent Workers labouring on the Selected Projects<sup>221</sup>, and had access to the records relating to the Indigent Workers by request<sup>222</sup>, particularly the assurance of the Agent that the Indigent Workers were recruited from the Employment Bureau, a government agency that assists the poor and chronically unemployed.<sup>223</sup>

The Charity also kept close supervision the Agent's work by reviewing the Selected Projects in person, by maintaining CANISCOM as their representative in Israel, and by keeping in daily contact with employees of the Agent to review the Selected Projects and ensure that the Agent was carrying out the Charity's work to their specifications.

### C. Conclusion

The Charity submits that it had a valid agency relationship with the Agent. The Agency Contract, although unsophisticated, is evidence of this relationship, and the actions of the Charity and the Agent further confirm the agency relationship.

The Charity executed its charitable projects and charitable activities through the Agent. However, the Charity maintained direction and control over the Agent and the use of its funds. This is demonstrated through the Charity's control over the projects that it supported, and the rigorous involvement of its staff, senior management, and CANISCOM in the selection, design, and implementation of the charitable projects. The Charity's process for controlling the flow of funds and regular contact with the Agent's Canada Desk and Finance Department is further evidence of the direction and control that the Charity exercised over its Agent and the Selected Projects.

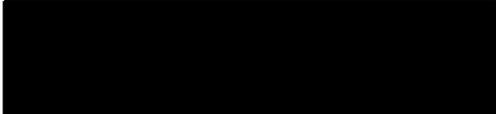
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<sup>220</sup> See Schedules C and D.

<sup>221</sup> Exhibit H(11) and H(12) – KKL Payroll PDF 1 and 2; and Exhibits H(13)-(36) – Charts of individual worker salary payments (January 2011 – December 2012).

<sup>222</sup> Exhibit H(2) - Records of 3 different indigent workers providing examples of the procedures and forms required for hiring indigent workers. A translation of the document into English is available at the following link: <http://taxinisrael.blogspot.co.il/2014/01/form-101-for-employees-2014-version.html>

<sup>223</sup> Exhibit H(8) - Sample indigent worker referral form from the Israeli Employment Bureau; and Exhibit H(3) - Letter from [REDACTED] Head of The Field Employees Department, JNF, to [REDACTED] Manager Finance Department, re criteria for determining field employees (November 2, 2014).



V. DETAILED RESPONSE – SUBMISSIONS IN RESPONSE TO AUDIT LETTER

A. Whether the Charity failed to be constituted and operated for exclusively charitable purposes [Audit Letter section 1]

a. CRA's position

The Charity did not devote its resources exclusively to activities in support of charitable purposes on the basis of the following propositions:

- (1) The Charity's objects are broad and vague, but the Charity was cautioned at the time of registration to restrict itself to charitable activities.
- (2) The only activity of the Charity was employing Indigent Workers in Israel and this activity does not further the Charity's formal purposes nor is it a charitable purpose per se.
- (3) The Charity appeared to be pursuing other unstated non-charitable purposes as evidenced in the Mission Statement.
- (4) The Charity is not established for exclusively charitable purposes.

b. The Charity's reply

The Charity was constituted and operated exclusively for charitable purposes. Its primary purpose is the relief of poverty, a judicially accepted charitable purpose, and its sole activity is ensuring the employment of the Indigent Workers by paying their salaries, which directly furthers its primary purpose.

With respect to the first and second propositions, as stated in Part II above, at the time of the registration of the Charity, the Charity described in writing the nature of its charitable activities to the Department of National Revenue and was informed in writing at that time that providing employment to indigent labourers such as the Indigent Workers was a valid charitable activity in the pursuit of its charitable purpose of relieving poverty.<sup>224</sup> As described in detail in Part II of this letter, the Charity has restricted itself to this activity since that time.

As demonstrated in Part III of this letter, the Minister's decision at the time of registration was correct as a matter of law: ensuring the employment of the Indigent Workers by paying their salaries is a valid activity because it furthers the relief of poverty, a recognized charitable purpose. The Charity's formal purpose, as stated in its letters patent of incorporation and its articles of incorporation, is to raise

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<sup>224</sup> Exhibit D(2) - 1967 Letters between Department of National Revenue and JNF Canada re qualification as a charitable organization (1967).

[REDACTED]

voluntary contributions “to be used for charitable purposes ... throughout Canada and elsewhere.” Since the relief of poverty of Indigent Workers is a charitable purpose, the Charity’s activity of ensuring the employment of the Indigent Workers by paying their salaries furthers the Charity’s formal purposes.

As stated by the CRA in the Audit Letter, the Charity’s activity in Israel was providing employment to “individuals that are poor” by paying their salaries.<sup>225</sup> The CRA’s audit revealed that the funds were indeed used for their stated purpose of paying the salaries of the Indigent Workers. The principal reason the Charity pursues its charitable purposes through paying the salaries of the Indigent Workers is because many of the Selected Projects are developmental in nature and result in lasting improvements in the land of Israel. In the past, the Charity has not taken ownership of the lasting improvements because it was able to justify all of its expenditures as expenditures in the relief of poverty – ensuring the employment of the Indigent Workers by paying their salaries. Nonetheless, as demonstrated in Part II of this letter, all of the Selected Projects in the Audit Years were exclusively charitable in nature, and therefore, also, in pursuit of the Charity’s formal purposes.

Further, descriptions of the Selected Projects are used in the Charity’s fundraising appeals. Experience shows that donors will provide funding for charitable projects that are described in terms of outcome. It is true that the Charity commits to project outcomes in its donor appeals, but, as stated, it is also true that the Charity achieves these charitable outcomes entirely through paying the salaries of the Indigent Workers.

With respect to the third proposition, the Mission Statement is fully consistent with the Charitable Objects. The first statement affirms the connection to the land of Israel and to the Agent and the historic work of the Agent in “redeeming” the land of Israel. As argued above in Part II of this letter, the action of “redeeming” the land of Israel is based in the foundational commitment of the Jewish religion. “Redeem” means rendering the land true to its purpose, namely, making the land of Israel a place where the Jewish people can thrive and live in accordance with the promise of the covenant as a people. The second and third statements in the Mission Statement are to like effect.

The suggestion in the first statement of the Mission Statement – that the mission is to provide funds to the Agent – is unfortunate. The suggestion that funds are simply provided to the Agent is belied by the fact that the Charity exercises extensive direction and control over the use of the Charity’s funds in Israel, as described in Part II of this letter.

With respect to the fourth proposition, it is clear from the foregoing arguments that the Charity is currently established for exclusively charitable purposes.

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<sup>225</sup> Exhibit D(10) – Letter from CRA to [REDACTED] JNF Canada) re Audit of JNF Canada for 2011 and 2012 (May 12, 2016), at 7- 8.

c. Compliance Proposal

The Charity's charitable purposes are broad and are not in accord with the current standards imposed by CRA as a condition of registration on new applicants. Although exclusively charitable, as required by law, they could be made more specific. To this end, subject to CRA's views in this regard, the Charity proposes that its objects be amended and restated as follows:

1. To relieve poverty by providing employment to individuals who are indigent and unemployable.
2. To advance education by providing courses, seminars, and workshops about Judaism and Jewish values such as *Klal Yisrael* (the community of Israel), *Kol Yisrael arevim zeh lazeh* (all Jews are responsible for one another), *Tzedaka* (righteousness, social justice), and *Tikkun Olam* (repairing the world), to encourage and promote the development of Jewish life in Canada and in Israel for the purpose of linking the Jewish people to the land of Israel.
3. To publish educational materials on Judaism and Jewish values, culture, and society for use in schools and educational program settings, linking the Jewish people to the land of Israel.
4. To provide the necessities of life, including counseling and outreach programs, to victims of disasters in Israel, including such examples as earthquakes, hurricanes, terrorism, and war.
5. To provide counseling and other support services for refugees and immigrants to Israel from all parts of the world, with particular emphasis on resettlement, language training, employment training, and education.
6. To manifest, promote, sustain, or increase belief in the practices associated with the Jewish religion and its fundamental values, and in particular those practices and values that are associated with the role of the land of Israel in Judaism, and with the responsibility of Jews for one another.
7. To redeem the land of Israel by engaging in projects to develop and preserve its land, historical sites, and resources by addressing ecological and environmental issues including reforestation projects, building public parks, improving natural waterways, maintaining historical sites, and alleviating the causes and effects of pollution in the environment.
8. To engage in projects that improve the civic environment, including the construction of public works and facilities and resources for the disabled such as reservoirs and dams and public amenities such as shelters for persons in need, parks, and community centres.
9. To educate the public about anti-Semitism and its dangers.
10. To gift funds to qualified donees as defined in subsection 149.1(1) of the Income Tax Act.

The Charity has undertaken a review of its operating principles and, subject to the views of CRA, intends to pursue these objects in the following manner:



The Charity will continue to pay the salaries of the Indigent Workers but will not rely on this charitable purpose exclusively.

The Charity will devote some of its resources to projects that result in lasting improvements in the land of Israel. Depending on the nature of the outcome or the asset produced, the Charity may take an ownership interest, as permitted under Israeli law, and use the improvement or ensure that the improvement is used for charitable purposes for its entire economic life. In other situations, where the outcome or asset, because of its nature, must be owned by an Israeli entity, the Charity will take all steps necessary to ensure that the outcome or asset is used for exclusively charitable purposes. In all cases, the Charity will comply with CRA's guidance, as described in Part III.

The following examples illustrate the proposed approach:

- The Charity enters a joint venture with an Israeli charity to build and operate a shelter for mistreated women. The Israeli charity might own the land or the land might be owned by the Agent or by the state of Israel or a local government. The Charity constructs the shelter and takes a long term lease on the land if it does not or cannot own it. The Israeli charity operates the shelter. The Charity exercises continuing control over the use of the facility through the joint venture agreement, but does not otherwise contribute to operations. If the facility ceases to be used for its charitable purposes, the economic value of the facility reverts to the Charity and is redeployed to another charitable purpose or is realized.
- The Charity engages in a reforestation project in a national park, a local park, or a community struck by forest fires. The trees and the forests are owned by whoever owns the land. The Charity takes legal measures to ensure that the forest is not available for private use or profit and that it remains in the public domain.
- The Charity with others builds a reservoir to provide potable water to a community. The Charity ensures that the reservoir remains a public work that is used for the benefit of the public.
- The Charity with others builds a park in a community on land that is owned by the municipality. The Charity ensures that the park remains a public amenity.

The Board intends to pass a resolution to adopt an official Mission Statement that will replace the unofficial Mission Statement. The official Mission Statement will conform to and express the proposed Objects, as approved by the CRA, and make it clear that the Charity does not gift funds to non-qualified donees.



**B. Whether the Charity failed to devote resources to charitable activities carried on by the Charity itself [Audit Letter Section 2]**

**1. Whether there was a lack of direction and control over the use of resources or gifting to non-qualified donees [Audit Letter Section 2.1]**

**a. CRA's position**

The Charity did not exercise continuous direction and control over the use of its funds by the Agent for specified projects on the basis of the following propositions:

- (1) The Agent is a general contractor responsible for the construction of infrastructure. The Agent is not a qualified donee.
- (2) The Agency Contract is not sufficiently detailed.
- (3) CANISCOM functions as a second board of directors.
- (4) The Charity transfers funds directly to the Agent without verifying the progress on projects.
- (5) Evidence showing direction and control of the Agent through CANISCOM is missing.
- (6) The Charity did not have an active role in its projects in Israel and merely transferred funds to the Agent to use for the accomplishment of the Agent's own programs.

**b. The Charity's reply**

The Charity exercised continuous direction and control over the use of its funds through CANISCOM, through the Charity's own employees, and through its agency relationship with the Agent.

With respect to the first proposition, the Charity is aware that the Agent is not a qualified donee. The Charity was aware at all relevant times that it was obliged to maintain direction and control over its resources in Israel. As described in Part II of this letter, the Charity did maintain direction and control of its resources in Israel.

It is not accurate to describe the Agent as a general contractor responsible for the construction of infrastructure in Israel. The Agent is accurately described in Part II of the letter: the Agent's origin and history demonstrate its pivotal role in the resettlement of the Jewish people in Israel nearly two thousand years after their expulsion. The Agent's history and mission demonstrate a richer global mission in the advancement of the Jewish people.

[REDACTED]

As stated by the CRA in the Audit Letter, “[the Agent] acts as [the Charity’s] agent in Israel”.<sup>226</sup> The Agent was engaged as the Charity’s agent because of the affinity of the two organization’s purposes. The Charity, from its inception, has been the Canadian vehicle for such of the purposes of the Agent as are exclusively charitable. The Agent, from the inception of the Charity, has been the Charity’s agent in the pursuit of its charitable projects in Israel.

With respect to the second proposition, the text of the Agency Contract is not reflective of the level of direction and control that the Charity exerts over its resources in Israel. The level of direction and control in fact is described in Part II of this letter, and includes: the activities of the Canada Desk; the activities of CANISCOM; the reports regarding the CANISCOM Account; the type and frequency of employee and senior management trips to Israel to supervise the progress of the Selected Projects; and, the participation of the Charity with other affiliates of the Agent in the design and operation of projects in Israel.

With respect to the third and fourth propositions, it is not accurate to describe CANISCOM as a second board of directors. It is clear from the description of CANISCOM in Part II that CANISCOM is a committee of the board of directors of the Charity that functions as the Charity’s eyes and ears in Israel, maintaining continuing supervision of the Agent through frequent contact with the Canada Desk. The Charity therefore maintains continuing supervision of the projects through its committee, CANISCOM, and through the frequent trips by Charity employees, as described in Part II of this letter. It is entirely inaccurate to claim that the Charity does not inquire about the progress of its projects and that it simply transfers its funds to the Agent; the Charity verifies progress before sending any funds to the CANISCOM Account. Progress is supervised through Senior Management Inspections, Staff Trips, communications with the Canada Desk, and CANISCOM reports: see Part II.

With respect to the fifth and sixth propositions, although written evidence may not be fulsome, there is abundant evidence, as described in Part II, of ongoing consistent communication between the employees of the Charity – through phone, email and visits – and CANISCOM and the Agent. The Charity, through its employees and CANISCOM, played an exceptionally active role in the design and implementation of all of its charitable projects. The Charity does not provide funds to the Agent for the Agent’s own projects – the Charity itself selects, designs and supervises the Selected Projects. The Charity’s funds are used only for the salaries of the Indigent Workers labouring on the Selected Projects, and the Charity keeps careful watch over the Selected Projects. The Charity, while affiliated with the Agent, takes pride in its accomplishments, promotes and fundraises on the basis of the Selected Projects, and attributes credit to its donors and itself only for the Selected Projects. It is of enormous importance to the Charity, the Board, members of the Charity, and donors to the Charity that the Charity receive credit for the results of the Charity’s own charitable work, which is distinct, although sometimes

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<sup>226</sup> Exhibit D(10) – Letter from CRA to [REDACTED] (JNF Canada) re Audit of JNF Canada for 2011 and 2012 (May 12, 2016), at 5.

[REDACTED]

shared, from the work of the Agent or of other foreign charities affiliated with the Agent such as the Jewish National Fund (America) or the Jewish National Fund (United Kingdom).

c. Compliance Proposal

The Charity proposes to enhance its direction and control over the use of its funds by increasing reporting requirements from CANISCOM and the Agent and by updating its relationship with CANISCOM and the Agent with formal, written contracts and requirements. The Charity will do this by:

- Entering a new Agency Agreement with the Agent, along the lines contained in Schedule E;
- Establishing new terms of reference and protocols for CANISCOM; and,
- In particular, requiring quarterly reports from the Canada Desk and CANISCOM;

**2. Whether there was a failure to devote resources to charitable activities [Audit Letter Section 2.2]**

a. CRA's position

The activity of employing Indigent Workers in Israel does not constitute operating for charitable purposes.

b. The Charity's reply

As explained above in subsection A(b), the activity of ensuring the employment of the Indigent Workers by paying their salaries is in furtherance of the relief of poverty, a judicially accepted charitable purpose. This proposition is demonstrated in Part III of this Letter.

c. Compliance Proposal

The Charity proposes to change the scope of its charitable programs as elaborated in subsection A(c). The Charity will continue to pay the salaries of the Indigent Workers, but will also be engaging directly in charitable projects in Israel as described.

**C. Whether there was a failure to maintain adequate books and records [Audit Letter section 3]**

a. CRA's position

The Charity did not maintain adequate books and records to substantiate that its resources were devoted to its own charitable programs, and did not maintain records of certain travel expense reports with sufficient detail to demonstrate that the claimed expenses were conducted in pursuit of the Charity's charitable purposes.



b. The Charity's reply

Through the Agent, the Charity maintained sufficient books and records to substantiate that its funds were devoted to its sole charitable program, which is the payment of the salaries of the Indigent Workers. These records are described in Part II, and include payroll documents<sup>227</sup>, progress reports<sup>228</sup>, Indigent Worker applications<sup>229</sup>, records relating to the CANISCOM Account<sup>230</sup>, and charitable submissions by Israeli Charities<sup>231</sup>.

With regards to the expense reports, the Audit Letter states that the expense reports did not indicate the date of travel, the purpose, the departure address, the destination address or the total distance travelled. The expense reports provided to the CRA do clearly contain the date of travel and the total distance travelled. However, the Charity concedes that, by only designating cities rather than specific addresses in those cities and by not outlining the purpose of the travel, its expense reports in 2011 and 2012 were lacking.

c. Compliance Proposal

As stated above, the Charity proposes to enhance the reporting requirements from its subsidiary CANISCOM and the Agent, and to develop formal reports for Senior Management Inspections. Furthermore, the Charity proposes to ensure that its future expense reports meet the required standard of the CRA by including the departure address, the destination address and the purpose of travel.

**VI. CONCLUDING SUBMISSIONS**

Based on the foregoing, the Charity submits that it would be inappropriate for the CRA to impose any penalties or suspensions, or to give notice of its intention to revoke the registration of the Charity. The Charity submits that it has complied with its obligations under the *Income Tax Act* and the common law to the best of its knowledge and with the informed consent of the CRA. The Charity submits that the legal arguments above and the attached Exhibits and Schedules support this position. Should the CRA have any questions or require more documents, we are happy to answer any questions relating to the Charity's activities, policies and history, and will provide any documents required.

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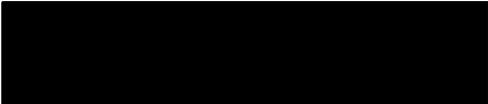
<sup>227</sup> Exhibits H(5) – H(40) – [documents related to the payment of indigent workers].

<sup>228</sup> Exhibit E(1) – Sample email of project progress update, re ALUT Stage 2 (March 2011); and Exhibit E(2) – Sample email attachment of project plans, re ALUT Stage 2 (March 2011).

<sup>229</sup> Exhibit H(2) – Records of 3 different indigent workers providing examples of the procedures and forms required for hiring indigent workers.

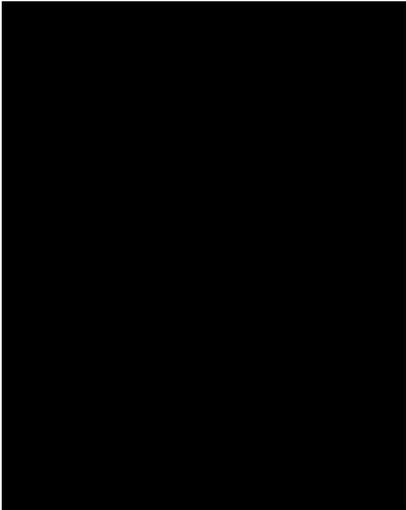
<sup>230</sup> Exhibits F(8) – F(10) – [sample confirmations of remittances to CANISCOM account]; F(12) – F(17) – [Quarterly reports of transfers to CANISCOM account (2011-2012)]; and Exhibits F(18) – F(20) – [CANISCOM bank account records and lists of remittances (2011-2012)].

<sup>231</sup> Exhibit E(6) – Third Party Contractor contract, Edible Gardens project (2011).

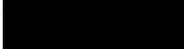


Notwithstanding this submission, the Charity wishes to work with the CRA and seeks to ensure that its protocols, policies and record-keeping are fully up-to-date with the CRA's requirements for Canadian charities. As detailed in Part V above, the Charity proposes that it update its protocols, policies, and record-keeping, and is open to entering into a Compliance Agreement with the CRA.

Sincerely,



## SCHEDULES

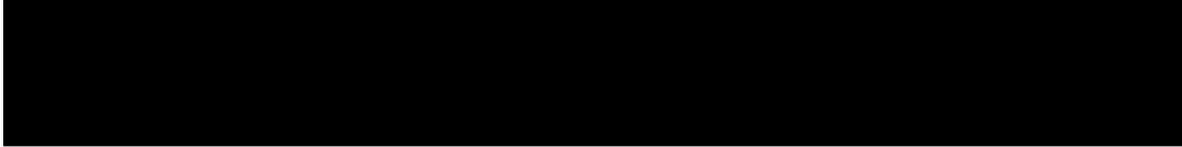
- A. List of Selected Projects categorized by charitable purpose (2011)
- B. List of Selected Projects categorized by charitable purpose (2012)
- C. Certified Statement of 
- D. Certified Statement of 
- E. Proposed Agency Agreement
- F. Proposed Objects

## SCHEDULE A

### 2011 Selected Projects

#### I. ENVIRONMENT

##### 1. ACACIA TREES



##### 2. CARMEL FOREST FIRE

[REDACTED] JNF has begun its campaign to restore the burnt forest and make preparations for replanting the damaged areas

##### 3. CLEAN UP ISRAEL



##### 4. GATEWAY TO THE NEGEV

JNF is developing a greenbelt around Beer Sheva. The objective is to create a green environment appropriate to the desert know as 'savannization'.

##### 5. HULA VALLEY ARBORETUM

[REDACTED] This project will create a focus for educational tours and visits from students, as well as areas for visitors to plant trees.

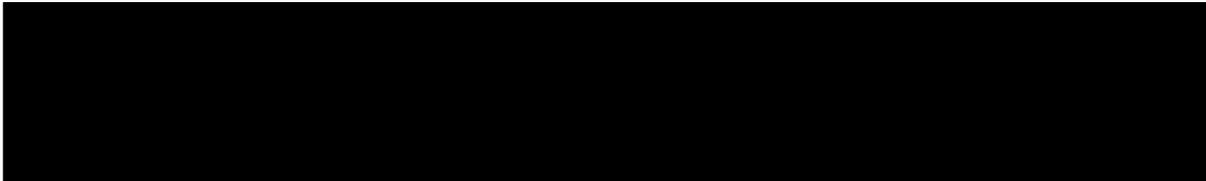
##### 6. MAOF

[REDACTED] Collaboration and participation are undoubtedly the easiest way to ensure that the project will continue to expand and develop independently, when direct JNF participation diminishes. [REDACTED] JNF realizes that education is the key to successful integration into Israel society and has decided to meet this challenge head on, preparing a unique program for working in schools with a majority of olim the student body.

**7. PERES PEACE INSTITUTE**



**8. SDEROT RECYCLED WATER RESERVOIR**



**9. SHOMERA - GREYWATER RECYCLING INITIATIVE**

The Greywater Recycling Initiative is a partnership between JNF/KKL and Shomera For A Better Environment, an Israeli organization dedicated to creating health, sustainable urban environments. Its goal is to set a precedent of an authorized greywater recycling facility in an urban setting which will comply with strict Ministry of Health guidelines for the re-use of the water thus generated.

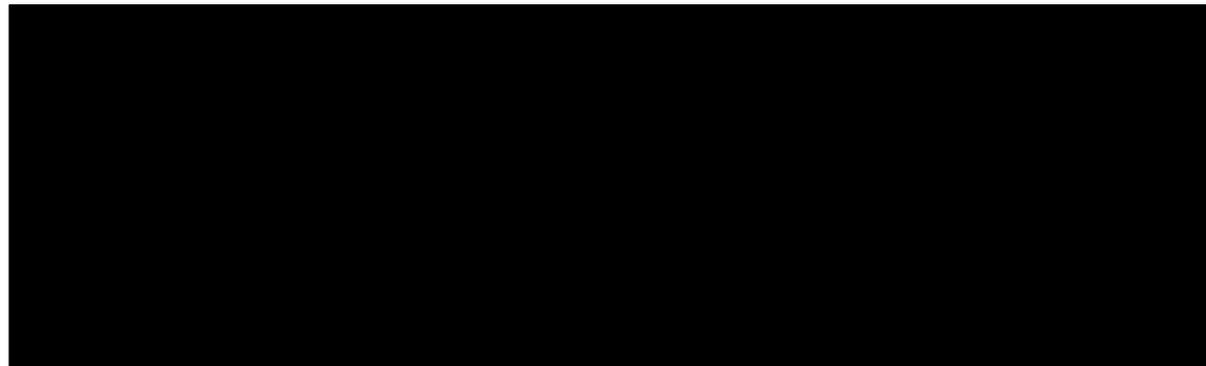
**10. SOUTHERN ARAVA RECYCLED WATER**



The goal will be to formulate irrigation recommendations based on the research results. Contributions to this project will support an integrated study of both ecological and economic importance. It combines a solution for wastewater disposal – one of the most pressing environmental problems in the world today, with improving crop yields – the major source of income in the southern Arava.

**II. PUBLIC WORKS**

**1. NAHAL ALEXANDER RIVER RESTORATION PROJECT**



[REDACTED]

Auxiliary projects developed along with the river's restoration include:

The establishment of the Yad Hannah purification plant and the Emeq Hefer reservoirs, a combination that prevents the pollution of Nahal Shehem and Nahal Alexander and enables fresh water to flow in the riverbed. A recreation area and picnic facilities at the entrance to a model stream with three small dams that regulate the height of water flowing into the streams, developed riverbanks, plantings and warm ponds for wildlife. A scenic trail along the streambed, from the Eucalyptus Recreation Area until Turtle Bridge that is easily accessible for pedestrians, bicyclers, as well as by the wheelchair bound.

## **2. BIRIYYA FOREST, SCENIC ROAD & NEVORAYA SYNAGOGUE**

[REDACTED]

In order to make it more accessible to tourists, the road must be widened, paved and repaired. With the funds raised, lookouts will be built and a 6 km section will be fully developed.

## **3. HALUTZIOT**

JNF is planning to develop the entrance to Naveh – Halutziot, including landscaping the sides of the approach road to the community. The new entrance will create a pleasant and attractive environment to welcome visitors to the community.

[REDACTED]

This project is part of JNF's ongoing involvement with the community. The project includes earthworks (clearing, filling, paving), paths, sidewalks, plazas and steps. Several architectural motifs will be developed: sculpted walls, artistic lettering for the community's name and an irrigation system will be installed. Landscaping will include planting and lighting

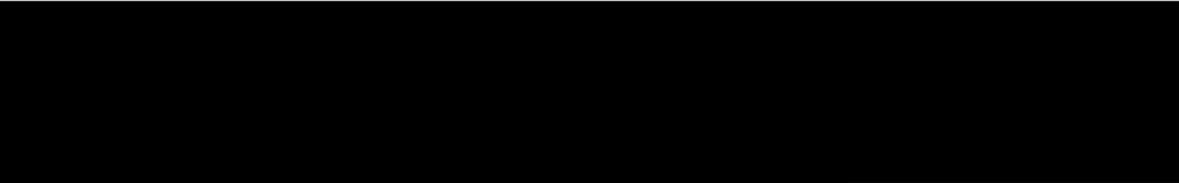
## **4. YERUHAM WASTEWATER TREATMENT**

[REDACTED]

JNF and the Yeroham municipality have joined forces to solve the problem. The new wastewater treatment plant will provide an ecological solution for the park, and can purify approximately one

million cubic meters of water a year. By creating a state-of-the-art wastewater treatment facility it will meet the needs of the park and the town.

**5. THE JOE AND WOLF LEBOVIC TEL AVIV-JERUSALEM BICYCLE TRAIL**



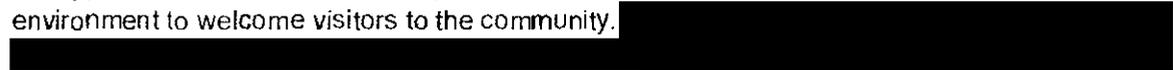
The path passes through scenery including a flowing river, JNF forests, natural fields and groves.

**6. MISHMAR HAYARDEN RESERVOIR**



**7. NAVEH HALUTZIOT**

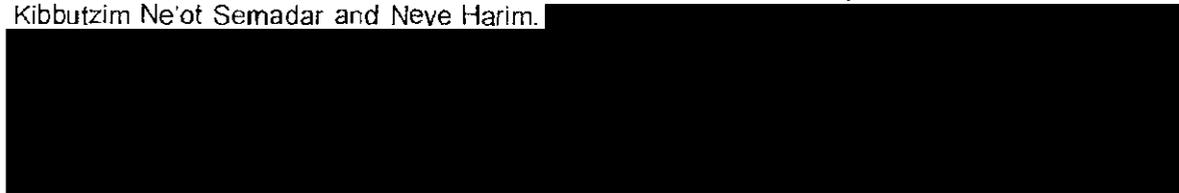
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**8. NE'OT SEMADAR ECOLOGICAL WASTEWATER TREATMENT FACILITY**

The constructed wetland JNF created provides a solution for the disposal of the wastewater of Kibbutzim Ne'ot Semadar and Neve Harim.



**9. OFAKIM PERIMETER CYCLING TRAIL**



JNF is developing an eight-kilometer cycling trail around the city of Ofakim, together with local cycling enthusiasts. The single-width track begins by the local shopping center and then passes along Nahal Patish, Nahal Ofakim, through Ofakim Forest, and on to Patish Fortress.

**10. RESTORERS OF JERUSALEM**

[REDACTED]

Since statehood, the Jewish National Fund, Israel's leading environmental organization, has continued protecting Israel's ecology and remains committed to sustainable development. The JNF is always focusing on its important task of planting trees, establishing reservoirs, building roads, draining swamps and dozens of other ways of preparing the land for useful habitation and cultivation. Now the JNF is being asked for its assistance in the physical improvement of the old city walls.

**11. SHECHAFIM**

[REDACTED]

**12. GREEN SUNDAY (MILES OF TREES)**

[REDACTED]

The new roads, together with forestation "Miles of Trees" project being carried out by JNF, will provide security for residents and students traveling in the area."

[REDACTED]

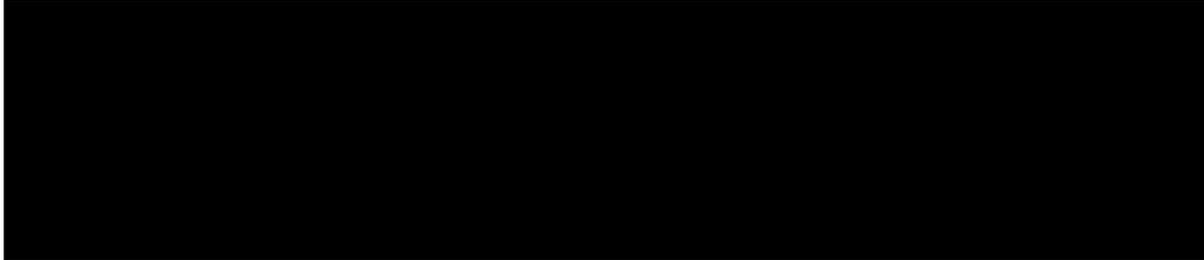
**III. EDUCATION**

**1. HULA SCHOLARSHIP**

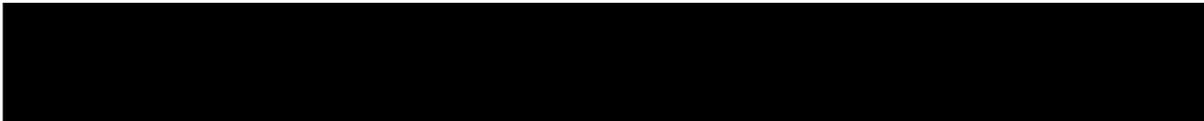
[REDACTED]

#### **IV. COMMUNITY DEVELOPMENT OR ECONOMIC DEVELOPMENT**

##### **1. ASPER COMMUNITY ACTION CENTRES**



##### **2. ALUT - THE ISRAELI SOCIETY FOR AUTISTIC CHILDREN**



##### **3. ALUT- BEERSHEVA – ISRAELI SOCIETY FOR AUTISTIC CHILDREN**

The first village for autistic young adults in Beersheva will be built in conjunction with Alut. The JNF will be preparing the infrastructure as well as all the landscaping of the community. The complex will house 6-8 residential buildings, each having 6-8 apartments units. There will be dining, recreational and other facilities which will enable the young adults to live in a highly supervised but family-like environment, promoting independence and safety.

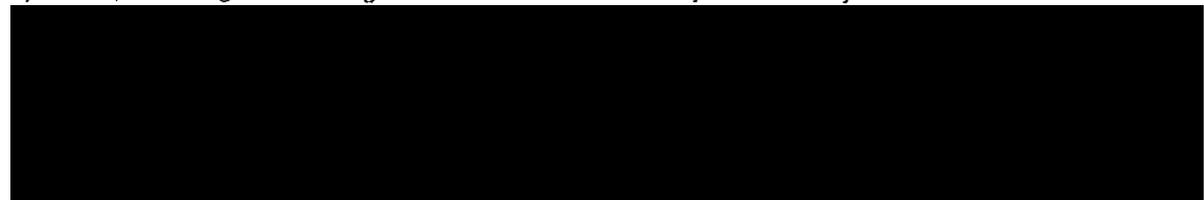
##### **4. BLUE VALLEY PARK AT ZEFAT**



KKL-JNF is planning a park in Blue Valley that will serve both local and foreign visitors in the Zefat area. The park will have two entrances, one for pedestrians and one for vehicles. The project will include a parking lot, restoration of the terraces, paths and leisure areas near the water.

##### **5. EDIBLE GARDEN**

The Edible Garden is a community gardening project for Ethiopian-Israeli teenagers and their parents, to strengthen each generation of the community on a variety of levels.

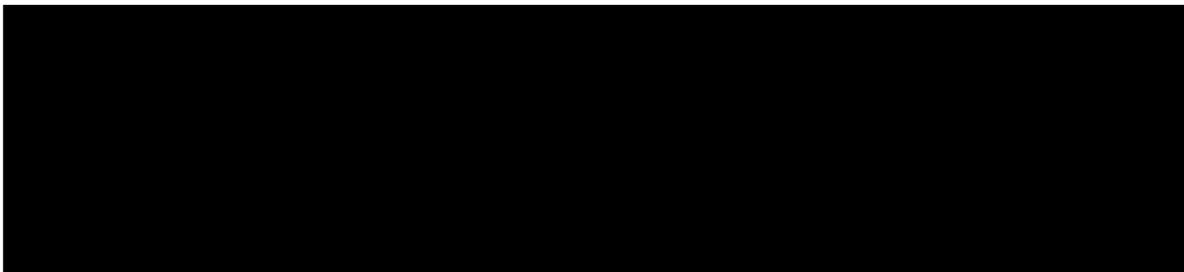


##### **6. HATSOR HAGELILIT – HILLEL LANDSMAN PARK**

JNF together with the Ministry of Construction & Housing, the Hatsor Local Council and Israel Lottery are developing a park in Hatsor HaGelilit which is situated in the Upper Galilee a few kilometers east of Tsfat and close to Rosh Pina. They will provide a central park facility for the

town whereby they will strive to improve the quality of life of their residents. The park will enhance the sense of civic pride and provide space where residents of all backgrounds can mingle and enjoy their leisure and recreation time.

**7. KADIMA TSORAN RECREATION AREA**



**8. KIBBUTZ HAHOTRIM - SPORTS FIELD**

KKL/JNF is planning to develop a sports field at the Yafit Park complex in Kibbutz HaHotrim in the northern Carmel coast. The project will be an additional element in the park - a multi-functional sports field where the kibbutz residents' can enjoy games of futsal, volleyball and basketball. When the park will be complete, it will provide adults, young people and children with a pleasant, green shady site for spending their free time outdoors. Up to now, the kibbutz had no such site, and it will markedly contribute to the residents' quality of life. Development of the sports field will include earthworks, paving, acrylic paint for the sports field, perimeter fencing and lighting

**9. MOSHAV GOREN RECREATION CENTER**

The JNF playground in Moshav Goren in the northern Galilee is designed to meet the needs of children with physical disabilities. The chosen site is an old grove in the center of the community. Many of the facilities in the playground are adapted for use by children with physical disabilities, including special seesaws and a wheelchair-accessible ramp leading onto a large play structure. The playground will also include a family seating area with benches, picnic tables (some wheelchair-accessible).

**10. NES HARIM CAMP**



JNF is proud to be a partner with all our supporters in Winnipeg to establish this program and help to increase the quality of life for those who have special needs in Israel.

**11. ASHDOD MEDICAL CENTRE CALM CORNER**



**12. RAMAT DAVID AFB RECREATION AREA**

[REDACTED] KKL-JNF established pleasant, shady meeting points with greenery and picnic tables so family can visit with their loved one comfortably and enjoyably. It has also been equipped with playgrounds for children.

**13. YAIR R & D STATION (VISITORS CENTRE) AT HATZEVA**

Yair Research and Development station at Hatseva in the central Arava forms part of the network of agricultural R & D stations developed and supported by JNF throughout the country. JNF now plans to convert one of the hothouses at the station into an agricultural tourism center for visitors traveling the Arava highway.

**14. YEDIDIM**

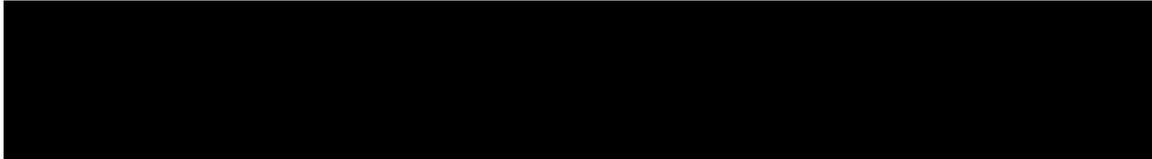
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## SCHEDULE B

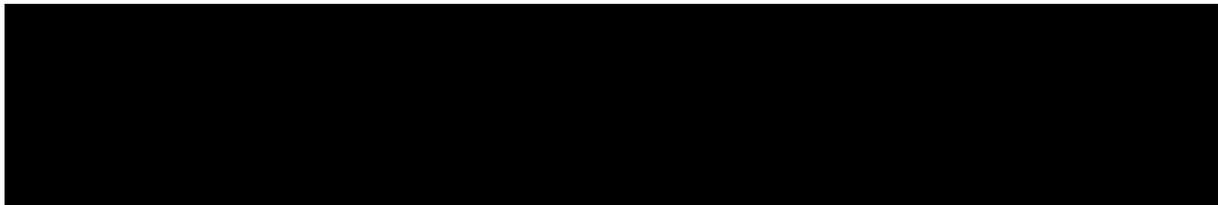
### 2012 Description of Projects Supported in the Year

#### I. PRESERVATION OF THE ENVIRONMENT

##### 1. ACACIA TREES



##### ✓ 2. ALEXANDER RIVER RESTORATION PROJECT



##### 3. RESEARCH INTO RECYCLED WATER FOR DESERT AGRICULTURE (AQUAPONICS)

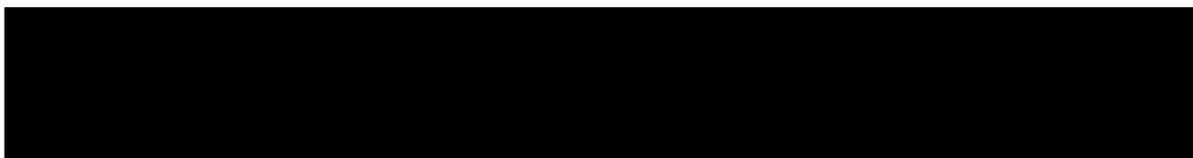


The goal will be to formulate irrigation recommendations based on the research results. Contributions to this project will support an integrated study of both ecological and economic importance. It combines a solution for wastewater disposal – one of the most pressing environmental problems in the world today, with improving crop yields – the major source of income in the southern Arava.

##### 4. GATEWAY TO THE NEGEV

JNF is developing a greenbelt around Beer Sheva. The objective is to create a green environment appropriate to the desert know as 'savannization'.

##### 5. GREENHOUSE CULTIVATION SYSTEM – ENERGY – WISE FARMING IN THE DESERT





**6. HULA VALLEY ARBORETUM**



This project will create a focus for educational tours and visits from students, as well as areas for visitors to plant trees.

**7. MAOF**

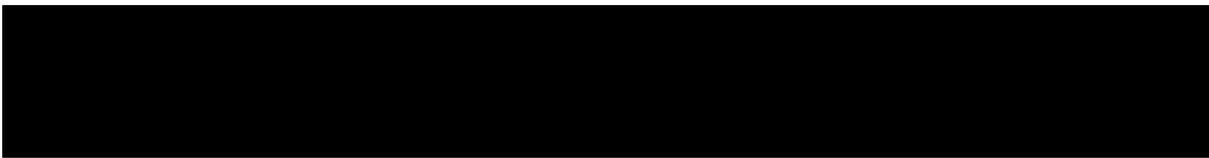


Collaboration and participation are undoubtedly the easiest way to ensure that the project will continue to expand and develop independently, when direct JNF participation diminishes.

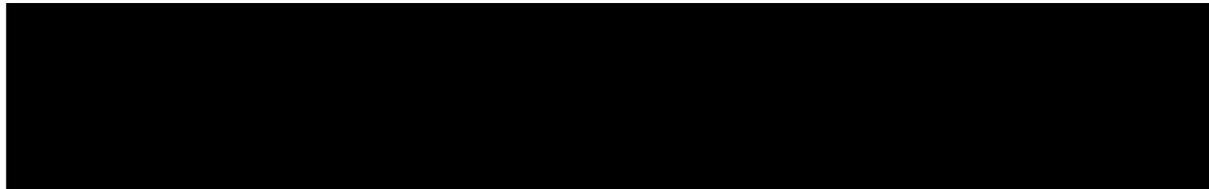


JNF realizes that education is the key to successful integration into Israel society and has decided to meet this challenge head on, preparing a unique program for working in schools with a majority of olim the student body.

**8. PERES PEACE INSTITUTE**



**9. SDEROT RECYCLED WATER RESERVOIR**



**10. SHOMERA GREYWATER RECYCLING INITIATIVE**

The Greywater Recycling Initiative is a partnership between JNF/KKL and Shomera For A Better Environment, an Israeli organization dedicated to creating health, sustainable urban environments. Its goal is to set a precedent of an authorized greywater recycling facility in an urban setting which will comply with strict Ministry of Health guidelines for the re-use of the water thus generated.

**II. PROMOTION OF HEALTH**

**1. SHNIER NATAL ISRAEL TRAUMA CENTRE**



**III. PUBLIC WORKS**

**1. ARAVA PEACE ROUTE**



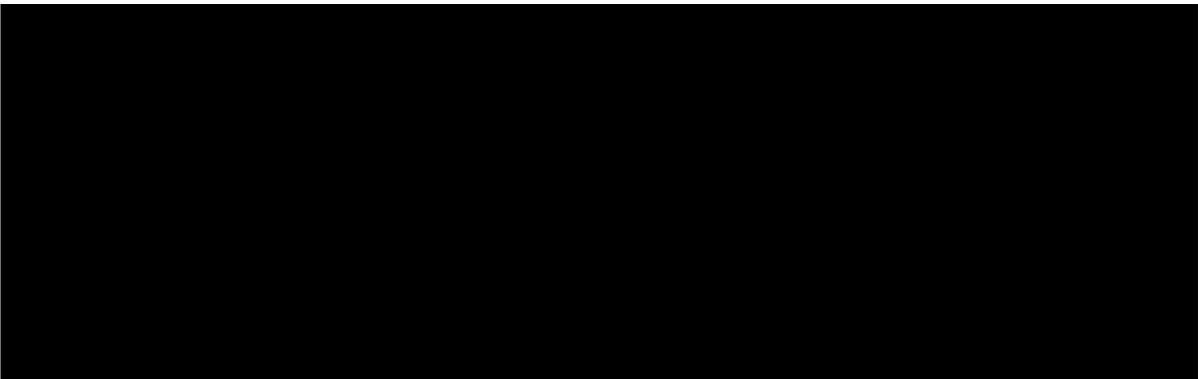
KKL/JNF is adding 16km of road to the existing route. In order to complete this project, land mines will have to be carefully removed from the route. This new route will enhance access to and from farmers' fields. It will improve security and inspire tourists to explore the beautiful scenery of the region.

✓ **2. AYALON - CANADA PARK**



As its name implies, Ayalon-Canada Park is supported by JNF Canadian friends and is their flagship project in the country.

**3. BIRIYYA FOREST, SCENIC ROAD & NEVORAYA SYNAGOGUE**



In order to make it more accessible to tourists, the road

must be widened, paved and repaired. With the funds raised, lookouts will be built and a 6 km section will be fully developed.

#### **4. HALUTZIOT**

JNF is planning to develop the entrance to Naveh – Halutziot, including landscaping the sides of the approach road to the community. The new entrance will create a pleasant and attractive environment to welcome visitors to the community.

This project is part of JNF's ongoing involvement with the community. The project includes earthworks (clearing, filling, paving), paths, sidewalks, plazas and steps. Several architectural motifs will be developed: sculpted walls, artistic lettering for the community's name and an irrigation system will be installed. Landscaping will include planting and lighting

#### **5. HATSOR HAGELILIT – HILLEL LANDSMAN PARK**

JNF together with the Ministry of Construction & Housing, the Hatsor Local Council and Israel Lottery are developing a park in Hatsor HaGelilit which is situated in the Upper Galilee a few kilometers east of Tsfat and close to Rosh Pina. They will provide a central park facility for the town whereby they will strive to improve the quality of life of their residents. The park will enhance the sense of civic pride and provide space where residents of all backgrounds can mingle and enjoy their leisure and recreation time.

#### **6. THE OTTAWA RECREATION AND PICNIC AREA IN THE LAHAV FOREST**

#### **7. THE JOE AND WOLF LEBOVIC TEL AVIV-JERUSALEM BICYCLE TRAIL**

The path passes through scenery including a flowing river, JNF forests, natural fields and groves.

#### **8. NAVEH**

JNF is planning to develop the entrance to Naveh – Halutziot, including landscaping the sides of the approach road to the community. The new entrance will create a pleasant and attractive environment to welcome visitors to the community.

This project is part of JNF's ongoing involvement with the community. The project includes earthworks (clearing, filling, paving), paths, sidewalks, plazas and steps. Several architectural motifs will be developed: sculpted walls, artistic lettering for the community's name and an irrigation system will be installed. Landscaping will include planting and lighting.

#### **9. NE'OT SEMADAR ECOLOGICAL WASTEWATER TREATMENT FACILITY**

The constructed wetland JNF created provides a solution for the disposal of the wastewater of Kibbutzim Neot Semadar and Neve Harim.

#### **10. OFAKIM PERIMETER CYCLING TRAIL**

JNF is developing an eight-kilometer cycling trail around the city of Ofakim, together with local cycling enthusiasts. The single-width track begins by the local shopping center and then passes along Nahal Patish, Nahal Ofakim, through Ofakim Forest, and on to Patish Fortress.

#### **11. RAANANA PARK**

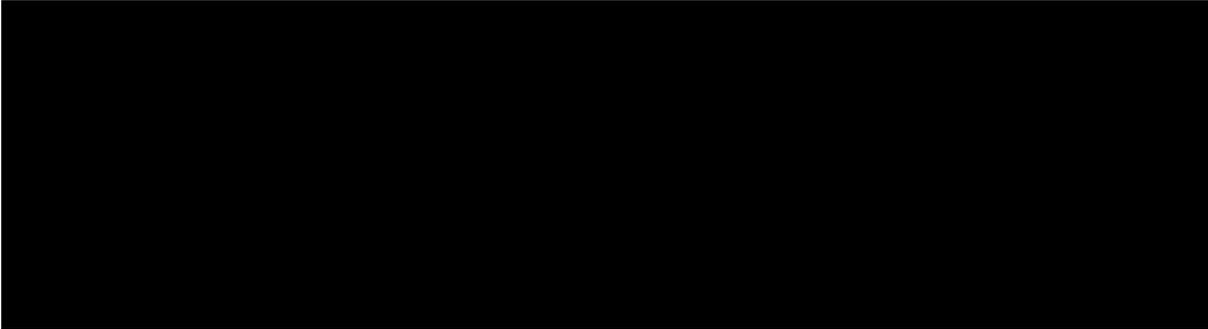
#### **12. RAMOT MENASHE PROMENADE**

Constructed by the Megiddo Regional Council with the assistance of KKL/JNF, it will be a leisure time venue for family walks and youth and community activities, as well as bicycle races.

#### **13. RESTORERS OF JERUSALEM**

Since statehood, the Jewish National Fund, Israel's leading environmental organization, has continued protecting Israel's ecology and remains committed to sustainable development. The JNF is always focusing on its important task of planting trees, establishing reservoirs, building roads, draining swamps and dozens of other ways of preparing the land for useful habitation and cultivation. Now the JNF is being asked for its assistance in the physical improvement of the old city walls.

**14. TEL NOF AIR BASE- LANDSCAPE DEVELOPMENT**



**IV. ADVANCEMENT OF EDUCATION**

**1. CONSERVATORY AT THE CENTRAL ARAVA COMMUNITY CENTER**

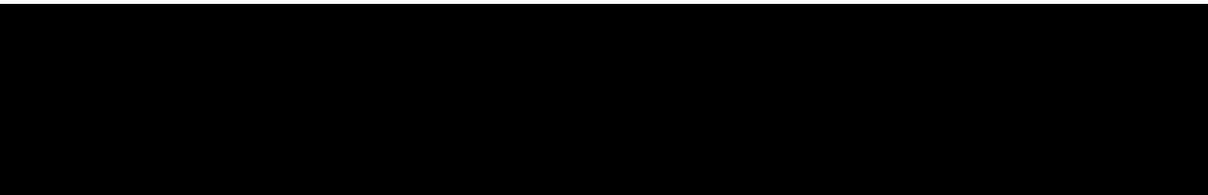


Our goal is to build a Conservatory within The Central Arava Regional Community Center. This will allow all music students to cultivate their skills. Cultural and artistic education, play an important role in the nurturing, socially active, cooperative citizens and in promoting a vibrant region with an appreciation for diversity and humane values.

**2. HULA GUIDE**



**3. STEINHARDT MUSEUM OF NATURAL HISTORY**



**V. PROMOTION OF COMMUNITY ECONOMIC DEVELOPMENT**

**1. AKKO BOTANICAL GARDEN**



**2. BESOR RESEARCH AND DEVELOPMENT**



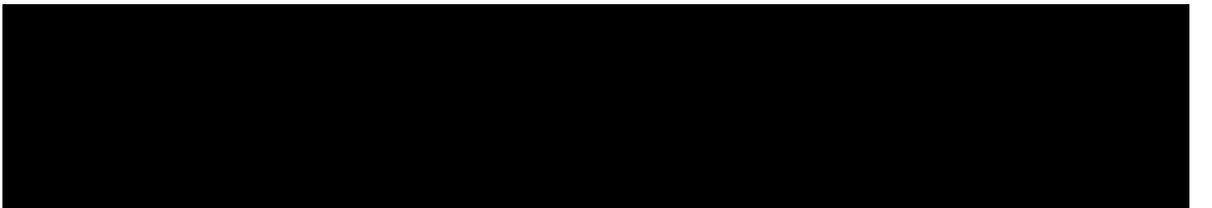
**3. BNEI NETZARIM**



With the help of JNF, this barren land has begun to prosper. You can help establish a Centre to accommodate the needs of their children and youth.

**4. EDIBLE GARDEN**

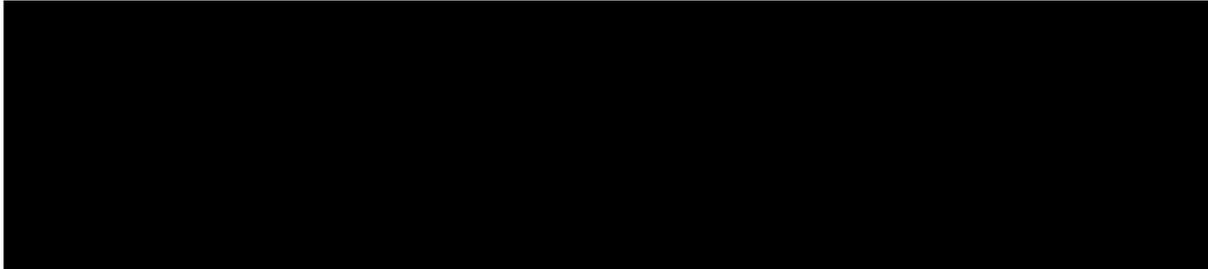
The Edible Garden is a community gardening project for Ethiopian-Israeli teenagers and their parents, to strengthen each generation of the community on a variety of levels.



**5. HALUZIT**



**6. KADIMA TSORAN RECREATION AREA**



**7. MOSHAV GOREN RECREATION CENTER**

The JNF playground in Moshav Goren in the northern Galilee is designed to meet the needs of children with physical disabilities. The chosen site is an old grove in the center of the community. Many of the facilities in the playground are adapted for use by children with physical disabilities, including special seesaws and a wheelchair-accessible ramp leading onto a large play structure. The playground will also include a family seating area with benches, picnic tables (some wheelchair-accessible).

**8. THE PEACE ORCHARD IN SATAF**

The Peace Orchard is being planted by children from Jewish and Arab schools in Jerusalem. KKL/JNF is operating this project, which involves both developing social relations and learning about our shared agricultural heritage. It is intended for children from grades 5 and 6 from Jewish Schools in West Jerusalem and Arab Schools in East Jerusalem. Sataf is located just outside Jerusalem in the Judean Hills.

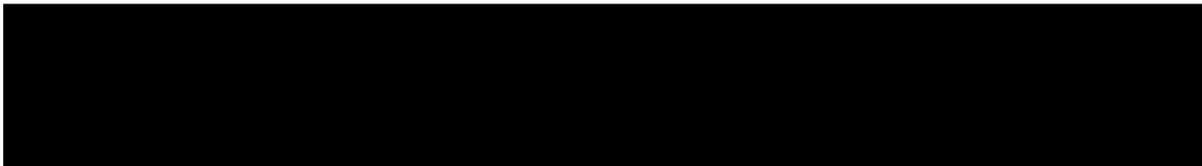
The Peace Orchard Project will connect people and cultures. The focus on sustainable agriculture is especially meaningful in an age of global warming. The children will benefit from KKL/JNF's years of knowledge about afforestation.

**9. RAMAT DAVID AFB RECREATION AREA**



KKL-JNF established pleasant, shady meeting points with greenery and picnic tables so family can visit with their loved one comfortably and enjoyably. It has also been equipped with playgrounds for children.

**10. WORLD ZIONIST ORGANIZATION**



**11. YAIR R & D STATION AT HATZEVA(VISITORS CENTRE**

Yair Research and Development station at Hatseva in the central Arava forms part of the network of agricultural R & D stations developed and supported by JNF throughout the country. JNF now plans to convert one of the hothouses at the station into an agricultural tourism center for visitors traveling the Arava highway

**12. SHNIER NO TO VIOLENCE AGAINST WOMEN.**



SCHEDULE C

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CERTIFIED STATEMENT OF [REDACTED]

Signed on the 9 day of September, 2016

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To Whom It May Concern,

I, [REDACTED] hereby certify that the following facts are true:

1. [REDACTED]

2. This certified statement is signed in support of the Charity's written representations to the Canada Revenue Agency regarding the audit letter received by the Charity on May 12, 2016 and applies to the practices and actions undertaken by the Charity during the Audit Years. I have personal knowledge of the matters herein save and except where otherwise indicated herein.
3. The Charity's primary activity in the Audit Years was ensuring the employment of poor and unemployable labourers in Israel (the "**Indigent Workers**") by paying their salaries.
4. During the Audit Years, the Charity paid the salaries of the Indigent Workers labouring on selected worthy projects in Israel. Projects would come to the attention of the Charity in one of three ways:
  - a. organizations in need ( "**Recipient Organizations**") contacted the Charity directly to request assistance;



- b. Keren Kayemeth Le'Israel, the agent of the Charity, (the "**Agent**") identified projects or Recipient Organizations in need of assistance and brought the potential projects to the attention of the Charity; or
  - c. donors approached the Charity to suggest worthy projects in need of assistance.
5. In all situations, the Charity's employees and senior management would investigate the project and assess the needs of the Recipient Organization to determine whether the Charity could assist.
  6. The Charity and the Agent had an understanding that the Agent would use plaques on attractive projects to honour Canadian donors to the Charity, even though the funds donated by the donor were not used to acquire the land or capital property of the project, which did not belong to the Charity.
  7. The Charity often shared credit for a completed charitable project with the Agent and/or affiliated charities from around the world.
  8. The employees of the Charity, including but not limited to myself, were in daily contact with the office of the Agent responsible for Canadian communications and affairs (the "**Canada Desk**").
  9. The Canada Desk was the Charity's main contact with the Agent, providing frequent progress updates on projects and requesting funds to pay the Indigent Workers. The Canada Desk employees were fluent in English, and the Charity had many employees with written and oral fluency in Hebrew.
  10. On request, the Charity could acquire documents, translations or other required information from the Canada Desk with little notice. This was generally done by phone or by email.
  11. Funds were released to the Agent once per quarter, and only upon the confirmation that work on a project was progressing. Project progression was generally confirmed by an in-person inspection by myself or other senior management. On the rare occasion that an inspection was not possible, the Canada Desk sent a progress update by email with pictures of the project.
  12. The Finance Department of the Agent executed all transfers of funds from the Charity's Israeli bank account (the "**CANISCOM Account**") and provided the Chief Executive Officer with confirmations of funds and all financial information relating to the CANISCOM Account on request.



SCHEDULE D

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CERTIFIED STATEMENT OF [REDACTED]

Signed on the 12<sup>th</sup> day of September, 2016

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To Whom It May Concern,

I, [REDACTED] hereby certify that the following facts are true:

1. [REDACTED]

2. This statement is written in support of the Jewish National Fund of Canada (Keren Kayemeth Le'Israel) Inc.'s (the "Charity") written representations to the Canada Revenue Agency regarding the audit letter received by the Charity on May 12, 2016. I have personal knowledge of the matters herein save and except where otherwise indicated herein. Except when otherwise stated, the facts below relate to the practices of KKL and the Charity during 2011 and 2012 (the "Audit Years").

3. KKL is an Israeli charitable organization that does charitable work in Israel in partnership with and on behalf of numerous foreign and local organizations, as well as on its own behalf.

4. [REDACTED]

5. During the Audit Years, employees of the Charity were in communication by email or phone with myself and Canada Desk employees on a daily basis.

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6. The Canada Desk assisted the Charity when coordinating visits to Israel by staff, donors and senior management. During inspections of projects by the Charity's senior management, Canada Desk employees traveled with senior management of the Charity for their entire stay in Israel. Senior management of KKL also frequently met with the senior management of the Charity on these inspections.
  7. During the Audit Years, the Charity would commit to assisting charitable projects in Israel by paying the salaries of poor and/or unskilled labourers. Projects that the Charity committed to assist were assigned a unique project number, and any funds received from the Charity to pay the salaries of the poor and/or unskilled labourers working on the project were identified with that project number.
  8. Without the commitment of the Charity to pay the salaries of the poor and/or unskilled labourers, many of the projects would not have been completed, and many of the poor and/or unskilled labourers would have remained unemployed.
  9. Before spending any funds on a project, a committee of KKL would review the project submission from a charitable organization and ensure that KKL had received paperwork demonstrating that the organization receiving the fund was a charitable organization.
  10. The Canada Desk, acting as the agent of the Charity, would manage the Charity's funds to pay the salaries of the poor and/or unskilled labourers working on the projects selected by the Charity. The Canada Desk would also coordinate with other contributors to these projects, such as local Israeli charities, KKL itself or foreign charitable organizations affiliated with KKL.
  11. The majority of the projects assisted by the Charity in the Audit Years were projects run and managed by KKL.
  12. Where KKL was unable to run and manage the selected project, KKL would hire a contractor to complete the project work. KKL would solicit tenders from contractors, sign a contract on behalf of the Charity with a chosen contractor and then supervise the contractor throughout the life of the project. During this process, it was the contractor who would hire the poor and/or unskilled labourers, paying their salaries with the funds released by the Charity.
  13. The Charity would release funds to pay the poor and/or unskilled labourers after receiving a progress report from the Canada Desk or by confirming independently. When releasing funds, the Charity would send the funds to a bank account in Israel (the "CANISCOM Account"). The
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funds were then released from the CANISCOM Account to KKL after the Canada Desk received authorization from the Charity.

14. During the Audit Years, KKL had signing authority over the CANISCOM Account. At the end of the year, KKL provided the chair of CANISCOM, a committee of JNF, with the bank reconciliation of the CANISCOM account to review and sign.
15. If KKL was the employer of the poor and/or unskilled labourers, KKL would pay the labourers after the Canada Desk received an authorization letter from the Charity.
16. If a contractor was the employer of the poor and/or unskilled labourers, KKL would transfer the funds to the Israeli charitable organization who proposed the project after the Canada Desk received an authorization letter from the Charity. The Israeli charitable organization would then transfer the funds to the contractor, who would pay the poor and/or unskilled labourers using those funds.
17. The Charity and the Canada Desk have an understanding that KKL would use plaques on attractive projects to honour Canadian donors to the Charity, even though the funds donated by the donor were not used to acquire the land or capital property of the project, which did not belong to the Charity.
18. At least once a year, and throughout the year on an informal basis, CANISCOM would visit on-going projects where the Charity was paying the salaries of the poor labourers.
19. The Canada Desk maintained records of the Charity's committed projects, funds received from the Charity, and any disbursements to Israeli charitable organizations to pay the poor labourers.
20. KKL recorded and maintained all information regarding KKL's hiring and employment of poor and/or unskilled labourers.



SCHEDULE E

GENERAL AGENCY AGREEMENT

THIS GENERAL AGENCY AGREEMENT (the "Agreement") is made as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date")

BETWEEN:

JEWISH NATIONAL FUND OF CANADA (KEREN KAYEMETH LE'ISRAEL) INC. / FONDS NATIONAL JUIF DU CANADA (KEREN KAYEMETH LE'ISRAEL) INC., a corporation without share capital incorporated under the laws of Canada with its registered office in Montreal, Quebec, Canada

(hereinafter called "JNF")

- and -

KEREN KAYEMETH LE'ISRAEL, a [corporation without share capital incorporated under the laws of Israel] with its registered office in Jerusalem, Israel

(hereinafter called the "Agent")

RECITALS:

- A. JNF is a registered Canadian charity, and has as its charitable purposes: ["To create, provide, enlarge and administer a fund to be made up of voluntary contributions from the Jewish community and others, to be used for charitable purposes".]
- B. In the interest of efficiency of operation and maximum utilization of the funds at its disposal, JNF wishes to employ the facilities, services and personnel of the Agent to implement one or more charitable projects ("Charitable Projects") that will be determined following the Effective Date in accordance with this Agreement.
- C. The Agent has the requisite facilities, services and personnel for the efficient implementation of the Charitable Projects, and wishes to make available such facilities, services and personnel to implement the Charitable Projects on behalf of JNF in accordance with this Agreement.

NOW THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the parties agree as follows:

## 1. RELATIONSHIP OF THE PARTIES

- 1.1 JNF hereby designates the Agent to act as its non-exclusive agent from time to time in matters relating to the implementation and operation of the Charitable Projects, as may be authorized from time to time by JNF in accordance with this Agreement.
- 1.2 The Agent acknowledges that it is aware of JNF's goals and objectives as stated in Recital A, and agrees to act as the operating agent and to use its facilities, services and personnel to carry out the Charitable Projects on behalf of JNF, when and in the manner authorized by JNF, in accordance with this Agreement.
- 1.3 For greater clarification of the relationship between JNF and the Agent:
  - (a) JNF shall maintain direction, control and supervision over the application of its funds by the Agent; and
  - (b) JNF may exercise such direction, control and supervision, or any of its other rights under this Agreement, through a committee made up of at least five (5) individuals in Jerusalem (such committee, "**JNF Caniscom**") together with the assistance of one or more paid officials.
- 1.4 All employees and contractors required for the operation of a Charitable Project shall be hired or engaged by the Agent and their employment or contractor relationship with the Agent shall be governed by Israel law. The Agent shall have internal full time staff dedicated to overseeing JNF's operations. The Agent, based on its greater experience and expertise working in the Israel context, shall have authority over its employees and contractors. JNF shall not be liable for any act or omission of the employees or contractors of the Agent.

## 2. SCOPE OF WORK

- 2.1 Each Charitable Project to be carried out by the Agent pursuant to the terms of this Agreement shall be described in a document ("**Governing Document**") that is in substantial conformity with Schedule 1. Each Governing Document will include a proposed budget for the Charitable Project in conformity with the requirements of Schedule 1 with respect to the expected expenditures required for the operation of the Charitable Project (the "**Budget**"). JNF will have authority to approve, amend or reject the proposed Budget and other details of a Charitable Project listed in the Governing Document.
- 2.2 Each Budget shall set out the roles of any employees and contractors which are required by the Agent for the operation of the Charitable Project, and the salaries that are expected to be payable by the Agent to them in the next year. JNF will have authority to approve, amend or reject the proposed staffing requirements and salaries.
- 2.3 Except as otherwise set out in a Governing Document, each Charitable Project shall be publicly identified as a project of JNF carried on by the Agent as an agent of JNF, both on-site and in all literature and promotional materials.

### 3. FUNDS

- 3.1 Based on the final form of Budget approved by JNF for the Charitable Project, the Agent may be required to disburse its own funds and submit to JNF for reimbursement accounts and receipts for all expenses of the Charitable Project. If JNF determines that the Agent's submission is in order, JNF will reimburse the Agent for its expenditures through JNF Caniscom. Alternatively, funds may be advanced to JNF Caniscom and then to the Agent as the Charitable Project progresses.
- 3.2 The Agent undertakes to hold all funds received from JNF, including via JNF Caniscom, in trust, separate and apart from the funds of the Agent and agrees to return any unexpended funds forthwith upon demand by JNF. In this regard, the Agent shall deposit all funds received from JNF in an account at a financial institution which is clearly designated as an account for the sole benefit of JNF and will disburse such funds only as directed by JNF. Except to the extent that financial commitments made by the Agent on behalf of JNF in accordance with the provisions of this Agreement remain unpaid, JNF shall be entitled to withdraw or withhold its funds or other resources at its discretion.
- 3.3 All expenditures of the funds of JNF by the Agent will be pursuant to written directions of JNF and the Agent shall obtain a written acknowledgement from all third parties to which funds are given pursuant to such written directions of JNF.

### 4. PROPERTY

- 4.1 JNF reserves to itself the sole and exclusive right to decide what personal property is to be purchased or leased on its behalf and the prices or rentals to be paid therefor, and the Agent has no power or authority to commit JNF in that regard without specific written instructions from JNF. JNF may designate, from time to time, the specific type of property, equipment, materials, supplies or facilities which it will provide and/or the total amount of funds allocated for the particular purpose, as the case may be. JNF may seek the advice of the Agent in designating the type of property, equipment, materials, supplies or facilities which it will provide.
- 4.2 All the property, equipment, materials, supplies, facilities or teaching aids acquired by the Agent on behalf of JNF shall be used exclusively for charitable purposes, shall be maintained and shall be made available to third parties for only the stated purposes of JNF and shall be operated by the Agent in accordance with the directions of JNF. If funds are used in the acquisition, construction or improvement of any capital property, the property will be used exclusively for charitable purposes. Title to all property, equipment, materials, supplies, and facilities, including realty, purchased or acquired with funds supplied by JNF (the "**Purchased Property**") shall be used as directed by JNF. The Agent shall, from time to time, acknowledge in writing and obtain a written acknowledgment from third parties who may be in possession of the Purchased Property, to the effect that the Agent, or third party (as the case may be), holds such property on behalf of JNF and is responsible for the maintenance and insurance of such property. JNF Caniscom and/or the Agent shall from time to time visit or communicate with the operators of the Purchased Property to ensure that it is being maintained, insured and used for charitable purposes.

## 5. REPORTING

- 5.1 The Agent will keep JNF currently and fully informed of its activities and of general developments in the areas of activity in which it acts from time to time as operating agent for JNF.
- 5.2 The Agent agrees to be available, upon request by JNF for consultation with a representative or representatives of JNF.
- 5.3 The Agent will permit JNF and/or JNF Caniscom to enter at reasonable times, any premises used by the Agent in connection with the activities and programs of JNF, in order to evaluate and observe their activities and programs and to inspect all records relating to the same.

## 6. RECORDS AND AUDIT

- 6.1 The Agent will keep adequate books and records to substantiate compliance with the obligations of the Agent hereunder, including records of all funds received from or for the account of JNF and for all expenditures incurred, and shall provide JNF with access and copies of these books and records on a quarterly basis. The Agent shall keep copies of all such books and records for at least six (6) years.
- 6.2 JNF may, or may appoint an auditor of its own choosing to, examine the books and records of the Agent at any time, including in the six (6) years following the termination of this Agreement, in connection with those matters involving the income and expenditure of funds, and the purchase, maintenance, possession and insurance of property in its capacity as the agent of JNF.
- 6.3 The Agent will render to JNF annual unaudited statements of account of funds received from or for the account of JNF and of any and all expenditures incurred or committed for its account during such period as required. JNF may request at any time from the Agent, the preparation of unaudited financial statements or any other type of report as may be required to enable JNF to maintain control over the expenditure of its funds by the Agent. The Agent agrees and undertakes to provide JNF with reports received by the Agent of its activities hereunder. Such statements of account shall be in such form, including computerized records accessible over the internet, as may be directed by JNF. The Agent shall furnish to JNF each year a full and complete report of the allotment of JNF's funds for the preceding calendar year, which report shall outline in detail all amounts received by the Agent from JNF together with a detailed breakdown of expenditures made by the Agent pursuant to the written directions of JNF to enable JNF to make informed decisions as to the application of its funds and to maintain full and complete records.

## 7. TERM AND TERMINATION

- 7.1 This Agreement shall have a term of 3 years (the "**Term**"), commencing on the date first written above, unless terminated earlier in accordance with this Agreement. This Agreement shall be renewed automatically at the end of the Term, and from year to year thereafter, for successive terms of one-year each (the "**Renewal Term**").

7.2 This Agreement may be terminated prior to the end of the Term or of the Renewal Term at the option of either party upon three (3) months' written notice to the other party. In the event of termination, the Agent will refund forthwith to JNF any monies advanced by JNF and not expended in accordance with JNF's directions.

**8. GENERAL**

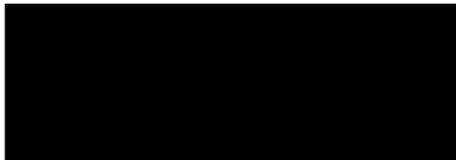
8.1 This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall constitute one and the same agreement and notwithstanding their date of execution shall be deemed to be executed on the date set out above.

8.2 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

8.3 The parties hereby submit to the jurisdiction of the courts of the Province of Ontario and agree to comply with the provisions of the *Income Tax Act* (Canada) as it may relate to this Agreement; provided however, that JNF shall be entitled to commence proceedings elsewhere. The parties hereto agree to comply with the provisions of the *Income Tax Act* (Canada) as it relates to the activities being carried on as contemplated in this Agreement.

8.4 All notices or other communications by the terms hereof required or permitted to be given by one party to the other shall be given in writing by personal delivery or by registered mail, postage prepaid or by commercial courier to such other party as follows:

(a) to JNF at:



(b) to the Agent at:



or at such other addresses as may be given by a party to the other in writing from time to time.

8.5 All obligations which, by their nature, are intended to survive the expiration or termination of this Agreement shall remain in effect after the expiration or termination of this Agreement until such obligations expire according to their respective terms or intent.

8.6 The parties hereto shall sign further and other documents, cause such meetings to be held, resolutions passed and by laws enacted, exercise their vote and influence, do and perform

and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part thereof.

IN WITNESS WHEREOF the parties have signed this Agreement by their duly authorized representatives as of the Effective Date.

**JEWISH NATIONAL FUND OF  
CANADA (KEREN KAYEMETH  
LE'ISRAEL) INC. / FONDS NATIONAL  
JUIF DU CANADA (KEREN  
KAYEMETH LE'ISRAEL) INC.**

**KEREN KAYEMETH LE'ISRAEL**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE 1  
TO THE GENERAL AGENCY AGREEMENT  
BETWEEN JEWISH NATIONAL FUND OF CANADA (KEREN KAYEMETH  
LE'ISRAEL) INC. / FONDS NATIONAL JUIF DU CANADA (KEREN KAYEMETH  
LE'ISRAEL) INC. ("JNF")  
AND KEREN KAYEMETH LE'ISRAEL (THE "AGENT"), DATED □, 2016  
(THE "AGREEMENT")**

This document is a schedule to the Agreement and contains supplementary terms and conditions relating to a Charitable Project to be carried out pursuant to it. All of the terms and conditions of the Agreement apply to the Charitable Project and no provision of this Agreement shall be applied or interpreted in a manner which contradicts or frustrates it. Where a provision of this Schedule contradicts a provision of the Agreement, the provision of the Agreement shall prevail.

- I. DESCRIPTION OF THE CHARITABLE PROJECT**
  
- II. TERM OF THE CHARITABLE PROJECT**
  
- III. BUDGET OF THE CHARITABLE PROJECT**
  
- IV. SPECIFIC REPORTING OBLIGATION OF THE AGENT**
  
- V. MANNER OF ADVANCES OF FUNDS AND REIMBURSEMENT OF FUNDS**
  
- VI. OWNERSHIP OF PROPERTY**
  
- VII. PUBLICITY**

## SCHEDULE F

### PROPOSED CHARITABLE OBJECTS

1. To relieve poverty by providing employment to individuals who are indigent and unemployable.
  2. To advance education by providing courses, seminars, and workshops about Judaism and Jewish values such as *Klal Yisrael* (the community of Israel), *Kol Yisrael arevim zeh lazeh* (all Jews are responsible for one another), *Tzedaka* (righteousness, social justice), and *Tikkun Olam* (repairing the world), to encourage and promote the development of Jewish life in Canada and in Israel for the purpose of linking the Jewish people to the land of Israel.
  3. To publish educational materials on Judaism and Jewish values, culture, and society for use in schools and educational program settings, linking the Jewish people to the land of Israel.
  4. To provide the necessities of life, including counseling and outreach programs, to victims of disasters in Israel, including such examples as earthquakes, hurricanes, terrorism, and war.
  5. To provide counseling and other support services for refugees and immigrants to Israel from all parts of the world, with particular emphasis on resettlement, language training, employment training, and education.
  6. To manifest, promote, sustain, or increase belief in the practices associated with the Jewish religion and its fundamental values, and in particular those practices and values that are associated with the role of the land of Israel in Judaism, and with the responsibility of Jews for one another.
  7. To redeem the land of Israel by engaging in projects to develop and preserve its land, historical sites, and resources by addressing ecological and environmental issues including reforestation projects, building public parks, improving natural waterways, maintaining historical sites, and alleviating the causes and effects of pollution in the environment.
  8. To engage in projects that improve the civic environment, including the construction of public works and facilities and resources for the disabled such as reservoirs and dams and public amenities such as shelters for persons in need, parks, and community centres.
  9. To educate the public about anti-Semitism and its dangers.
  10. To gift funds to qualified donees as defined in subsection 149.1(1) of the Income Tax Act.
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## Index of Exhibits

### **A. Constatng Documents**

- (1) Articles of Incorporation, Letters Patent, JNF Canada (November 14, 1961)
- (2) National By-Laws of JNF Canada (November 26, 2010)
- (3) Form 4031 – Articles of Continuance and Form 4002 – Initial Registered Office Address and First Board of Directors for JNF Canada (May 26, 2014)
- (4) By-Law No. 1 of JNF Canada (May 17, 2015)

### **B. Agreements and Accords**

- (1) Agreement between JNF Canada Inc. and KKL of Jerusalem, Israel, signed February 1966, effective April 1, 1966
- (2) Agreement between JNF Canada Inc. and KKL of Jerusalem, Israel, signed January 1968, effective April 1, 1968
- (3) Agreement between JNF Canada Inc. and KKL of Jerusalem, Israel, signed December 2009, effective January 1, 2010
- (4) Agreement between JNF Canada Inc. and KKL of Jerusalem, Israel, effective January 1, 2014

### **C. Governance Documents**

- (1) Mission Statement of JNF Canada
  - (2) Board of Directors of JNF Canada (2011)
  - (3) Board of Directors of JNF Canada (2012)
  - (4) Minutes of the Caniscom (Canada Israel Committee) meeting (July 3, 2011)
  - (5) Minutes of the Caniscom (Canada Israel Committee) meeting (June 14, 2012)
  - (6) Minutes of the National Board of Directors of JNF Canada, meeting (January 5, 1966)
  - (7) Minutes of the National Board of Directors of JNF Canada, conference call (February 23, 2011 and March 17, 2011)
    - (7.1) Minutes of the National Board Directors of JNF Canada, conference call (February 23, 2011)
    - (7.2) Minutes of the National Board of Directors of JNF Canada, conference call (March 17, 2011)
  - (8) Minutes of the National Board of Directors of JNF Canada, conference call (April 21, 2011)
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- (9) Minutes of the National Board of Directors of JNF Canada, annual meeting (June 17, 2011)
- (10) Minutes of the National Board of Directors of JNF Canada, conference call (December 13, 2011)
- (11) Minutes of the National Board of Directors of JNF Canada, annual meeting (June 15, 2012)
- (12) Minutes of the National Executive Committee of JNF Canada, conference call (May 5, 2011)
- (13) Minutes of the National Executive Committee of JNF Canada, conference call (July 8, 2011)
- (14) Minutes of the National Executive Committee of JNF Canada, conference call (August 24, 2011)
- (15) Minutes of the National Executive Committee of JNF Canada, conference call (September 7, 2011)
- (16) Minutes of the National Executive Committee of JNF Canada, conference call (November 23, 2011)
- (17) Minutes of the National Executive Committee of JNF Canada, conference call (January 11, 2012)
- (18) Minutes of the National Executive Committee of JNF Canada, conference call (March 8, 2012)
- (19) Minutes of the National Executive Committee of JNF Canada, conference call (May 10, 2012)
- (20) Minutes of the National Executive Committee of JNF Canada, conference call (May 22, 2012)
- (21) Minutes of the National Executive Committee of JNF Canada, conference call (August 30, 2012)
- (22) Minutes of the National Executive Committee of JNF Canada, conference call (November 22, 2012)
- (23) Annual Meeting book, JNF Canada (2011)
- (24) Annual Meeting book, JNF Canada (2012)
- (25) Board Member Information Manual, JNF Canada

**D. Communications with CRA**

- (1) Letter to Department of National Revenue from [REDACTED]  
[REDACTED] JNF Canada re materials in support of Application for Registration (February 14, 1967)
- [REDACTED]

- (2) 1967 Letters between Department of National Revenue and JNF Canada re qualification as a charitable organization (1967)
    - (2.1) Letter [REDACTED] re JNF Canada continuing tax exemption under the Ontario Succession Duty Act (July 18, 1967)
    - (2.2) Letter from JNF Canada to Department of National Revenue re JNF Canada's fulfillment of the requisite principles of a Canadian charitable organization (July 21, 1967)
    - (2.3) Letter from Department of National Revenue to JNF Canada re requisite principles for a Canadian charitable organization to pursue charitable activities outside of Canada (August 21, 1967)
    - (2.4) Letter from JNF Canada to Department of National Revenue re explanation of monies spent on religious education (August 22, 1967)
    - (2.5) Letter from Department of National Revenue to JNF Canada re decision to qualify JNF Canada as a charitable organization (August 25, 1967)
  - (3) 1989-1992 Letters between Revenue Canada Taxation and JNF Canada re audit of JNF Canada for 1984 and 1985 (1989 - 1992)
    - (3.1) Letter from Revenue Canada Taxation to JNF Canada re audit of JNF Canada for 1984 and 1985 (August 21, 1989)
    - (3.2) Letter from [REDACTED] JNF Canada, [REDACTED] re allocation of funds to indigent workers and JNF Canada's means of overseeing work in Israel (September 18, 1989)
    - (3.3) Letter [REDACTED] to Revenue Canada Taxation re response to August 21, 1989 audit letter (September 20, 1989)
    - (3.4) Letter from Revenue Canada Taxation [REDACTED] re response to September 20, 1989 letter and ongoing review of JNF Canada (October 28, 1991)
    - (3.5) Letter from Revenue Canada Taxation [REDACTED] re request for documents and further information in support of September 20, 1989 response to audit letter (January 10, 1992)
  - (4) Letter from CRA to [REDACTED] JNF Canada) re audit of JNF for 2011 and 2012, pre audit checklist and questionnaire (May 2, 2014)
  - (5) CRA Facsimile Transmission Sheet to [REDACTED] JNF Canada re Documents and Information Request (October 14, 2014)
  - (6) CRA Audit Query Sheet, T997, re Documents and/or information for the T-3010 (2011 and 2012) of the Organization (answered October 31, 2014)
  - (7) Notes re CRA Audit Query Sheet T997
- [REDACTED]

- (8) Email from [REDACTED] KKL to [REDACTED] JNF Canada re documents for CRA audit of JNF, attached Audit Query Sheet T997 (March 8, 2015)
- (9) CRA Audit Query Sheet, T997, re Documents and/or information for the T-3010 (2011 and 2012) of the Organization (answered March 13, 2015)
- (10) Letter from CRA to [REDACTED] JNF Canada re Audit of JNF Canada for 2011 and 2012 (May 12, 2016)
- (11) Email with attachments from [REDACTED] JNF Canada to CRA re travel expense reports for executive directors from 2011 and 2012 (October 1, 2014)

**E. Documents Relating to Charitable Projects**

- (1) Sample email of project progress update, re ALUT Stage 2 (March 2011)
- (2) Sample email attachment of project plans, re ALUT Stage 2 (March 2011)
- (3) Sample email confirming transfer of funds to KKL, re Moshav Rehov project (April 2011)
- (4) Sample email project description summary, re Caffarelli Wood Recreation Area (April 2011)
- (5) Sample email of project suggestion, re Negev Dinner (July 2011)
- (6) Third Party Contractor contract, Edible Gardens project (2011)
- (7) Sample Israeli charity confirmation of receipt of funds from KKL (2015)
- (8) Sample Israeli charity confirmation of receipt of funds from KKL, translation (2015)

**F. Financial Records**

- (1) Auditor's letter to JNF Canada re review of how funds transferred to Israel by JNF Canada were used (June 26, 1992)
  - (2) KKL Bank Statement and translation, page 1 of 8 (July 4, 2012)
  - (3) KKL's Foreign Currency Account Statement, page 2 of 8 (July 4, 2012)
  - (4) Daily Foreign Currency Current Account Report, page 3 of 8 (September 30, 2012)
  - (5) Printout of communication report, page 4 of 8 (June 7, 2012)
  - (6) Attachment 7.1, List of Banking Institutions
  - (7) Email to [REDACTED] JNF Canada and attached summaries of receipts of transfers to Israel (KKL) and internet bank statements for 2011 and 2012 (October 30, 2014)
  - (8) Sample - Email confirmation of remittance to CANISCOM account (October 3, 2011)
  - (9) Sample - Email confirmation of remittance to CANISCOM account (April 4, 2012)
- [REDACTED]

- (10) Sample – Email confirmation of remittance to CANISCOM account (October 12, 2012)
- (11) Sample letters from JNF Canada to KKL re committing funding to specific projects (2013-2015)
- (12) Quarterly Report, Quarter 2, re transfer of funds to CANISCOM account (June 30, 2011)
- (13) Quarterly Report, Quarter 3, re transfer of funds to CANISCOM account (September 30, 2011)
- (14) Quarterly Report, Quarter 1, re transfer of funds to CANISCOM account (March 31, 2012)
- (15) Quarterly Report, Quarter 2, re transfer of funds to CANISCOM account (June 30, 2012)
- (16) Quarterly Report, Quarter 3, re transfer of funds to CANISCOM account (September, 2012)
- (17) Quarterly Report, Quarter 4, re transfer of funds to CANISCOM account (December 31, 2012)
- (18) CANISCOM bank account records and lists of JNF remittances (2011)
- (19) CANISCOM bank account records, translated (2011)
- (20) CANISCOM bank account records and lists of JNF remittances (2012)
- (21) JNF Canada phone records and bills (2012)

**G. Income Tax Documents**

- (1) Policy for Issuing Replacement Receipts and Gift in Kind Receipts
- (2) Gift in Kind Report for JNF Canada (2012)
- (3) List of CRA Voided Receipts (2011)
- (4) List of CRA Voided Receipts (2012)
- (5) List of donations of 100k or more (2011 and 2012)
  - (5.1) List of donations of 100k or more (2011)
  - (5.2) List of donations of 100k or more (2012)

**H. Employment of Indigent Workers**

- (1) Email from [REDACTED] KKL to [REDACTED] JNF re Monthly Payroll – CRA Query (October 26, 2014)
- (2) Records of 3 different indigent workers providing examples of the procedures and forms required for hiring indigent workers  
[REDACTED]

- (3) Letter from [REDACTED] JNF, to [REDACTED] Manager Finance Department, re criteria for determining field employees (November 2, 2014)
  - (4) Chart of monthly wages for indigent workers, by bank (June 6, 2011)
  - (5) Financial statement of total of the net wages of indigent workers (printed June 6, 2012)
  - (6) Translation of Form 17, Summary of working hours for each employee of the project (Date of approval as of May 1, 2012)
  - (7) Summary of hours worked per worker per project
  - (8) Sample indigent worker referral form from the Israeli Employment Bureau
  - (9) List of Gross and Net Wages of Indigent Workers (2011)
  - (10) List of Gross and Net Wages of Indigent Workers (2012)
  - (11) KKL Payroll PDF 1 (transmitted October 26, 2014)
  - (12) KKL Payroll PDF 2 (transmitted October 26, 2014)
  - (13) Chart of individual indigent worker salary payments (January 2011)
  - (14) Chart of individual indigent worker salary payments (February 2011)
  - (15) Chart of individual indigent worker salary payments (March 2011)
  - (16) Chart of individual indigent worker salary payments (April 2011)
  - (17) Chart of individual indigent worker salary payments (May 2011)
  - (18) Chart of individual indigent worker salary payments (June 2011)
  - (19) Chart of individual indigent worker salary payments (July 2011)
  - (20) Chart of individual indigent worker salary payments (August 2011)
  - (21) Chart of individual indigent worker salary payments (September 2011)
  - (22) Chart of individual indigent worker salary payments (October 2011)
  - (23) Chart of individual indigent worker salary payments (November 2011)
  - (24) Chart of individual indigent worker salary payments (December 2011)
  - (25) Chart of individual indigent worker salary payments (January 2012)
  - (26) Chart of individual indigent worker salary payments (February 2012)
  - (27) Chart of individual indigent worker salary payments (March 2012)
  - (28) Chart of individual indigent worker salary payments (April 2012)
- [REDACTED]

- (29) Chart of individual indigent worker salary payments (May 2012)
- (30) Chart of individual indigent worker salary payments (June 2012)
- (31) Chart of individual indigent worker salary payments (July 2012)
- (32) Chart of individual indigent worker salary payments (August 2012)
- (33) Chart of individual indigent worker salary payments (September 2012)
- (34) Chart of individual indigent worker salary payments (October 2012)
- (35) Chart of individual indigent worker salary payments (November 2012)
- (36) Chart of individual indigent worker salary payments (December 2012)
- (37) Monthly expenditure reports for 2011, re salaries paid to indigent workers, sent from KKL Employment Committee to [REDACTED] (sent on November 26, 2013)
  - (37.1) Monthly expenditure report, re salaries paid to indigent workers (January 2011)
  - (37.2) Monthly expenditure report, re salaries paid to indigent workers (February 2011)
  - (37.3) Monthly expenditure report, re salaries paid to indigent workers (March 2011)
  - (37.4) Monthly expenditure report, re salaries paid to indigent workers (April 2011)
  - (37.5) Monthly expenditure report, re salaries paid to indigent workers (May 2011)
  - (37.6) Monthly expenditure report, re salaries paid to indigent workers (June 2011)
  - (37.7) Monthly expenditure report, re salaries paid to indigent workers (July 2011)
  - (37.8) Monthly expenditure report, re salaries paid to indigent workers (August 2011)
  - (37.9) Monthly expenditure report, re salaries paid to indigent workers (September 2011)
  - (37.10) Monthly expenditure report, re salaries paid to indigent workers (October 2011)
  - (37.11) Monthly expenditure report, re salaries paid to indigent workers (November 2011)
  - (37.12) Monthly expenditure report, re salaries paid to indigent workers (December 2011)
- (38) Monthly expenditure reports for 2012, re salaries paid to indigent workers, sent from KKL Employment Committee to [REDACTED] (sent on November 26, 2013)
  - (38.1) Monthly expenditure report, re salaries paid to indigent workers (January 2012)
  - (38.2) Monthly expenditure report, re salaries paid to indigent workers (February 2012)
  - (38.3) Monthly expenditure report, re salaries paid to indigent workers (March 2012)
  - (38.4) Monthly expenditure report, re salaries paid to indigent workers (April 2012)

[REDACTED]

- (38.5) Monthly expenditure report, re salaries paid to indigent workers (May 2012)
  - (38.6) Monthly expenditure report, re salaries paid to indigent workers (June 2012)
  - (38.7) Monthly expenditure report, re salaries paid to indigent workers (July 2012)
  - (38.8) Monthly expenditure report, re salaries paid to indigent workers (August 2012)
  - (38.9) Monthly expenditure report, re salaries paid to indigent workers (September 2012)
  - (38.10) Monthly expenditure report, re salaries paid to indigent workers (October 2012)
  - (38.11) Monthly expenditure report, re salaries paid to indigent workers (November 2012)
  - (38.12) Monthly expenditure report, re salaries paid to indigent workers (December 2012)
  - (38.13) Table of dollar amounts titled "2011"
- (39) Form indicating total cost of labour for workers for projects (May 2012)
  - (40) List of payments to specific indigent workers

**I. Other Employment Matters**

- (1) Job descriptions for JNF Canada employees and positions
- (2) Job description for KKL Canada Desk position
- (3) Biography [REDACTED]
- (4) Resume of [REDACTED]
- (5) Resume of [REDACTED]
- (6) Resume of [REDACTED]
- (7) Resume of [REDACTED]
- (8) Resume of [REDACTED]
- (9) Resume of [REDACTED]
- (10) Resume of [REDACTED]
- (11) Resume of [REDACTED]
- (12) Resume of [REDACTED]
- (13) Resume of [REDACTED]
- (14) Report 145/0019 Caniscom field employees (report validity December 31, 2012)

[REDACTED]

**J. Visits to Israel**

- (1) Israel Trip Itinerary, [REDACTED]  
[REDACTED] (March 27 – April 1, 2011)
- (2) Minutes of the 2011 KKL-JNF World Leadership Conference and (March 27 – April 1, 2011) and 2011 Covenant re-affirming support for KKL-JNF (March 31, 2011)
- (3) Israel Trip Itinerary, [REDACTED] JNF Canada (May 8 – 22, 2011)
- (4) Israel Trip Itinerary, [REDACTED] JNF Canada (May 10-17, 2011)
- (5) Israel trip itinerary, [REDACTED] JNF Canada (July 5 – 14, 2011)
- (6) Israel and Spain Trip Itinerary, [REDACTED]  
JNF Canada (October 23 – November 8, 2011)
- (7) Article re JNF Canada Israel Mission and Itinerary, KKL-JNF Green Israel News (November 2011)
- (8) Israel Trip Itinerary, [REDACTED] JNF Canada (February 5 – 16, 2012)
- (9) Israel Trip Itinerary, [REDACTED] JNF Canada (March 25 – April 10, 2012)
- (10) Israel Trip Itinerary, [REDACTED] JNF Canada (April 27 – May 2, 2012)
- (11) Israel and Berlin Trip Itinerary, [REDACTED] JNF Canada (October 14 – 29, 2012)
- (12) List of JNF Canada Senior Staff who attended Israel trips (2011-2016)
- (13) Flight receipts, email confirmations, and accounting records from JNF Canada staff trips to Israel (2011-2012)
- (14) Photographs from JNF Canada trips to Israel and donor plaques

**K. Advertising and Promotion**

- (1) Publication called Roots, JNF of Toronto (April 2011)
  - (2) Publication called Roots, JNF of Toronto (April 2012)
  - (3) Publication called Vision JNF, JNF of Montreal (Fall 2011)
  - (4) Publication called Vision JNF, JNF of Montreal (September 2012)
  - (5) List of Negev Dinners, JNF Canada (2011)
  - (6) Event Program, Negev Dinner Winnipeg (2012)
  - (7) Event Program, Negev Dinner Calgary (2011)
  - (8) Event Program, Negev Dinner Hamilton (2011)
- [REDACTED]

- (9) Event Program, Negev Dinner London (2011)
- (10) Event Program, Negev Dinner Calgary (2012)
- (11) Event Program, Negev Dinner Edmonton (2012)
- (12) Event Program, Negev Dinner Pacific Region (2011)
- (13) Event Program, Negev Dinner Windsor (2012)
- (14) Event Program, Negev Dinner London (2012)
- (15) Event Program, Negev Dinner Windsor (2011)
- (16) 100% Israel Advertisement, CJN (August 25 and January 13, 2011)
- (17) Arava Flyer (2012)
- (18) Arava Speaker Advertisement, Jewish Independent (May 11, 2012)
- (19) Bar and Bat Mitzvah Book Advertisement, Jewish Independent (August 19, 2011)
- (20) Blue Box Collection Advertisement, CJN (December 2, 2010)
- (21) Blue Box Collection Advertisement 1, CJN (December 8, 2011)
- (22) Blue Box Collection Advertisement 2, CJN (December 8, 2011)
- (23) Blue Box Collection Advertisement, CJN (2012)
- (24) Blue Box Collection Advertisement, Jewish Independent (October 15 2010 – July 1, 2011)
- (25) Article and Advertisement re Calgary Negev Dinner (April 20, 2012)
- (26) High Holy Day Appeal Advertisement, Jewish Independent (September 14, 2012)
- (27) High Holy Day Appeal Advertisement, Jewish Independent (September 23, 2011)
- (28) Article re International Year of Forests, Ottawa Jewish Bulletin (May 30, 2011)
- (29) Invitation to Become Restorer of Jerusalem Advertisement (Fall 2011)
- (30) Advertisement listing JNF donors 1
- (31) Advertisement listing JNF donors 2
- (32) Advertisement listing JNF donors (February 2011)
- (33) Article re JNF Hosts a Taste of Honey, Jewish Freepress
- (34) Article re JNF KKL Finding New Ways to Treat and Recycle Waste Water, London Jewish Community News (February 2011)



- (35) JNF Mission to Israel Flyer (2011)
- (36) JNF Mission to Israel Flyer (2012)
- (37) Article re JNF Plans Motorcycle Ride for Fire Victims, CJNI (August 25, 2011)
- (38) Marriage and Bar and Bat Mitzvah Books Advertisement, Jewish Independent (September 28, 2012 and October 28, 2011)
- (39) Negev Dinner Advertisement, CJNI (May 12, 2011)
- (40) Negev Dinner Advertisement, CJNI (September 20, 2012)
- (41) Negev Dinner Advertisement, CJNI (March 22, 2012)
- (42) Negev Dinner Advertisement, CJNI (October 10 and 28, 2010, November 4, 2010, and November 10, 2011)
- (43) Negev Dinner Advertisement, Edmonton Jewish News (April 2011)
- (44) Negev Dinner Advertisement, Hamilton Jewish News (April 2011)
- (45) Negev Dinner Advertisement, Jewish Independent (March 18, 2011)
- (46) Negev Dinner Advertisement, Jewish Post and News (May 18, 2011)
- (47) Negev Dinner Advertisement, Jewish Post and News (February 22 and March 7, 2012)
- (48) Negev Dinner Advertisement, London Jewish Community News (March 2011)
- (49) Negev Dinner Advertisement, Ottawa Jewish Bulletin (October 3, 2011)
- (50) Negev Dinner Advertisement, Ottawa Jewish Bulletin (September 10, 2012)
- (51) Article re Negev Dinner, CJNI (May 19, 2011)
- (52) Article re Negev Dinner, Hamilton Jewish News (September 2012)
- (53) Article re Negev Dinner, Jewish Post and News (June 15, 2011)
- (54) Article re Negev Dinner, London Jewish Community News (June 2011)
- (55) Article re Negev Dinner, London Jewish Community News (March 2011)
- (56) Article re Negev Dinner 2, London Jewish Community News (June 2011)
- (57) Article re Negev Dinner Honours True Friend of Israel
- (58) Article re Noted Israeli Journalist Gil Hoffman Sets the Record Straight, London Jewish Community News (December 2010)
- (59) Article re Start-Up Nation Calgary and Negev Dinner Advertisement, Jewish Freepress (June 24, 2011)



- (60) Tree Campaign Advertisement, CJNI (August 18, 2011)
- (61) Tree Campaign Advertisement, Ottawa Jewish Bulletin (September 6, 2010)
- (62) Tree Campaign Advertisement, Ottawa Jewish Bulletin (October 11, 2010)
- (63) Tree Campaign Advertisement, Ottawa Jewish Bulletin (September 27, 2010)
- (64) Tree Planting Advertisements, CJNI (September 2011 – January 2012)
- (65) Tu Bi Shevat Manitoba Advertisement, Jewish Post and News (January 11 and 25, 2012)
- (66) Tu Bi Shevat Mt. Carmel Flyer
- (67) Tu Bi Shevat Seder Advertisement, Jewish Independent (January 14, 2011)
- (68) Tu Bi Shevat Telethon Advertisement (February 3, 2011)
- (69) Tu Bi Shevat Telethon Advertisement, CJNI (January 6, 2011)
- (70) Tu Bi Shevat Telethon Advertisement, CJNI (February 16, 2012)
- (71) Tu Bi Shevat Telethon Advertisement, Jewish Independent (February 3, 2012)
- (72) Tu Bi Shevat Telethon Advertisement, Jewish Independent (January 14, 2011)
- (73) Tu Bi Shevat Telethon Advertisement, Jewish Independent (January 27, 2012)
- (74) Tu Bi Shevat Telethon Advertisement, Jewish Independent (February 8, 2012)
- (75) Tu Bi Shevat Telethon Advertisement, Ottawa Jewish Bulletin (January 24, 2011)
- (76) Tu Bi Shevat Tree Donation Advertisement, Ottawa Jewish Bulletin (January 23, 2012)
- (77) Tu Bi Shevat Treeathon Advertisement, CJNI (March 17, 2011)
- (78) Tu Bi Shevat Treeathon Advertisement, CJNI (March 31, 2011)
- (79) Tu Bi Shevat Treeathon Advertisement, Ottawa Jewish Bulletin (January 23, 2012)
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- (82) Yizkor Donation Advertisement
- (83) Yizkor Tree Donation Flyer
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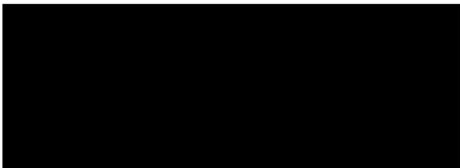
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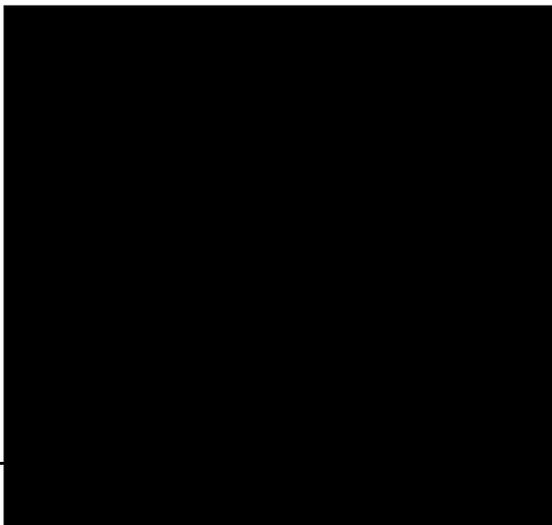
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**FACSIMILE**

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**To:** Sandra Burke  
**Company:** CRA - Charities Directorate  
**Fax Number:** 613-941-0186  
**Tel Number:**  
**City/Country:** Ottawa

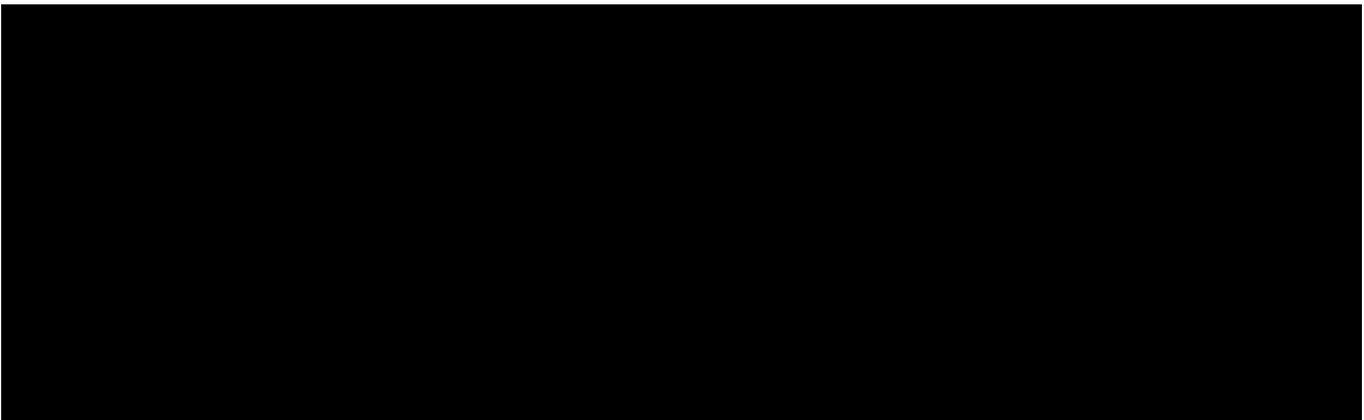


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**Date:** May 17, 2018  
**Re:** Response to Audit of the Jewish National Fund of Canada (Keren Kayemeth Le'Israel)  
Inc. CRA File #0246231  
**Total Pages:** 4 (including cover)

See attached.

**If there is a problem with transmission or all pages are not received, please call for retransmission.**



BY FACSIMILE: 613-941-0186

May 17, 2018

Ms. Sandra Burke  
Operations and Policy Support  
Compliance Division  
Charities Directorate  
Canada Revenue Agency  
Ottawa, ON K1A 0L5

Dear Ms. Burke:

Re: Response to Audit of the Jewish National Fund of Canada (Keren Kayemeth Le'Israel) Inc. (BN: 107534877RR0001) CRA File #0246231.

Thank you for your letter of April 19, 2018.

We understand from your letter that in respect of the Jewish National Fund of Canada (Keren Kayemeth Le'Israel) Inc. (the "Charity") the Canada Revenue Agency ("CRA") takes the positions that:

- 1) the Charity is not constituted for exclusively charitable purposes. In particular, we understand that the CRA takes the position that, notwithstanding that the activity of employing workers otherwise unable to find employment ("Indigent Workers") can further a charitable purpose as a matter of law, the Charity had non-charitable purposes because, as a matter of fact, the Charity's emphasis on the projects (the "Projects") in marketing materials and internal communications suggests that the Projects are not incidental and ancillary to its charitable purpose, but are a primary purpose of the Charity and, as a matter of fact, not all Projects are charitable in nature.
- 2) (a) that the Charity did not exercise sufficient direction and control over the use of its resources. In particular, we understand that the CRA takes the position that the Charity did not have sufficient direction and control over its agent, Keren Kayemeth Le'Israel ("KKL"), did not assess that the Indigent Workers met its eligibility criteria established by the Charity, and was therefore transferring funds to KKL for Projects without supervision or connection to the Charity's charitable purpose.

- [REDACTED]
- 2) (b) that the Charity used funds for Projects that are not considered charitable. In particular, we understand that the CRA takes the position that certain Projects were not charitable in nature because
- i) they took place in the Golan Heights, the West Bank, East Jerusalem and the Gaza Strip, and are therefore contrary to public policy; and
  - ii) they involved providing support for the armed forces of a foreign country, specifically the Israeli Defence Forces.
- 3) that the Charity failed to maintain adequate books and records. In particular, we understand that the CRA takes the position that the books and records were not adequate because of the language of the records, the limited details available, and the lack of documentation supporting the flow of funds from KKL to the Indigent workers or supporting the assertion that expenses were in the conduct of charitable activities.

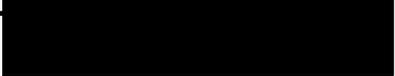
The Executive Committee of the Charity has reviewed your letter and consulted counsel. The Executive Committee proposes that, going forward, the Charity would exclusively use a CRA-approved agency agreement, and enter into a Compliance Agreement with the CRA.

In the time since the original audit letter from the CRA dated May 12, 2016, the Charity has made substantial operational changes, including:

- 1) a new agency agreement for agents in Israel;
- 2) a new agency agreement for KKL;
- 3) a new director's handbook, explaining the charity law and tax requirements of a charity and the requirements of directors of a charity; and
- 4) new management that is committed to returning the Charity to full compliance with its obligations.

If you would like, we will send you the above documents under separate cover. The Charity is dedicated to reaching a Compliance Agreement that satisfies the CRA, and understands that such a Compliance Agreement may entail substantial operational and fundamental changes to its current practices.

Accordingly, we request that we arrange a telephone call with you on May 31<sup>st</sup>, 2018, to discuss next steps and options for coming to a mutually satisfactory Compliance Agreement.



Sincerely,



BY FAX 1 613 670 9498

October 5, 2018

WITHOUT PREJUDICE

Ms. Elizabeth Gunsolus  
Operations and Policy Support  
Compliance Division  
Charities Directorate  
Ottawa ON K1A 0L5  
TEL 1 613 670 0797

Dear Ms. Gunsolus:

**Re: Response to your letter of April 19, 2018 on the audit of the Jewish National Fund of Canada (Keren Kayemeth Le'Israel) Inc.**

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We are writing further to Ms. Sandra Burke's letter dated April 19, 2018 (the "**April Letter**") in which the Canada Revenue Agency ("**CRA**") invited the Jewish National Fund of Canada (Keren Kayemeth Le'Israel) Inc. (the "**Charity**") to submit a response in regard to certain issues and concerns raised by CRA. The April Letter was prepared by the CRA in response to a submission by the Charity to the CRA Audit Division dated September 12, 2016 (the "**2016 Submission**").

This letter is divided into the following parts:

- I. Summary of Submissions
- II. Submissions in response to April Letter
- III. Proposed Compliance Agreement
- IV. Concluding Submissions

In addition, attached to this letter are the following Schedules, Exhibits and Appendices:

- Schedule 1 "Proposed New Charitable Purposes"
- Schedule 2 "Detail Regarding Indigent Labour Activities"
- Schedule 3 "Detail Regarding Capital Project Activities"
- Exhibit A "Joint Venture Agreement Between JNF and KKL"
- Exhibit B "Jewish National Fund, Directors' Handbook – Foreign Activities"

[REDACTED]

Appendix A Excerpt re "public policy" from Ontario Law Reform Commission *Report on the Law of Charities* (1996)

Appendix B *Canadian Magen David Adom v Canada* 2002 FCA 323 (CanLII)

The Charity hopes that these submissions will demonstrate a number of things to the CRA. First and foremost, that the Charity has made material improvements to its operations in response to issues raised by the CRA in its letters of May 12, 2016 and April 19, 2018. Second, that the Charity welcomes the opportunity to make additional changes to its activities, as reflected in the elements of a proposed compliance agreement. The Charity believes that this next step will place the operations of the Charity on a firm footing for the future.

## I. SUMMARY OF SUBMISSIONS

In summary form, the main concerns expressed in the April Letter are as follows:

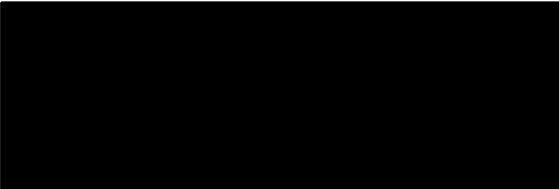
- (1) The Charity's projects are its main focus instead of the relief of poverty or the advancement of religion.
- (2) The Charity did not exercise direction and control over the use of its funds by the Israeli corporation Keren Kayemeth Le'Israel ("KKL") for specified projects.
- (3) The Charity conducted non-charitable activities by conducting projects in the "Occupied Territories" and in support of the Israel Defence Forces ("IDF").
- (4) The Charity failed to maintain adequate books and records.

In summary form, the main responses of the Charity to the points raised in the April Letter are as follows:

- (1) Historically, the Charity has devoted its resources to the relief of poverty. It has completed most of its projects using workers who are hard-to-hire or unemployable ("indigent workers"). The emphasis on its projects in its fundraising materials and on its website was intended to encourage donations by focussing on the results of its charitable activity. The Charity had understood that employing indigent labour and taking this approach to fundraising was acceptable to the CRA. The Charity accepts CRA's position that a new approach is required. The Charity is proposing to amend its charitable purposes and modify its charitable activities to address the concerns of the CRA in this regard.

The Charity recognizes that it could have been advancing religion in a manner that is more overtly consistent with the elements that the CRA has expressed in the April Letter. The Charity is proposing to amend its objects to remove reference to the advancement of religion as one of its purposes.

- (2) The Charity is and always has been independent from KKL. Historically, however, the Charity has relied almost exclusively on KKL as its agent in Israel to supervise its projects. Partially in response to the CRA's concerns, but also for its own reasons, the Charity is reducing its reliance on KKL as its agent and is entering new agency or joint venture agreements with other Israeli charities on a project by project basis. The Charity has also negotiated and signed a



new joint venture agreement with KKL. The Charity and KKL have agreed that the Charity will maintain direction and control over its activities conducted through KKL. In addition, the Charity has adopted a Handbook to educate its staff in Canada and Israel about how to better exercise direction and control more generally. The Charity has an employee in Israel and a committee of active volunteers in Israel who are responsible for supervising agents and projects and sourcing new projects.

- (3) A review of applicable case law and Government of Canada policies reveals that performing charitable projects in the Occupied or Disputed Territories ("**Territories**") is not per se contrary to Canadian public policy. The Charity carries on important projects in the Territories, and would like to continue to do so, within some limits to be discussed and agreed upon with CRA. In general, the Charity suggests that any exclusively charitable project should be acceptable unless the project directly or indirectly promotes further settlement activity or is conducted on land that is owned by the IDF or on land that has been illegally expropriated. The Charity has, in any event, ceased all projects on the bases of the IDF as of 2016.
- (4) The Charity will improve its record-keeping practices.

These submissions include elements of a proposed compliance agreement between the Charity and the CRA that are intended to address issues raised by the CRA.

## II. SUBMISSIONS IN RESPONSE TO APRIL LETTER

### 1. **The Charity's projects are its main focus instead of the relief of poverty or the advancement of religion**

#### a. Relief of Poverty

In the April Letter, the CRA agreed with the Charity that the employment of indigent workers can further a charitable purpose. However, the CRA suggests that projects selected by the Charity are its main focus instead of the relief of poverty through the employment of indigent workers. More particularly, the CRA states: "[b]ased on our review of the [Charity's] promotional and marketing materials, and its website, it is our position that the projects are its main focus, and the employment of indigent workers serves as a means to an unstated end of broadly supporting the work of [KKL]". The April Letter goes on to cite an excerpt from the Charity's website that emphasizes various projects.

The Charity does not dispute the emphasis on projects in its fundraising and promotional materials. As indicated in the April Letter, experience has shown the Charity that donors are more likely to provide donations for charitable projects than simply relieving poverty through the employment of Indigent Workers. This approach to fundraising was also explained to the Department of National Revenue, as demonstrated in a letter from the Charity to the Department dated July 21, 1967. In that letter, the Charity stated:

I have put the word "planted" in quotation marks. You will recall that on the phone I referred to the practice of "planting" trees as a "gimmick". Actually, all monies raised by the Jewish National Fund of Canada are used to pay daily stipends to indigent workers. So we "plant"



the trees to the extent that we give a tree certificate to the donor and use the money to give employment to the man who is doing the planting...<sup>1</sup>

The forerunner of the CRA did not see any issue with this approach to fundraising. Therefore, the Charity has been using it, as it believed it was permitted to do, for some time and with some success. However, the Charity accepts the CRA's position in the April Letter that: "...the CRA may take a position that differs from that reached previously...". In addition, while the relief of poverty through the employment of Indigent Workers has been the Charity's primary focus and that its projects have been incidental or ancillary to that purpose, the Charity recognizes that the historic approach to fundraising is no longer acceptable. The Charity agrees that that issue has not been helped by the Charity's purposes, which are admittedly anachronistic and would benefit from being updated.

As a result, the Charity proposes to amend its charitable purposes and to adjust its charitable activities accordingly, as described at Section III of this letter.

b. Advancement of Religion

The Charity acknowledges that its activities could have advanced religion in a more overt manner. Accordingly, the Charity proposes to change its charitable activities to align them with the new charitable purposes of the Charity that it is proposing at Section III of this letter. The Charity does not intend to have any purposes that focus directly on the advancement of religion.

**2. The Charity did not exercise direction and control over the use of its funds by KKL for specified projects**

The CRA is concerned that the Charity did not exercise adequate direction and control over KKL. The Charity accepts that there are instances where it could have exercised more effective direction and control over KKL. However, before explaining steps that the Charity has taken to improve its exercise of direction and control over KKL and more generally, it is worth commenting upon the Charity's broader relationship with KKL.

Despite the historic linkages between the Charity and KKL, the Charity does operate independently from KKL. Indeed, in recent years, the Charity's relationship with KKL has become more "distant" in many respects. From a corporate perspective, KKL has no direct or indirect role in determining the composition of the Charity's Board of Directors or senior staff and *vice versa*. In terms of the Charity's projects, the Charity has been steadily reducing the number of projects that it has performed with KKL as its agent – and, at the same time, increasing the number of projects that it performs with other intermediaries. The Charity has also been increasing its donations to qualified donees. The Charity intends to continue these operational trends.

With respect to branding, the Charity is in the process of developing a new logo that is distinct from the logo of KKL, and the Charity is in the process of changing its corporate name to remove the reference to KKL. The Charity has limited control over how KKL characterizes the Charity and other organizations on KKL's website. The Charity will, however, endeavour to ensure that the KKL website and other KKL promotional materials be entirely accurate as to the legal relationship between KKL and JNF and about

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<sup>1</sup> Refer to Exhibit D (2.2) in the 2016 Submission.





JNF's independence as a registered charity in accordance with Canadian law. The Charity is aware of, and has learned from, the issues between JNF UK and KKL.

The Charity has taken concrete steps to improve its exercise of direction and control over KKL. More particularly, the Charity has entered into a Joint Venture Agreement with KKL dated June 1, 2018, which is attached hereto at Exhibit A. That agreement is consistent with *Guidance GC-002: Canadian registered charities carrying out activities outside of Canada* (the "**Guidance**"). The Charity fully intends to ensure that the terms and provisions of the agreement are complied with and that KKL remains aware that the Charity must exercise direction and control over the Charity's activities. The attached agreement was negotiated, with assistance of counsel, between the Charity and KKL over the period of several months.

The Charity has also developed the Handbook attached at Exhibit B that reflects the Guidance. Among other things, the Handbook is intended to provide directors, officers and employees of the Charity with an understanding of how to exercise direction and control over the Charity's intermediaries, including but not limited to KKL, and how to perform capital projects. By educating those individuals about the Charity's obligations under the *Income Tax Act*, the Charity will be more likely to be compliant with those obligations in the future. The Handbook also contains precedent agreements for use by the Charity in all of its agency relationships that are consistent with the Guidance. Should the Charity and the CRA enter into a compliance agreement, the compliance agreement itself, together with CRA's letters, would be added to the Handbook so that readers are aware of the issues raised by CRA and of the Charity's obligations under the agreement.

The Charity will continue to employ a manager in Israel. The Charity has employed a part-time employee for several years. Currently the employee is employed for three-quarters of her time. Her title is "Manager of Israel Projects". Her job description requires her to focus on the supervision of the Charity's projects in Israel, including ensuring that agents and joint venture partners are complying with the terms of their agreement. She also assists in sourcing projects. The Manager of Israel Projects reports directly to Canadian management of the Charity.

The Charity is also reconstituting and updating the terms of reference of CANISCOM as a committee of 4 to 6 volunteers who assist in overseeing the activities of agents and joint venture partners and ensure that the terms and provisions of the relevant agreement are complied with. The members of the Caniscom meet at least four times a year. They work in a co-ordinated fashion with the Manager of Israel Projects. They assist the Manager of Israel Projects in supervising projects. They also assist in sourcing new projects.

The Executive Director will visit Israel 3 to 5 times per year to liaise with the Manager of Israel Projects, the members of Caniscom and joint venture partners and agents.

The whole Canadian management team will visit Israel at least once a year.

The Charity has adopted internal protocols governing the disbursement of funds that allow it to better exercise direction and control over its intermediaries. These protocols, which apply to all projects, include: (1) establishing accounts in Canada only; and (2) not disbursing any funds to an intermediary until the Charity has received the reports required by the relevant agency agreement that the project has achieved relevant milestones or is completed.



**3. The Charity conducted non-charitable activities by conducting projects in the Territories and in support of the IDF**

a. Territories

The Charity submits that carrying-out charitable projects in the Territories can be charitable, and that carrying on charitable activities in the Territories is not contrary to any Canadian public policy.

The Charity accepts that the position that an organization will not be charitable if its activities are illegal or contrary to public policy. This proposition is supported by the majority and dissenting opinions in the *Canadian Magen David Adom for Israel v Canada* ((2002) FCA 323 (CanLII) and is affirmed in the Ontario Law Reform Commission *Report on the Law of Charity* (1996) at page 208. However, we are not aware of any decision in which this proposition has been applied. It was not specifically applied in *MDA*. In Appendix A we include an excerpt from the OLRC Report discussing the role of public policy in the evaluation of charitable activities. In Appendix B we also include an excerpt from the FCA decision in *MDA* where the role of public policy is discussed.

In the FCA decision in *Every Woman's Health Clinic*, Mr. Justice Decary stated that there must be a "definite and somehow officially declared and implemented policy" ...

The Charity questions the assertions in the April Letter that it is contrary to public policy in Canada for a Canadian charity to carry on charitable activities in the Territories. The April Letter cites three additional developments on this issue since the decision in *MDA*, as follows: The statement of Canadian foreign policy published in 2016 and quoted in relevant part in the letter; the Advisory opinion of the ICJ regarding the legality of the construction of the wall, and UN Security council resolution 2334. The April Letter also sets out additional arguments based on international law.

In the Charity's submission, the most relevant document is the Global Affairs Canada pronouncement. In the Charity's view, the pronouncement falls short of a "definite and somehow officially declared and implemented policy" prohibiting Canadian charities from operating in the Territories.

The Charity recognizes that there is a debatable question in this regard. The Charity proposes that it work with CRA to determine an acceptable approach to both parties on this question. For example, many of the projects undertaken by the Charity (in the Golan Heights and in Jerusalem, for example) have no connection with displaced Palestinian villages or with settlements that are inherently controversial. Additionally, some of the Charity's most significant projects are located in only a few places, including Jerusalem. Finally, some of the projects in the Territories are in mid-completion, and should be completed.

The suggested approach has the merit that the Charity is not the only Canadian Jewish charity with activities and objects in the Territories. Other Canadian charities interested in this question should have an opportunity to be involved in discussions that are aimed at deciding whether certain activities in greater Israel are contrary to public policy. In general, the Charity suggests that any exclusively charitable project should be acceptable unless the project directly or indirectly promotes further settlements or is conducted on land that is owned by the IDF or on land that has been illegally expropriated.

b. IDF

The Charity stopped performing activities on IDF military bases in 2016. In its proposed compliance agreement, the Charity commits to not do so in the future.

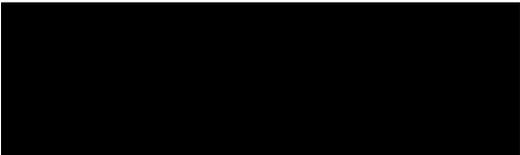
**4. The Charity failed to maintain adequate books and records**

The Charity concedes that there is room to improve its record-keeping practices. Given the nature of its work in Israel and the fact that many organizations in Israel operate in Hebrew, some of the Charity's records will likely always be in Hebrew. As more particularly described in its proposed compliance agreement, the Charity will commit to better record-keeping practices.

**III. PROPOSED COMPLIANCE AGREEMENT**

The Charity proposes the following elements of a compliance agreement with the CRA. This list of elements is not intended to be exhaustive and the Charity will consider any other elements or changes thereto that may be proposed by the CRA.

- The Charity will amend its purposes, subject to the approval of CRA, as indicated in Schedule 1.
- The Charity will carry on indigent labour activities, subject to the approval of CRA, as indicated in Schedule 2. There will always be a direct connection between the work performed by the indigent workers and a project that is exclusively charitable. Some indigent workers projects will be in relation to capital projects. Some will be charitable projects, such as planting trees or agricultural work intended to benefit the poor, of a non-capital nature.
- The Charity will obtain the prior approval of CRA for substantial capital projects where the Charity's property is used to construct capital property (for example, a hospital) that is used for only charitable purposes but that is not and will not be owned by the Charity. In each case, there will be an agreement between the charity and the relevant Israeli entity that is in compliance with the guidelines, as indicated in Schedule 3, and approved by CRA prior to commencement.
- The Charity will not commence any new projects in the "Territories", other than Jerusalem and the Golan Heights, until the Charity and CRA have agreed to guidelines governing such projects. The Charity will, however, continue with its current projects to completion.
- The Charity will not perform or support any projects on IDF military bases or in support of the IDF. For certainty, this commitment means that there are currently no such projects or commitments and there will be none in the future.
- The Charity will enter into agreements for its projects involving intermediaries using the agreements contained in the Handbook. The Charity will be diligent in exercising direction and control over its intermediaries, including having any intermediaries issue more detailed and timely reports.



The Charity will continue to employ a manager in Israel. [REDACTED] title is "Manager of Israel Projects". [REDACTED] job description focuses on the supervision of the Charity's projects in Israel, including ensuring that agents and joint venture partners are complying with the terms of their agreement and sourcing new projects. The Manager of Israel Projects reports directly to Canadian management of the Charity.

The Charity will reconstitute and update the terms of reference of CANISCOM as a committee of 4 to 6 volunteers who will oversee the activities of agents and joint venture partners and ensure that the terms and provisions of the relevant agreement are complied with. The members of the Caniscom will meet at least four times a year. They will work in a co-ordinated fashion with the Manager of Israel Projects. They will assist the Manager of Israel Projects in supervising projects. They will also assist in sourcing new projects.

The Executive Director will visit Israel 3 to 5 times per year to liaise with the Manager of Israel Projects, the members of Caniscom and joint venture partners and agents.

The whole Canadian management team will visit Israel at least once a year

All project funds will be maintained in Canada in Canadian bank accounts in the name of the Charity. Signing authority over the bank accounts will be vested in Canadian management and the Charity's directors. Funds will be released from the account to the agent or joint venture partner in reimbursement of their expenses incurred on behalf of the Charity, subject to the written approval of Canadian management of the Charity or the directors and only in accordance with the terms of the relevant agreement.

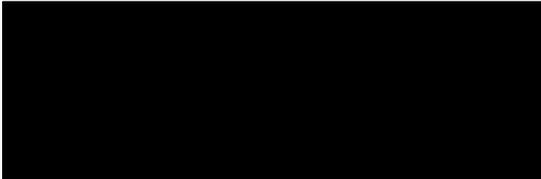
The Charity will change its name and fundraising materials to avoid confusion with KKL, including adopting a new logo and removing the reference to KKL in its corporate name.

The Charity will adopt better record-keeping processes to comply with its obligations under the *Income Tax Act*. The Charity is endeavouring to obtain from all its agents which employ indigent workers the records of employment and/or payroll information that is required for government purposes in Israel. This may include the equivalent of T4 slips. The Charity understands the CRA's concern is that there be adequate evidence that the individuals employed as indigent workers have actually been paid.

#### **IV. CONCLUDING SUBMISSIONS**

The CRA's audit of the Charity has presented the Charity with an opportunity to modernize its activities and to place them on a more solid foundation for the future. The Charity plans to make full use of this opportunity, and has already taken concrete steps to enhance its compliance with the *Income Tax Act*. In the same way that the predecessor of the Charities Directorate and the Charity sought reassurances from each other in the 1960s, the Charity wishes to enter into a compliance agreement with the CRA today. Among other things, taking that next step will allow the Charity to adopt more modern charitable purposes and to pursue charitable activities that are more closely attuned with the CRA's current views on charitable activities. The Charity looks forward to working with the CRA to conclude a compliance agreement or to address any additional questions or comments that the CRA may have.





Sincerely,



Attachments

cc:  CEO, Jewish National Fund of Canada (Keren Kayemeth Le'Israel) Inc.





**Exhibit A**

**JOINT VENTURE AGREEMENT**

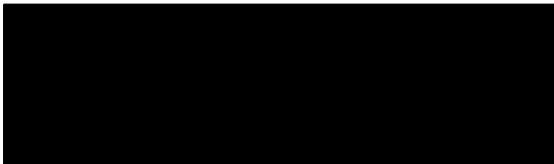




**Exhibit B**

**JEWISH NATIONAL FUND DIRECTORS' HANDBOOK – FOREIGN ACTIVITIES**



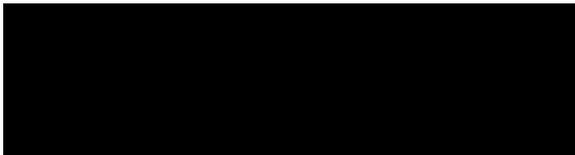


## Schedule 1

### PROPOSED NEW CHARITABLE PURPOSES

- (1) To relieve poverty by providing basic amenities, including food, clothing and shelter, financial aid, employment and psychological counselling to needy persons in Israel.
- (2) To relieve poverty by employing indigent labour on projects of an exclusively charitable nature
- (3) To advance education by providing courses, seminars and workshops about Judaism and Jewish values such as Klal Yisrael (the community of Israel), Kol Yisrael arevim zeh lazeh (all Jews are responsible for one another) and Tzedaka (righteousness, social justice) and Tikun Olam (repairing the world).
- (4) To advance education by conducting formal and informal education programs for youth and young adults, with particular emphasis on programs for Jews attending colleges and universities, aimed at developing, enhancing and strengthening Jewish identity and grounded in Jewish values.
- (5) To advance education by working in partnership with qualified donees in Canada and to develop skills, tools and educational resources in Israel.
- (6) To develop or promote public health.
- (7) To promote and provide medical services.
- (8) To improve the quality of drinking water and water used in agriculture by constructing wells and water treatment, irrigation and sewage treatment systems.
- (9) To improve skills in forestry, agriculture and horticulture and to assist in the preservation of the environment.
- (10) To provide support and encouragement to persons with disabilities by offering programs in individual development, education, employment and integration into the community.
- (11) To educate and increase the public's understanding of the environment and its importance by offering courses, seminars, conferences and meetings and by collecting and disseminating information on that topic.
- (12) To provide non-profit residential accommodation and incidental facilities exclusively for:
  - (a) Persons of low income;
  - (b) Senior citizens primarily of low or modest income; or
  - (c) Disabled persons primarily of low or modest income.





- (13) Through the construction of buildings, infrastructure and public works, to promote all of the above listed charitable purposes, including by building hospitals, schools, museums, libraries, group homes and homes for the aged, memorials, public parks, nature reserves, and reservoirs, and like projects and structures.
- (14) To gift funds to qualified donees as defined in subsection 149.1(1) of the Income Tax Act.





Schedule 2  
**DETAIL REGARDING INDIGENT LABOUR ACTIVITIES**

The Charity will continue to employ indigent labour as one of its charitable activities. The Charity will describe its indigent labour projects in its fundraising materials in an accurate and proportional way. All of the indigent labour projects will be devoted to building structures that will be used for exclusively charitable purposes or carrying on charitable projects of a non-capital nature, such as planting trees or agricultural work to benefit the poor. The Charity will obtain a legally enforceable commitment that the any capital asset resulting from the labour will remain devoted to exclusively charitable purposes during its expected economic life.

The Charity will use the following approach and definition of indigent labour with prospective agents (the "Israeli Charity"):

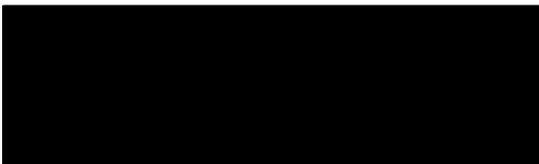
"The Israeli Charity is building/ reconstructing the ● located at ●. The ● will continue to be used for ● [details re exclusive charitable use]

The Israeli Charity will manage and supervise the building/reconstruction effort and will hire or cause to be hired workers who are indigent or otherwise unemployable. JNF's charitable project will be the employment of such persons.

The Israeli Charity and JNF will work together to ensure that the persons hired are indigent, unemployed or unemployable, and shall take into account the following considerations in making this determination:

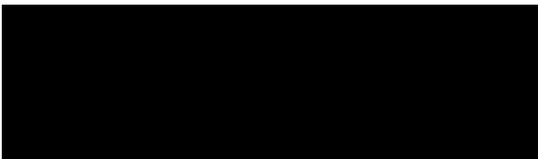
- (1) The persons must be unemployed, indigent or low-skilled such that they have significant difficulty in finding regular employment.
- (2) Persons of Bedouin or Palestinian-Arab background and living in the periphery may generally be presumed to meet the criteria.
- (3) Persons who have no recent history of permanent employment or who have a history of chronic under-employment may generally be considered to meet the criteria.
- (4) Israeli Charity is not required to confirm the annual income of the workers if, under the circumstances, it would be intrusive or offensive to make the relevant inquiries or to require financial information from prospective workers, provided that Israeli Charity exercises care and diligence in satisfying itself that the criteria in each individual case are met.
- (5) Israeli Charity shall have regard to criteria established by the Central Bureau of Statistics in determining the poverty line and to other social indicators established by relevant state and non-state authorities.
- (6) Israeli Charity shall, upon request, provide to JNF publications and communications containing information and analysis of the nature and scope of poverty and under-employment in Israel.





The Israeli Charity will enter a legally binding agreement that the uses of the structure built by the indigent labour will remain exclusively charitable for its economic life





Schedule 3  
**DETAIL REGARDING CAPITAL PROJECT ACTIVITIES**

The Charity will comply with the following policy from the Guidelines:

“A charity may want to acquire land or buildings in another country, but find that owning capital property in that country is impossible. Or a charity might already own capital property in a foreign country, but a change in circumstances makes continued ownership impossible. In these cases, a charity may want to transfer ownership of the capital property to a foreign organization that may be a non-qualified donee. As a rule, transferring ownership of capital property to any non-qualified donee, including a local organization or government body, is not permitted. This is because land and buildings might be used for non-charitable purposes. However, transfers to non-qualified donees might be acceptable in the following three situations:

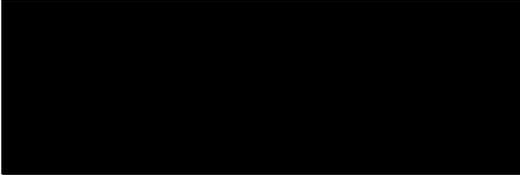
- the country in which the charity is operating does not permit foreign ownership of capital property
- the capital property is transferred only as part of a development project to relieve poverty by helping a community to become self-sufficient
- the charity can show that it has made every reasonable effort to gift the capital property to another qualified donee, and has made every reasonable effort to sell the capital property for its fair market value, but has not been successful

A development project is generally one where turning over the property to a local organization is integral to giving a deprived community the means to break free of the cycle of poverty and disease. This may include, for example, projects such as schools and hospital buildings.

In any of the three scenarios above, a charity should make sure that the organization it is transferring the property to has a mandate that is consistent with ensuring the continued charitable use of the property. The charity should get documentation from the non-qualified donee stating that the capital property will be used only for charitable purposes. Also, the charity should get, document, and keep reasonable assurances that the property will, for its expected useful life, benefit the whole community.

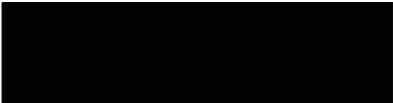
The charity should also, to the best of its ability, assess the risk that its capital property might be used inappropriately. If the risk of inappropriate use is greater than the benefit that may be provided, the charity should not transfer ownership of the property. Before transferring ownership of any capital property, and particularly in the case of the third scenario in the above list, we recommend contacting the Charities Directorate to consider the available options.





Appendix A

Ontario Law Reform Commission *Report on the Law of Charities* (1996)





Appendix B

*Canadian Magen David Adom v Canada (FCA, 2002)*



4.06.2018 תמונה

**JOINT VENTURE AGREEMENT**

**THIS JOINT VENTURE AGREEMENT** (the "Agreement") is made as of the 1st day of June, 2018 (the "Effective Date")

**BETWEEN:**

**JEWISH NATIONAL FUND OF CANADA (KEREN KAYEMETH LE'ISRAEL) INC. / FONDS NATIONAL JUIF DU CANADA (KEREN KAYEMETH LE'ISRAEL) INC.**, a corporation without share capital incorporated under the laws of Canada with its registered office in Montreal, Quebec, Canada

(hereinafter called "JNF")

- and -

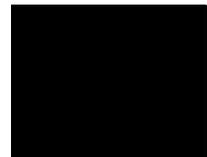
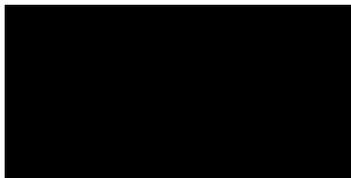
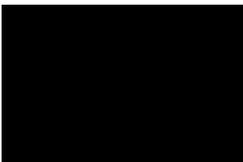
**KEREN KAYEMETH LE'ISRAEL**, a public benefit company governed by Israeli law with its registered office in Jerusalem, Israel

(hereinafter called the "KKL")

**RECITALS:**

- A. JNF is a registered Canadian charity, and has as its charitable purposes: "To create, provide, enlarge and administer a fund to be made up of voluntary contributions from the Jewish community and others, to be used for charitable purposes".
- B. KKL is a non-governmental organization (NGO) registered as a public benefit company governed by Israeli law and is regulated by the Israeli Corporations Authority. KKL aims to work toward developing the land, strengthening the bond between the Jewish people and their homeland, responding to the needs of the country and preserving Israel's natural and cultural heritage.
- C. Each party is legally and operationally in all respects a separate and independent entity, each with its own separate Board of Directors, employees, and donors, but the parties share a common purpose and objective in strengthening the land and people of Israel for all of its citizens and Jews throughout the diaspora.
- D. The parties wish to collaborate from time to time, and enter into this Agreement to govern the manner in which existing and future charitable projects in Israel are, or are to be, implemented jointly by them (each, a "Charitable Project").

**THEREFORE**, in consideration of the mutual covenants herein contained and other good and valuable consideration, the parties agree as follows:



**1. JOINT VENTURE**

1.1 JNF and KKL hereby form a joint venture (the "Joint Venture") to carry out the Charitable Projects in Israel, as identified, defined and determined pursuant to the terms and conditions of this Agreement from time to time. Notwithstanding the foregoing, any on-going Charitable Projects that commenced prior to this Agreement shall, unless the parties determine otherwise on a case by case basis, be governed by the terms and conditions of this Agreement.

1.2 Each party will perform its obligations under this Agreement and contribute to the Joint Venture such resources as the parties agree are necessary to perform the Charitable Projects.

**2. CHARITABLE PROJECTS**

2.1 Each Charitable Project to be carried out by the Joint Venture shall be described in a document ("Governing Document") that is in substantial conformity with Schedule 1. Each Governing Document, once agreed upon by the parties, will be part of and subject to the terms of this Agreement.

2.2 Each Governing Document will provide for, at a minimum:

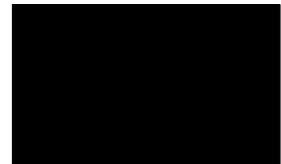
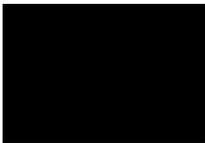
- (a) a detailed description of the Charitable Project, including how the Charitable Project is consistent with the JNF's charitable purpose and KKL's purpose and the roles and responsibilities of Joint Venture's personnel in the field; and
- (b) a proposed budget (the "Budget") for the Charitable Project that sets out the expected expenditures required for the operation of the Charitable Project, including the salaries that are expected to be payable to any employees and contractors.

2.3 Notwithstanding the foregoing, if the parties determine that the documentation describing on-going Charitable Projects that commenced prior to the date of this Agreement may not satisfy applicable Canadian charities laws and/or Israeli laws, the parties shall cooperate together to amend that documentation to render it compliant with such laws or enter into a new Governing Document to describe the Charitable Project.

**3. RELATIONSHIP OF THE PARTIES**

3.1 All matters pertaining to decisions of the Joint Venture, including the selection, oversight, and performance of any and all Charitable Projects, as well as the approval or modification of any Charitable Project will be made by the Joint Venture's board (the "Board"). The Board shall initially consist of four (4) directors, of whom:

- (a) three (3) shall be representatives of the JNF, who shall initially be the Chief Executive Officer, the Chief Financial Officer, and legal counsel of JNF; and



- (b) three (3) shall be representatives of KKL, who shall initially be the Chief Executive Officer, the Chief Financial Officer and Legal Advisor of KKL.

Additional directors may be appointed by mutual agreement of the parties; provided each party has an equal number of directors on the Board, not to exceed four (4) directors for each party. Each party will have the right to remove one or more directors appointed by it and to appoint the successor(s), and will advise the other party promptly, but in any case, no later than thirty (30) days of any change to any of its representatives.

- 3.2 The Board will meet bi-annually at either the registered office of the JNF, the registered office of KKL or via telephone or teleconferencing. The Board may meet more frequently via telephone or teleconferencing, as one party or both parties may require, to dictate and account for how their respective resources are being used and to discuss the progress of one or more Charitable Projects and related issues.
- 3.3 No decision of the Board shall be effective:
  - (a) unless a majority of the representatives, consisting of equal number of representatives from both parties, are present at a Board meeting, either in person or electronically, when the decision is made;
  - (b) if it purports to eliminate the ability of JNF or KKL to approve or reject any amendments to the Budget; or
  - (c) if it purports to eliminate the ability of JNF or KKL to provide input into the performance of a Charitable Project or to direct or modify the Charitable Project, or to establish deadlines or other performance benchmarks.
  - (d) All decisions will be binding. Only the Board will be authorised to make changes to Board decisions.
  - (e) All decisions must coincide with both Israeli and Canadian charitable laws.
- 3.4 In addition to Board meetings and other reporting obligations hereunder, each party will keep the other party currently and fully informed of its activities and of general developments in the areas of activity in which it acts from time to time hereunder.
- 3.5 The official language of the relationship between the parties will be English.
- 3.6 The parties acknowledge that if a party allows the resources that the other party has contributed to the Joint Venture to be used other than as authorized under this Agreement, including any change to a Charitable Project that might cause the overall project to no longer be charitable under applicable Canadian and / or Israeli laws, the other party may, upon notice, withdraw such resources from the Charitable Project or the Joint Venture.
- 3.7 The personnel who will perform the Charitable Project may be hired or contracted or sub contracted or engaged by each party separately. If the Joint Venture wishes to retain any



personnel, no party may hire or terminate personnel on behalf of the Joint Venture without the authorization of the other party.

- 3.8 If KKL or the Joint Venture procures any goods or services on its behalf pursuant to this Agreement, it shall do so in accordance with KKL internal tendering regulations or quotations processes ("Tendering Regulations"), as may be amended from time to time, and JNF agrees and accepts that such procurements will be governed by the Tendering Regulations.
- 3.9 For greater certainty, the signature of both parties will be required on all loans, contracts and other agreements of the Joint Venture.
- 3.10 Each Charitable Project will be publicly identified as a project of the parties carried on by the Joint Venture, both on-site and in literature and promotional materials.
- 3.11 Each party will co-author all procedures manuals, training guides, standards of conduct and other literature prepared by the Joint Venture, if any.

#### 4. PROPERTY

- 4.1 Each party may acquire assets or property in connection with the performance of a Charitable Project. However, all assets and property acquired by the Joint Venture shall be jointly owned by the parties and shall be used exclusively for charitable purposes, in accordance with the directions of the Board. Any divestment by JNF of its ownership interest in the assets or property of the Joint Venture, or in any assets or property that it may acquire in connection with a Charitable Project, will be subject to all applicable laws, and may be specified in the applicable Governing Document.

#### 5. RECORDS AND AUDIT

- 5.1 The parties shall appoint an auditor for the Joint Venture. The Joint Venture shall keep copies of all books and records for at least seven (7) years. Each party will have the right to examine the books and records of the Joint Venture in connection with those matters involving the income and expenditure of funds, and the purchase, maintenance, possession and insurance of property.
- 5.2 The Joint Venture shall deliver an annual report to each party on or before each anniversary of the Effective Date containing:
  - (a) a duplicate copy of the Joint Venture's detailed books and records;
  - (b) a full and complete financial report dealing in detail with the uses of the Joint Venture's funds for the preceding year, and all amounts received by the Joint Venture from each party, if received. The financial report shall be duly certified by a certified public accountant; and
  - (c) a narrative report of each Charitable Project performed or in progress during that year.

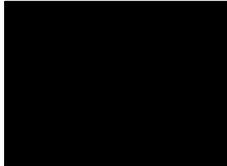


- 5.3 The Joint Venture shall hold all funds received from each party, if received in trust, separate and apart from the funds of each party in an account at a financial institution which is clearly designated as a trust account for the sole benefit of the Joint Venture, and will disburse such funds only as approved by the Board. All deposits, withdrawals and other transactions with respect to the Joint Venture's account shall require the signature of such person or persons as the Board may from time to time determine. Notwithstanding the foregoing, except where commitments have been made by the Joint Venture in accordance with the provisions of this Agreement, each party shall be entitled to withdraw or withhold their funds or other resources at their discretion and each party shall use reasonable efforts to cooperate with the other party to allow the other party to exercise its rights hereunder.
- 5.4 A party may request at any time from the Joint Venture, the preparation of unaudited financial statements or any other type of report as may be required to enable such party to maintain control over the expenditure of its funds by the Joint Venture.
- 5.5 The Joint Venture shall provide each party with all vouchers and receipts received by the Joint Venture in respect of its activities hereunder.
- 5.6 Each party may enter at any premises used by the Joint Venture, in order to evaluate and observe the activities and programs being carried out and to inspect all records relating to the same.

## 6. TERM AND TERMINATION

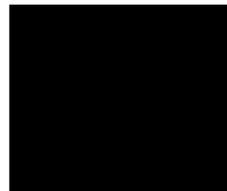
- 6.1 This Agreement shall have a term of one (1) year (the "Term"), commencing on the Effective Date, unless terminated earlier in accordance with this Agreement. This Agreement shall be renewed automatically at the end of the Term, and from year to year thereafter, for successive terms of one-year each (the "Renewal Term").
- 6.2 This Agreement may be terminated prior to the end of the Term or of the Renewal Term at the option of either party upon three (3) months' written notice to the other party. In the event of termination, the Joint Venture will return forthwith to both parties the monies advanced by each party and not committed or expended.

## 7. LIABILITIES AND INSURANCE

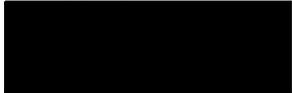
- 7.1 In no event shall a party be liable to the other party for any consequential, exemplary, special, punitive or indirect losses or damages, whether arising in contract, warranty, tort (including negligence), strict liability, fundamental breach or otherwise, including loss of use, profit, business, or reputation.
- 7.2 Each party shall carry adequate insurance against any liability arising in relation to each Charitable Project. Each party shall be named as an additional insured party in all applicable insurance policies of the other party. Each party will provide the other party with confirmation from the insurer as to the insurance coverage, and an undertaking from the insurer to immediately notify the other party prior to any cancellation, significant change or lapse of the insurance policy.
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8. GENERAL

- 8.1 No person employed by KKL, or otherwise engaged in implementing the Charitable Project, shall in any way be considered an employee of JNF nor shall such person have any rights as an employee of JNF, nor shall such person be eligible to receive any payments, compensation, social or other benefits in connection with the performance of his or her services relating to the Charitable Project or with the termination or cancellation of this Agreement, except as provided herein.
- 8.2 No person employed by JNF, or otherwise engaged in implementing the Charitable Project, shall in any way be considered an employee of KKL nor shall such person have any rights as an employee of KKL, nor shall such person be eligible to receive any payments, compensation, social or other benefits in connection with the performance of his or her services relating to the Charitable Project or with the termination or cancellation of this Agreement, except as provided herein.
- 8.3 Neither party may assign this Agreement in whole or in part, including the performance of any Charitable Project, without the prior written consent of the other party. The parties may not subcontract any of their obligations hereunder except as contemplated in this Agreement.
- 8.4 KKL is responsible for the payment of all taxes, Social Security and other payments which employer must pay according to law or custom if applicable in Israel and this only for the personnel engaged by KKL.
- 8.5 JNF will be responsible for the payment of all taxes, Social Security and others payments which employer must pay according to law or custom if applicable in Canada and this only for the personnel engaged by JNF.
- 8.6 All expenses in relation with the Joint Venture will be paid by the Joint Venture.
- 8.7 This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall constitute one and the same agreement and notwithstanding their date of execution shall be deemed to be executed on the date set out above.
- 8.8 This Agreement shall be governed by and construed in accordance with the laws of the Israel.
- 8.9 The parties hereby submit to the jurisdiction of the courts of the State of Israel.
- 8.10 Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and shall be given by personal delivery, fax, registered mail or electronic means of communication or by commercial courier to such other party as follows;



- (a) to JNF at:  
740-5160 Decarie Blvd.  
Montreal, Quebec  
H3X 2H9
- (b) to KKL at:



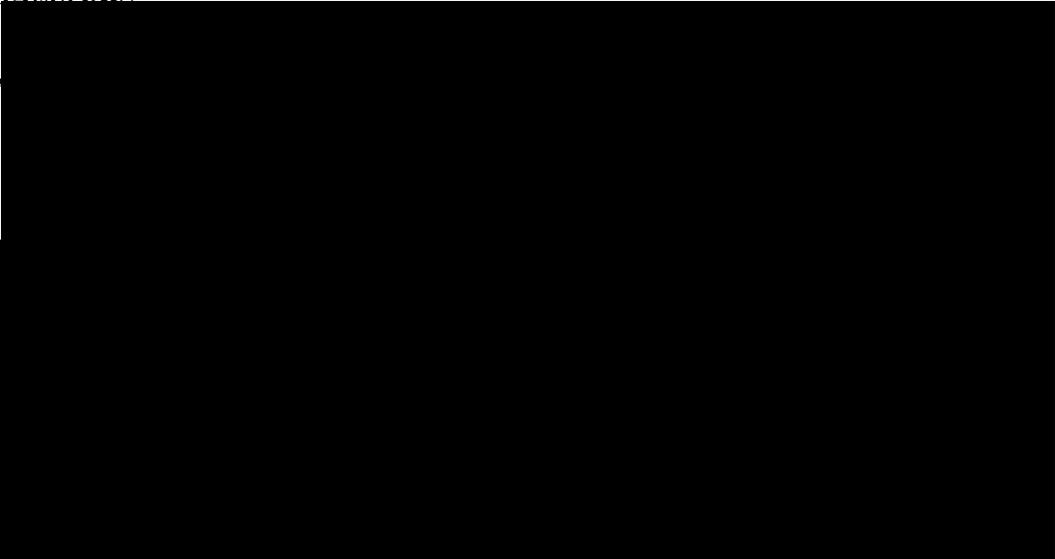
or to such other address, individual or electronic communication number as may be designated by notice given by either party to the other. Any demand, notice or other communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered mail, on the seventh business day following the deposit thereof in the mail and, if given by electronic communication, on the day of transmittal thereof if given during the normal business hours of the recipient and on the business day during which such normal business hours next occur if not given during such hours on any day. If the party giving any demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system which might affect the delivery of mail, any such demand, notice or other communication shall not be mailed but shall be given by personal delivery or by electronic communication.

- 8.11 All obligations which, by their nature, are intended to survive the expiration or termination of this Agreement shall remain in effect after the expiration or termination of this Agreement until such obligations expire according to their respective terms or intent.
- 8.12 The parties hereto shall sign further and other documents, cause such meetings to be held, resolutions passed and by laws enacted, exercise their vote and influence, do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part thereof.

IN WITNESS WHEREOF the parties have signed this Agreement by their duly authorized representatives as of the Effective Date.

**JEWISH NATIONAL FUND OF KEREN KAYEMETH LE'ISRAEL  
CANADA (KEREN KAYEMETH  
LE'ISRAEL) INC.**

Per:  
Name:  
Title:  
Per:  
Name:  
Title:



**SCHEDULE 1  
GOVERNING DOCUMENT**

This Governing Document is a schedule to the agreement ("Agreement") dated June 1, 2018 and entered into between JEWISH NATIONAL FUND OF CANADA (KEREN KAYEMETH LE'ISRAEL) INC. and KEREN KAYEMETH LE'ISRAEL ("KKL"). It contains supplementary terms and conditions relating to a Charitable Project to be carried out pursuant to it. All of the terms and conditions of the Agreement apply to the Charitable Project and no provision of this Governing Document shall be applied or interpreted in a manner which contradicts or frustrates it. Where a provision of this Governing Document contradicts a provision of the Agreement, the provision of the Agreement shall prevail.

**I DESCRIPTION OF THE CHARITABLE PROJECT**

[NTD: The CRA and the Agreement require a clear, complete, and detailed description of the activities to be carried out by the parties, and an explanation of how the activities further the JNF charitable purpose set out on the first page of the Agreement. The location(s) where the activity will be carried on (for example, physical address, town or city) must also be set out.]

**II ACTIVITIES OF THE PROJECT AND RESPONSIBILITIES OF THE PARTIES**

The Joint Venture will undertake the following activities in furtherance of its objectives:

- [NTD: detailed description required]

The respective responsibilities of the parties will be as follows:

Party	Responsibilities
JNF	[NTD: The CRA requires that the roles and responsibilities of JNF's personnel in the field be described.]
KKL	●

**III TERM OF THE CHARITABLE PROJECT**

[NTD: The CRA requires all time frames and deadlines to be described clearly.]

#### IV. BUDGET OF THE CHARITABLE PROJECT

[NTD: The CRA and the Agreement require a detailed budget that is specific with respect to amounts, expenditure items, timing and methods and conditions governing the transfer of funds.]

#### V. CAPITALIZATION AND REIMBURSEMENT OF FUNDS

The Joint Venture will be capitalized as follows:

Party	Total Percentage of Funding Supplied
JNF	●% to be provided as described below
KKL	●% to be provided as described below

The Joint Venture will use the funds advanced by the JNF solely to fund reasonable costs directly in support of the activities described in the Agreement, including this Governing Document. The JNF will advance funds to the Joint Venture in the following manner:

Payment Date	Payment Amount
Within ● days following receipt of countersigned agreement	\$ ●
Upon satisfactory performance/ completion of ●	\$ ●

The advanced funds may be expended subject to the conditions set out in the Agreement during the Term of the Charitable Project commencing from the effective date of this Governing Document.

#### VI. PUBLICITY

[NTD: The CRA and the Agreement require each Charitable Project to be publicly identified as a project of the parties carried on by the Joint Venture, both on-site and in literature and promotional materials.]

VII. OWNERSHIP OF PROPERTY

[NTD: CRA and the Agreement require that any property purchased by the Joint Venture be jointly owned by the parties. By exception, provided the CRA guidance is complied with, property may be transferred by JNF. If such a transfer is contemplated, the manner of compliance with the CRA guidance should be described in this Governing Document in this section and the required documents appended as schedules to this Governing Document.]

IN WITNESS WHEREOF the parties have signed this Governing Document by their duly authorized representatives as of the date first above written.

JEWISH NATIONAL FUND OF KEREN KAYEMETH LE'ISRAEL  
CANADA (KEREN KAYEMETH  
LE'ISRAEL) INC

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**JEWISH NATIONAL FUND OF CANADA (KEREN KAYEMETH LE'ISRAEL) INC.**

**HANDBOOK FOR CHARITABLE ACTIVITIES OUTSIDE OF CANADA**

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## SECTION 1 - INTRODUCTION

### 1.1 Objective of this Handbook

The JEWISH NATIONAL FUND OF CANADA (KEREN KAYEMETH LE'ISRAEL) INC. ("JNF") supports a number of charitable projects in Israel. As a registered charity in Canada, JNF is subject to various requirements that apply to all registered Canadian charities that carry out projects outside of Canada. The purpose of this Handbook is to help the directors, officers and employees of JNF to understand those requirements so that they can perform their respective responsibilities in a manner that complies with applicable laws and the guidance issued by the Canada Revenue Agency ("CRA").

### 1.2 Background

Before exploring the specific requirements that apply to registered charities operating abroad, it is useful to outline the general legal framework in which registered Canadian charities must operate. JNF operates as a "charitable organization" within the definition of a "registered charity" under the (Canada) *Income Tax Act* (the "Act").

The first two parts of the definition of "charitable organization" under the Act are worth exploring, since they constitute the core obligations of all charitable organizations. The first two parts of the definition of "charitable organization" are as follows:

...an organization, whether or not incorporated,

- (a) all of the resources of which are devoted to charitable activities carried on by the organization itself,
- (b) no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof.<sup>1</sup>

The first requirement (i.e., subsection (a)) has two components, namely: (1) all resources (a broad concept that likely includes more than money) must be devoted to "charitable activities", and (2) all of those activities must be carried on *by the organization itself*.

There is no definition of "charitable activities" under the Act or the common law. However, activities that have been recognized as charitable fall into four groups: the relief of poverty; the advancement of education; the advancement of religion; and miscellaneous activities beneficial to the community. In addition, every charitable activity must be concerned with the benefit of the public or some significantly large section of the public. It is beyond the scope of this Handbook to provide further details regarding which permissible charitable activities fall within each of those categories. If there is any doubt as to whether or not a particular activity is charitable, JNF should contact its legal counsel for advice.

With respect to the second component (i.e., carrying on activities "by itself"), it is clear that a registered charity is free to carry-out its charitable activities through its staff or volunteers. As

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<sup>1</sup> *Income Tax Act*, RSC 1985, c1 (5th Supp), s 149.1(1).

more particularly discussed below, if a charity is unable to carry-out its own activities through its staff or volunteers, it may use an intermediary (i.e., an agent) to act on the registered charity's behalf.

The second requirement (i.e., subsection (b)) provides that no income is available to or payable to a proprietor, member, shareholder, trustee or settlor of the charity. This would not prevent a member receiving funds of the charity if the member is a legitimate recipient of the charity's generosity, but the charity will need to be able to show that the individual received the benefit as a charitable benefit instead of a private benefit.

## SECTION 2 - CHARITABLE ACTIVITIES OUTSIDE OF CANADA

### 2.1 Introduction

The ability of a Canadian registered charity to engage in foreign giving and foreign activities is limited in a number of important respects. While a Canadian registered charity can generally carry on its activities anywhere in the world, few Canadian charities have the resources to operate in this way. Instead, because many registered charities are unable to carry out their own activities abroad through their staff or volunteers, the charities must carry-out their activities through intermediaries (e.g., agents or contractors). A charitable organization, like JNF, can also make grants to other qualified donees who are operating abroad, subject to some restrictions.

These subjects are explored more fully in the sections that follow.

### 2.2 Foreign Activities by the Charity Itself

As discussed above, it is clear that a Canadian registered charity is free to carry on its activities outside of Canada through its own staff and volunteers. As a general rule, if a purpose would be charitable if it were carried out in Canada, it will be charitable if carried out abroad.

On that point, it is worth noting that the CRA guidance provides that a Canadian registered charity cannot carry out foreign activities that violate Canadian laws, including the Act and the common law on charities, or public policy.<sup>2</sup> In *Canadian Magen David Adom for Israel v. Canada (Minister of National Revenue)* ("CMDA") the Crown took the position that because the Canadian charity had allowed some of its ambulances to be used across the "green line" in the Occupied Territories, the Golan Heights, and the West Bank of Israel, it was violating Canadian public policy.<sup>3</sup> The Federal Court of Appeal confirmed that in order to be a violation of public policy, an activity would have to be illegal by Canadian law (including the anti-terrorism laws discussed below at Section 2.10). The fact that Canada had supported various UN resolutions condemning the occupation was held to be not sufficient to form the basis of a Canadian public policy.

Unfortunately, the CRA has not provided much guidance on the details of how a Canadian registered charity should operate abroad using its own staff besides the following

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<sup>2</sup> Canada Revenue Agency, Guidance CG-002, "Canadian registered charities carrying out activities outside Canada" (8 July 2010) at 4.1 [*CRA Guidance*].

<sup>3</sup> *Canadian Magen David Adom for Israel v. Canada (Minister of National Revenue)*, 2002 FCA 323, [2002] 4 CTC 422 [*CMDA*].

recommendations, which are basically common sense. The CRA recommends that all “charities make themselves aware of local laws, and how they are enforced, before carrying out their charitable programs abroad.”<sup>4</sup> The CRA further recommends that: “[b]eing aware of local laws and their application will help make sure that the public benefit provided by a charity’s activities is not offset by harm that may result to those carrying on the activities, to the charity’s beneficiaries, or to anyone else.”<sup>5</sup>

### **2.3 Qualified Donees**

Charitable organizations, like JNF, can devote up to fifty percent (50%) of their income to grants to other “qualified donees” who may be carrying-out charitable activities abroad. Qualified donees include other Canadian registered charities, the Crown in right of Canada or a province, the United Nations and its agencies, a foreign university customarily attended by Canadians, and a foreign charity that has received a gift from the federal Crown in the year or the preceding year. If an entity is a qualified donee, then a registered charity can make a grant to it without any further complication. It is also possible, of course, to attach conditions to the gift provided that the conditions do not require that the gift be transferred to a third party non-qualified donee (which would be treated the same way, in law, as a gift to a non-qualified donee).

Except as described in other sections below, if a registered charity were to make a gift or grant (e.g., funding or other property) to a non-qualified donee, even if the activities of that entity were consistent with the charitable activities of the charity, it would be grounds for de-registration.

The CRA provides the following example:

A charity is registered to protect the environment. A foreign organization that is not a qualified donee approaches the charity, seeking funding for its activity of preserving the rainforest. The charity approves of the non-qualified donee’s activity and agrees to provide funding. The two organizations sign a written agreement, and the non-qualified donee commits to using the Canadian charity’s money only for purposes considered charitable in Canada. However the Canadian charity has no say where, when or how the activity is carried out. The charity is simply funding the non-qualified donee’s own activities.<sup>6</sup>

### **2.4 Charitable Goods Policy**

It is possible for a Canadian registered charity to take the position that the transfer of property to a foreign charity, who is not, itself, a registered charity in Canada, is not a gift to that charity, but is instead, a gift made in the course of the Canadian charity’s own activities. The CRA will take into account the circumstances when determining whether or not the transfer is in furtherance of the charity’s own activities, but at a minimum, the following three conditions must apply:

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<sup>4</sup> *CRA Guidance, supra* note 2 at 4.1.

<sup>5</sup> *Ibid.*

<sup>6</sup> *CRA Guidance, supra* note 2 at 5.5.

- the nature of the property being transferred is such that it can reasonably be used only for charitable purposes (e.g., medical supplies that will likely only be used to treat the sick, or school supplies that will only likely be used to advance education);
- both parties understand and agree the property is to be used only for the specified charitable activities; and
- based on an investigation into the status and activities of the non-qualified donee receiving the property (including the outcome of any previous transfers by the charity, examining the entity's stated goals and purposes, its history and general reputation, relevant media reports, etc.), it is reasonable for the charity to have a strong expectation that the organization will use the property only for the intended charitable activities.<sup>7</sup>

If any of those conditions are not met, the Canadian registered charity should not transfer any property to the non-qualified donee. Otherwise, the charity risks financial penalties and revocation of its charitable status.

Note that the record-keeping rules that apply to Canadian registered charities would still apply if the charity transfers goods in accordance with the foregoing requirements.

## 2.5 Transfer of Capital Property

Transferring capital property (e.g., land or buildings) owned by a registered Canadian charity to a non-qualified donee (including a local organization or government body) in a foreign country is, as a general rule, not permitted. This is because land and buildings might be used for non-charitable purposes. However, the CRA permits such transfers in narrow circumstances. Before exploring those circumstances below, however, it is worth stating that we recommend that JNF (or, indeed, any registered Canadian charity) avoid dealing with the transfer of capital property issue. Instead, we are of the view it is always better for a charity to provide funding (i.e., funding a project that is charitable in nature under a General Agency Agreement). Indeed, if a Canadian charity is approached with a capital funding proposal by a foreign charity or entity, it should suggest that it will cover certain operating requirements of the foreign charity (to the extent doing so is charitable in nature) in order to free funding for the foreign charity or entity to be used for the capital project.

In CRA guidance that precedes the current guidance, the CRA recommended that a Canadian registered charity should insist upon maintaining ownership and control over all capital property that is funded with the resources of the charity. However, in the current guidance, the CRA acknowledges that it may not always be possible for the Canadian charity to own property and in those cases, it is possible to transfer property. For instance:

A charity may want to acquire land or buildings in another country, but find that owning capital property in that country is impossible. Or a charity might already own capital property in a foreign country, but a change in circumstances makes continued ownership impossible. In these cases, a charity may want to transfer

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<sup>7</sup> *CRA Guidance, supra* note 2 at 5.2.

ownership of the capital property to a foreign organization that may be a non-qualified donee.<sup>8</sup>

The guidance provides that transfers to non-qualified donees might be acceptable to the CRA in the following three situations:

- the country in which the charity is operating does not permit foreign ownership of capital property;
- the capital property is transferred only as part of a development project to relieve poverty by helping a community to become self-sufficient; or
- the charity can show that it has made every reasonable effort to gift the capital property to another qualified donee, and has made every reasonable effort to sell the capital property for its fair market value, but has not been successful.

As used above, a “development project” may include, for example, projects such as schools and hospital buildings.

In each of the three situations described above, the Canadian registered charity should make sure that the organization it is transferring the capital property to has a mandate that is consistent with ensuring that the property continues to be used for charitable purposes. The charity should enter into an agreement with the non-qualified donee which provides that the capital property will be used only for charitable purposes. Also, the agreement should contain reasonable assurances that the property will, for its expected useful life, benefit the whole community.

The charity should also, to the best of its ability, assess the risk that its capital property might be used inappropriately. If the risk of inappropriate use is greater than the benefit that may be provided, the charity should not transfer ownership of the property.

Legal counsel should be consulted before transferring any capital property to a non-qualified donee.

## **2.6 Leasehold Improvements**

The CRA has issued guidance on registered charities that may wish to lease property from others and to make improvements to that property even though the improvements will revert to the lessor (i.e., the owner) of the property at the end of the lease.

The CRA position is that where the improvements involve an increase in the value of the property, the registered charity must demonstrate the personal benefits to the lessor of the property “are offset by reasonable consideration to the charity” to ensure that the lessor does not “unduly benefit from the increased value of the property”. The charity can do this by entering into a lease agreement which provides that:

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<sup>8</sup> *CRA Guidance, supra* note 2 at Appendix B.

- the improvements are to be removed from the property at the termination of the lease;
- the lessor must pay the charity (as lessee) the fair market value of the improvements at the time that the lease is terminated; or
- the charity pays discounted rental charges for the cost of the improvements amortized over the term of the lease.

If the lessor is unwilling to agree to such terms, then the lessor may receive “undue benefits” if the improvements are made. In such cases, the charity would not be complying with the Act.

## **2.7 Intermediaries**

As discussed above, the CRA recognizes that a registered charity will be deemed to be carrying out its own activities if it engages a foreign agent (i.e., an intermediary). A charity uses an intermediary when it is unable to carry out its own activities through its staff or volunteers. The intermediary typically has resources or facilities that a charity requires to carry out one or more projects, including knowledge of a region or area, particular skills or expertise, staff in the area, or specialized equipment.<sup>9</sup>

The CRA guidance identifies several models for a charity to work with an intermediary namely: agency; joint-venture; co-operative participant; and contractors.

### **2.7.1 Due Diligence**

Before exploring those models in more detail, it is worth noting that the CRA recommends that a charity should investigate the status and activities of an intermediary before working with them to assure itself of the following conditions:

- the intermediary has the capacity (e.g., personnel, experience or equipment to carry out the charity’s activity; and
- there is a strong expectation that the intermediary will use the charity’s resources as directed by the charity.<sup>10</sup>

### **2.7.2 Agents**

Generally speaking, an agent is an intermediary that agrees to carry out specific activities on a charity’s behalf. The principal (i.e., the charity) is responsible for the activities of the agent and an agent may bind a principal. In our experience, an agency agreement, which evidences the principal/agent relationship, is the most common and simple method for a Canadian registered charity to engage an intermediary (or more than one intermediary). However, in order for the arrangement to be acceptable to the CRA, the charity must maintain “direction and control” over the agent’s activities. Direction and control is discussed further at Section 2.8.

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<sup>9</sup> *CRA Guidance, supra* note 2 at 6.

<sup>10</sup> *CRA Guidance, supra* note 2 at 6.

There are three court decisions in this area. In *Canadian Committee for the Tel Aviv Foundation v. The Canada* (“Tel Aviv”) the charitable organization’s (the “Committee”) registration was revoked due to numerous improper procedures in its dealings with its agent, including failing to exercise control over its own funds, failing to demonstrate adherence to a system of continuous and comprehensive reporting, and failure to abide by the agency agreement signed by the Committee and its representative in Israel.<sup>11</sup> The Federal Court of Appeal (“FCA”) determined that the principal reason that the Minister of National Revenue (the “Minister”) revoked the registration was the loss of control by the Committee over its funds as evidenced by the mixing of monies by its agent and that the agent had complete discretion over the use of the monies received from the Committee. In arriving at its decision, the FCA stated that while the scheme of the Act allows a charity to conduct its overseas activities either using its own personnel or through an agent, it cannot merely be a conduit to funnel donations overseas.<sup>12</sup> The FCA also stated that there is little evidence on the record that the Committee was in fact exercising the control and direction over the agent.<sup>13</sup>

In CMDA, the Minister revoked the charitable registration on three grounds, including alleged improper receipting practices, carrying on activities in contravention of Canadian public policy, and gifting resources to the Israeli affiliate. The FCA ignored the first ground and found that the purported public policy with respect to the second ground did not exist. However, the FCA found in favour of the MNR based on the third ground and stated:

As explained earlier, a charitable organization is obliged to carry on its charitable activities itself. If it does not do so its registration may be revoked. *A charitable organization that wishes to operate in a location where it has no officers or employees must somehow act through a person in that location. That obviously could be done by establishing an agency relationship between the charity and that person. Evidence that such a relationship has been established by contract, and if that contract has been adhered to, might well be the most straightforward means of proving to the Minister that a person purporting to carry out the charitable activities of a charity in a particular location is in fact acting on behalf of the charity.* It is possible that the same result might be achieved by other means. However, *a charity that chooses to carry out its activities in a foreign country through an agent or otherwise must be in a position to establish that any acts that purport to be those of the charity are effectively authorized, controlled and monitored by the charity.*<sup>14</sup> [emphasis added]

Finally, in *Bayit Lepletot v. Canada (Minister of National Revenue)*, the FCA upheld the Minister’s decision to revoke the registration of the Canadian charity on the basis that it did not provide sufficient evidence that the individual in Israel in receipt of funds from the Canadian charity was actually acting as its agent in disbursing such funds.<sup>15</sup> That individual was a rabbi who had supervision of a number of orphanages operated by an Israeli organization. The rabbi in question was part of the administration of the Israeli organization. The FCA held that the charity failed to show that the rabbi was carrying on the Canadian charity’s charitable works as opposed to those of the Israeli organization.

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<sup>11</sup> *Canadian Committee for the Tel Aviv Foundation v Canada*, 2002 FCA 72, 287 NR 82 [Tel Aviv].

<sup>12</sup> *Ibid* at para 30.

<sup>13</sup> *Ibid*.

<sup>14</sup> *CMDA*, *supra* note 3 at para 66.

<sup>15</sup> *Bayit Lepletot v Canada (Minister of National Revenue)*, 2006 FCA 128, [2006] 3 CTC 252.

The CRA guidance contains the details that should be set out in any agency agreement. These are discussed below at Section 2.8.1 of this Handbook. Precedent agency agreements are attached at Schedules 1, 2 and 3 of this Handbook.

### 2.7.3 Joint Ventures

The CRA permits Canadian registered charities to enter into joint venture arrangements with other organizations. Under such arrangements, the charity and the other organization or organizations pool their resources in order to accomplish a particular goal or project. This relationship differs from an agency relationship in that the charity is not relying entirely on the other organization or organizations to carry out the activities for the charity.

The terms of joint venture arrangements vary, but the CRA requires the charity to be able to “establish that its share of authority and responsibility over a venture allows the charity to dictate, and account for, how its resources are used”.<sup>16</sup>

The CRA provides the following example, which is worth relaying:

The charity provides roughly 40% of the funding for the project and its representation on the venture's governing board is about 40% of the voting rights. As long as the venture only uses the charity's resources for the agreed upon activities, the arrangement should be acceptable.

However, if the governing board of the venture decides to use the charity's resources for a purpose other than what is provided in the terms of the agreement, the charity must withdraw their resources from the project. Therefore, the agreement should include a provision that allows the charity to discontinue devoting its resources to the venture if its resources are to be used for purposes other than those that had been previously agreed upon.

The CRA will look at any venture as a whole, and a charity's participation in a venture, to make sure that the charity is only furthering its charitable purposes. If the purpose of an overall project is not charitable, such as providing excessive or undue private benefit to an individual or company, a charity's own activities on behalf of that project may not be acceptable, even if those activities would normally be considered to be furthering its charitable purposes if carried out on their own.<sup>17</sup>

This Handbook contains an unexecuted copy of a joint venture agreement at Schedule 5 between JNF and KKL. Because the joint venture relationships can be complicated, we would recommend that any proposed Joint Venture Agreement (including a completed version of the attached precedent) be reviewed by legal counsel before it is executed.

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<sup>16</sup> CRA guidance, *supra* note 2 at 6.3.

<sup>17</sup> CRA Guidance, *supra* note 2 at 6.3.

#### 2.7.4 Co-operative Participants

The CRA allows Canadian registered charities to operate jointly with others through a 'co-operative partnership'. The CRA distinguishes these relationships from joint ventures in that under a co-operative partnership, different parties take responsibility for different aspects of a charitable project. Under this arrangement, the other co-participant is not really an intermediary, since the Canadian charity is really carrying on its own activities in conjunction with another entity.

The CRA guidance provides the example of a Canadian registered charity that joins with a foreign organization that is not a qualified donee to build and operate a medical clinic in an isolated area. The charity agrees to provide nursing staff and the other entity builds the clinic without the assistance of the charity.<sup>18</sup>

#### 2.7.5 Contracts for Services

The CRA permits Canadian registered charities to hire an organization or an individual to provide goods and/or services. For example, a charity might hire a for-profit corporation to dig a well in a foreign country. These arrangements are permitted provided that the contract between the charity and the contractor demonstrates significant direction and control by the charity over the contractor in the performance of the project. Due to the degree of control required by the CRA, these sorts of arrangements are less flexible than agency or joint venture approaches.

The CRA guidance contains the details that should be set out in any agreement with a contractor. These are discussed below at Section 2.8.1 of this Handbook. A precedent agreement is attached at Schedule 4 of this Handbook.

### 2.8 What is Direction and Control?

In order to satisfy the obligation that a charity carries out charitable activities "by the organization itself", the CRA guidance provides that the charity must direct and control the use of the charity's resources when it transfers its resources to an intermediary.<sup>19</sup>

More particularly, the CRA guidance states that the charity must make decisions on and determine parameters of:

- how the activity will be carried out;
- the activity's overall goals;
- the area or region where the activity is carried out;
- who benefits from the activity;
- what goods and services the charity's money will buy; and

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<sup>18</sup> *CRA Guidance, supra* note 2 at 6.4.

<sup>19</sup> *CRA Guidance, supra* note 2 at 7.

- when the activity will begin and end.<sup>20</sup>

The foregoing indicia of ‘direction and control’, however, do not mean that the charity must make every decision relating to the implementation of a particular project or activity. Rather, generally speaking, an intermediary may make day-to-day operational decisions within the parameters established by the charity in the agreement with the intermediary, but the charity must have the ability to “intervene in any decision”.<sup>21</sup>

The CRA guidance provides the following examples where it is permissible for a charity to delegate the authority to make decisions to an intermediary:

- which local vendor to buy supplies from;
- hiring and managing staff;
- locating potential beneficiaries for an activity; and
- maintaining buildings owned or operated for the charity's activities.<sup>22</sup>

However, any such decisions must be reported to the charity, so that the charity can ensure that the intermediary’s activities continue to comply with the Act.

The CRA recommends adopting the following types of measures to give effect to the direction and control requirements:

- create a written agreement, and implement its terms and provisions;
- communicate a clear, complete, and detailed description of the activity to the intermediary;
- monitor and supervise the activity;
- provide clear, complete, and detailed instructions to the intermediary on an ongoing basis;
- arrange for the intermediary to keep the charity’s funds separate from its own, and to keep separate books and records; and
- make periodic transfers of resources, based on demonstrated performance.<sup>23</sup>

The CRA guidance expands on each of those measures.

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<sup>20</sup> *CRA Guidance, supra* note 2 at 7.

<sup>21</sup> *CRA Guidance, supra* note 2 at 7.

<sup>22</sup> *CRA Guidance, supra* note 2 at 7.

<sup>23</sup> *CRA Guidance, supra* note 2 at 7.

### **2.8.1 Written Agreement**

This measure is largely self-explanatory. Like the CRA, we, as legal counsel to JNF, highly recommend that JNF enter into written agreements with all of its intermediaries.

Please note that it is not enough for a charity to enter into a written agreement that simply provides for the foregoing measures (e.g., a right to monitor and supervise). Instead, the charity must be able to demonstrate to the CRA that it has a “real, ongoing, active relationship with its intermediary”.<sup>24</sup> As a result, the charity must continually exercise its rights under the written agreement, such as the right to monitor and supervise the activity. The CRA acknowledges that there may be instances where the money spent by a charity on a one-time activity is less than \$1,000, where the effort of developing a full written agreement may not be worthwhile. In those cases, other forms of communication could be used by the charity to demonstrate ‘direction and control’.

This Handbook contains various forms of written agreements for use by JNF.

### **2.8.2 Description of Activities**

The charity and the intermediary must, before commencing the project or activity, agree on a clear and detailed description of the proposed project or activity. That description should include (1) what the activity involves, its purpose and the charitable benefit that it provides; (2) who benefits from the activity; (3) the locations where the activity will take place; (4) a comprehensive budget for the activity; (5) when it will start and be completed; (6) a description of the milestones or other deliverables that are measured and reported; (7) how the charity will monitor the activity; (8) how the charity can modify the activity, including discontinuing it; and (8) any contributions that any other organizations are expected to make.

### **2.8.3 Monitoring and Supervision**

The CRA describes monitoring and supervision as the process of receiving “timely and accurate reports”. Examples of these reports include (1) progress reports; (2) receipts for expenses and financial statements; (3) informal communications via telephone or email; (4) photographs; (5) audit reports; and (6) on-site inspections by the charity’s staff members.<sup>25</sup>

### **2.8.4 Ongoing Instruction**

Providing instructions to the intermediary helps the charity to establish that it is exercising direction and control. The CRA recommends that instructions be provided in writing whenever possible, and that records be kept of the instructions.<sup>26</sup>

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<sup>24</sup> *CRA Guidance, supra* note 2 at 7.2.

<sup>25</sup> *CRA Guidance, supra* note 2 at 7.4.

<sup>26</sup> *CRA Guidance, supra* note 2 at 7.5.

### 2.8.5 Periodic Transfers

Instead of providing an intermediary with all of the funding for a particular project up-front, the CRA effectively requires a charity to make periodic payments or withhold payments until the end of the project, based upon demonstrated performance.<sup>27</sup>

### 2.8.6 Separate Activities and Funds

Where an intermediary is performing an activity on behalf of a charity, the intermediary should keep the money received from the charity in a separate bank account. The intermediary should only withdraw money from the bank account with the written authorization of the charity or after meeting agreed-upon performance benchmarks.<sup>28</sup>

## 2.9 Record-Keeping

The requirement to keep adequate books and records with respect to activities carried out by an intermediary can prove cumbersome. Subsection 230(2) of the Act states as follows in regards to recordkeeping:

Every [registered charity] shall keep records and books of account ... at an address in Canada recorded with the Minister or designated by the Minister — containing

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

The foregoing provision is not entirely clear. However, in essence, it requires that a charity keep sufficient records to demonstrate that all of its activities have a charitable purpose. In our view, in order to meet that requirement, JNF should err on the side of keeping more records than fewer records.

Further, Subsection 230(2) requires that the charity's records be kept in Canada. In *Tel Aviv*, one of the reasons that the charity's registration was revoked centred on the court's finding that the charity did not maintain the required records in Canada. Also, in that case, the court found that the charity had not been diligent in following up with its agent to ensure that the reports contemplated in the agency agreement were received. The CRA's published position is that remote electronic access to records from a terminal in Canada does not constitute keeping records in Canada, although it may be possible to obtain permission from the CRA to do so. Further, the CRA also requires that the records must be maintained in English or in French.

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<sup>27</sup> *CRA Guidance, supra* note 2 at 7.6.

<sup>28</sup> *CRA Guidance, supra* note 2 at 7.7.

## 2.10 Anti-Terrorism

Like all individuals and organizations in Canada, charities must ensure that they do not operate in association with individuals or groups that engage in or support terrorist activities. The CRA has prepared the following checklist to assist charities so that they do not contravene applicable anti-terrorist legislation in Canada:

- Do you know about the individuals and entities associated with terrorism, which are listed in Canada under the *United Nations Act* and the *Criminal Code*? Are you aware of the *Criminal Code* and the *Charities Registration (Security Information) Act* provisions on financing and supporting terrorism—and the consequences of breaching the provisions?
- Do you have a good understanding of the background and affiliations of your board members, employees, fundraisers, and volunteers?
- Have you read the CRA guidance about keeping adequate books and records, activities, engaging in allowable activities, operating outside Canada, and charities in the international context?
- Do you have appropriate, sound, internal financial and other oversight and verification controls—for example, appropriate delegations and separations of authority over the collection, handling, and depositing of cash and the issuing of receipts?
- Do you transfer money using normal banking mechanisms, wherever possible? When it is not, do you use reputable alternative systems, and have strong additional controls and audit trails to protect your charity's funds and show how and when they were used?
- Do you know who uses your facilities and for what purpose—for example, your office or meeting space, name, bank account, credit cards, website, computer system, telephone or fax—what they are saying, and what materials they are distributing or leaving behind?
- Do you try to find out who else might be supporting a person or cause that you are endorsing in public statements, and who uses your name as a supporter?
- Do you know where your donations and other support really come from?
- Do you know who has ultimate control over the project that your charity's money and resources are benefiting, and what the money and resources are used for, including after the particular project is finished?
- Do you know your partners in delivering the work you are doing, and their affiliations to other organizations?

Do you have clear written agreements with agents/contractors/other partners, in Canada and abroad, covering what activities will be undertaken and how they will be monitored and accounted for? Do you check that the agreements are being followed?<sup>29</sup>

### SECTION 3 - PRECEDENT AGREEMENTS

#### 3.1 General Agency Agreement (with Sub-agency Agreement attached)

This Agreement should be used where JNF and the intermediary (the “**Agent**”) plan to enter into an ongoing relationship with each other in which the Agent may, from time to time, engage another intermediary or other intermediaries (each, a “**Performing Agent**”) to perform one or more projects on behalf of JNF.

Under this form of Agreement, JNF and the Agent are parties to one contract, and the Agent and the Performing Agent are parties to another contract. To ensure that the contract between the Agent and the Performing Agent is not a one-page document, for example, which could jeopardize JNF’s charitable status, the form of agreement between the Agent and the Performing Agent is appended to the agreement between JNF and the Agent.

A precedent form of this Agreement is attached at Schedule 1.

#### 3.2 General Agency Agreement (with Supervising Agent and Performing Agent)

This Agreement should be used where JNF plans to use an intermediary (the “**Supervising Agent**”) to supervise the performance by another intermediary (the “**Performing Agent**”) of one or more projects on behalf of JNF. Under this form of Agreement, JNF, the Supervising Agent and the Performing Agent are parties to one contract.

A precedent form of this Agreement is attached at Schedule 2.

#### 3.3 General Agency Agreement (without Sub-agent)

This Agreement should be used where JNF and the intermediary (the “**Agent**”) plan to enter into an ongoing relationship with each other in which the Agent will perform one or more projects on behalf of JNF.

A precedent form of this Agreement is attached at Schedule 3.

#### 3.4 Services Agreement

This Agreement should be used when JNF wishes to retain an organization or an individual to provide goods and/or services.

A precedent form of this Agreement is attached at Schedule 4.

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<sup>29</sup> Canada Revenue Agency, “Checklist for charities on avoiding terrorist abuse”, (3 October 2017).

### **3.5 Joint Venture Agreement**

This Agreement should be used in connection with a joint venture arrangement.

A precedent form of this Agreement, which is based upon an unexecuted Joint Venture Agreement between JNF and KKL, is attached at Schedule 5.

**SCHEDULE 1 — GENERAL AGENCY AGREEMENT (WITH SUB-AGENCY  
AGREEMENT ATTACHED)**

**GENERAL AGENCY AGREEMENT**

**THIS GENERAL AGENCY AGREEMENT** (the “**Agreement**”) is made as of the [●] day of [●], 2017 (the “**Effective Date**”)

**BETWEEN:**

**JEWISH NATIONAL FUND OF CANADA (KEREN KAYEMETH LE'ISRAEL) INC. / FONDS NATIONAL JUIF DU CANADA (KEREN KAYEMETH LE'ISRAEL) INC.**, a corporation without share capital incorporated under the laws of Canada with its registered office in Montreal, Quebec, Canada

(hereinafter called “**JNF**”)

- and -

[●], a [corporation without share capital incorporated under the laws of Israel] with its registered office in [Jerusalem, Israel]

(hereinafter called the “**Agent**”)

**RECITALS:**

- A.** JNF is a registered Canadian charity, and has as its charitable purposes: “To create, provide, enlarge and administer a fund to be made up of voluntary contributions from the Jewish community and others, to be used for charitable purposes”.
- B.** In the interest of efficiency of operation and maximum utilization of the funds at its disposal, JNF wishes to employ the facilities, services and personnel of the Agent to implement, or supervise the implementation of, one or more charitable projects (each, a “**Charitable Project**”) that will be determined following the Effective Date in accordance with this Agreement.
- C.** The Agent has the requisite facilities, services and personnel to implement, or supervise the implementation of, the Charitable Projects, and wishes to make available such facilities, services and personnel to implement, or supervise the implementation of, the Charitable Projects on behalf of JNF in accordance with this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants herein contained and other good and valuable consideration, the parties agree as follows:

## 1. RELATIONSHIP OF JNF AND AGENT

- 1.1 JNF hereby designates the Agent to act as its non-exclusive agent from time to time in matters relating to the implementation and operation of the Charitable Project, as may be authorized from time to time by JNF in accordance with this Agreement.
- 1.2 For greater clarification of the relationship between JNF and the Agent:
  - (a) JNF will maintain direction, control and supervision over the application of its funds by the Agent;
  - (b) the Agent will comply with all instructions of JNF under this Agreement; and
  - (c) JNF may exercise such direction, control and supervision, or any of its other rights under this Agreement, through a committee made up of at least five (5) individuals in Jerusalem ("**JNF Caniscom**") in Israel together with the assistance of one or more paid employees of JNF.
- 1.3 The official language of this relationship will be English.
- 1.4 If the Agent will be procuring any goods or services on behalf of JNF, the Agent shall, where practical, adopt a competitive process for procurement of goods and services for the Charitable Project that enhances transparency, competition and fairness and results in best value. The Agent agrees to ensure, where practical, that a reasonable number of suppliers are given an opportunity to bid and should avoid situations where there may be a bias toward awarding a contract for goods or services for the Charitable Project to a specific person or entity. The Agent will not accept, directly or indirectly, any payment or benefit from any supplier of goods or services for the negotiation or obtainment of a contract with the Agent to purchase such goods and services from the supplier.
- 1.5 All employees and contractors required for the operation of the Charitable Project shall be hired or engaged by the Agent in accordance with this Agreement and their employment or contractor relationship with the Agent shall be governed by Israel law. The Agent shall have internal staff dedicated to overseeing the Charitable Project. The Agent, based on its greater experience and expertise working in Israel, shall have authority over its employees and contractors. JNF shall not be liable for any act or omission of the employees or contractors of the Agent.
- 1.6 The Agent shall carry adequate insurance against any liability arising in relation to the Charitable Project. JNF shall be named as an additional insured party in all such insurance policies. The Agent will provide JNF with confirmation from the insurer as to the insurance coverage, and an undertaking from the insurer to immediately notify JNF prior to any cancellation, significant change or lapse of the insurance policy.

## 2. PERFORMING AGENTS

- 2.1 If the Agent determines that it would be advisable for another person to carry-out any part of a Charitable Project, the Agent may retain that person (each such person, a “**Performing Agent**”) to do so provided that:
- (a) the Agent obtains the prior written consent of JNF to do so in each instance; and
  - (b) the Agent and the Performing Agent enter into an agency agreement that is substantially similar to the form of agency agreement set out at Schedule 2.
- 2.2 Upon request, the Agent will provide to JNF any executed copies of the agreements contemplated in Section 2.1(b) and will maintain such executed agreements in the records contemplated in Section 7 below.
- 2.3 For greater clarification of the relationship between the parties under this Agreement if a Performing Agent is retained, JNF shall maintain direction, control and supervision over the Agent, who shall maintain direction, control and supervision over the Performing Agent. The Agent shall not be relieved of any of its obligations under this Agreement even if it has retained a Performing Agent to perform any of its obligations hereunder.

## 3. SCOPE OF WORK

- 3.1 Each Charitable Project to be carried out by the Agent pursuant to the terms of this Agreement shall be described in a document that is in substantial conformity with Schedule 1 (a “**Governing Document**”), which includes the expected expenditures required for the operation of the Charitable Project (the “**Budget**”). Each Governing Document, once executed by the parties, will be part of and subject to the terms of this Agreement.
- 3.2 For certainty, JNF will have authority to approve, amend or reject the proposed Budget and other details of a Charitable Project listed in a Governing Document upon reasonable notice to the Agent, including the authority to approve, amend or reject (a) the proposed staffing requirements and salaries, and (b) the proposed arrangements with the Performing Agent (if any).
- 3.3 As more particularly described in a Governing Document, the Charitable Project shall be publicly identified as a project of JNF carried on by the Agent as an agent of JNF, both on-site and in all literature and promotional materials.

## 4. FUNDS

- 4.1 Based on the final form of Budget approved by JNF for the Charitable Project, the Agent may be required to disburse its own funds and submit to JNF for reimbursement accounts and receipts for all expenses of the Charitable Project. If JNF determines that the Agent’s submission is in order, JNF will reimburse the Agent for its expenditures through JNF Caniscom. Alternatively, funds may be advanced to JNF Caniscom and then to the Agent as the Charitable Project progresses.

- 4.2 The Agent undertakes to hold all funds received from JNF, including via JNF Caniscom, in trust, separate and apart from its other funds and agrees to return any unexpended funds forthwith upon demand by JNF. In this regard, the Agent shall deposit all funds received from JNF in an account at a financial institution which is clearly designated as an account for the sole benefit of JNF and will disburse such funds only as directed by JNF. Except to the extent that financial commitments made by the Agent on behalf of JNF in accordance with the provisions of this Agreement remain unpaid, JNF shall be entitled to withdraw or withhold its funds or other resources at its discretion.
- 4.3 All expenditures of the funds of JNF by the Agent will be pursuant to written directions of JNF and the Agent shall obtain a written acknowledgement from all third parties to which funds are given, including any Performing Agent, pursuant to such written directions of JNF.

## 5. PROPERTY

- 5.1 JNF reserves to itself the sole and exclusive right to decide what personal property is to be purchased or leased on its behalf and the prices or rentals to be paid therefor, and the Agent has no power or authority to commit JNF in that regard without specific written instructions from JNF. JNF may designate, from time to time, the specific type of property, equipment, materials, supplies or facilities which it will provide and/or the total amount of funds allocated for the particular purpose, as the case may be. JNF may seek the advice of the Agent in designating the type of property, equipment, materials, supplies or facilities which it will provide.
- 5.2 All of the property, equipment, materials, supplies, facilities or teaching aids acquired by the Agent on behalf of JNF shall be used exclusively for charitable purposes, shall be maintained and shall be made available to third parties for only the stated purposes of JNF and shall be operated by the Agent in accordance with the directions of JNF. If funds are used in the acquisition, construction or improvement of any capital property, the property will be used exclusively for charitable purposes. Title to all property, equipment, materials, supplies, and facilities, including realty, purchased or acquired with funds supplied by JNF (the "**Purchased Property**") shall be used as directed by JNF. The Agent shall acknowledge in writing and obtain a written acknowledgment from third parties who may be in possession of the Purchased Property, to the effect that the third party holds such property on behalf of JNF and is responsible for the maintenance and insurance of such property. JNF Caniscom and/or the Agent shall from time to time visit or communicate with the operators of the Purchased Property to ensure that it is being maintained, insured and used for charitable purposes.

## 6. REPORTING

- 6.1 The Agent will keep JNF currently and fully informed of its activities and of general developments in the areas of activity in which it acts from time to time as operating agent for JNF in the manner specified in the applicable Governing Document.

- 6.2 The Agent agrees to be available, upon request by JNF for consultation with a representative or representatives of JNF in the manner specified in the applicable Governing Document.
- 6.3 The Agent will permit JNF and/or JNF Caniscom to enter at reasonable times, any premises used by the Agent in connection with the activities and programs of JNF, in order to evaluate and observe their activities and programs and to inspect all records relating to the same.

## 7. RECORDS AND AUDIT

- 7.1 The Agent will keep adequate books and records to substantiate compliance with the obligations of the Agent hereunder, including records relating to the procurement processes described above, of all funds received from or for the account of JNF and for all expenditures incurred, and shall provide JNF with access and copies of these books and records on a quarterly basis. The Agent shall keep copies of all such books and records for at least six (6) years.
- 7.2 JNF may, or may appoint an auditor of its own choosing to, examine the books and records of the Agent at any time, including in the six (6) years following the termination of this Agreement, in connection with those matters involving the income and expenditure of funds, and the purchase, maintenance, possession and insurance of property in its capacity as the agent of JNF.
- 7.3 The Agent will render to JNF annual unaudited statements of account of funds received from or for the account of JNF and of any and all expenditures incurred or committed for its account during such period as required. JNF may request at any time from the Agent, the preparation of unaudited financial statements or any other type of report as may be required to enable JNF to maintain control over the expenditure of its funds by the Agent. Such statements of account shall be in such form, including computerized records accessible over the internet, as may be directed by JNF. The Agent shall furnish to JNF each year a full and complete report of the allotment of JNF's funds for the preceding calendar year, which report shall outline in detail all amounts received by the Agent from or on behalf of JNF together with a detailed breakdown of expenditures made by the Agent pursuant to the written directions of JNF to enable JNF to make informed decisions as to the application of its funds and to maintain full and complete records.

## 8. TERM AND TERMINATION

- 8.1 This Agreement shall have a term of [three (3) years] (the "Term"), commencing on the date first written above, unless terminated earlier in accordance with this Agreement. This Agreement shall be renewed automatically at the end of the Term, and from year to year thereafter, for successive terms of [one-year] each (the "Renewal Term").
- 8.2 This Agreement may be terminated prior to the end of the Term or of the Renewal Term at the option of any party upon [three (3) months'] written notice to the other parties. In the event of termination, the Agent will refund forthwith to JNF any monies advanced by JNF and not expended in accordance with JNF's directions.

**9. REMEDIES**

- 9.1 Any use of JNF funds other than as specified in this Agreement shall constitute an essential breach of this Agreement, and JNF shall be entitled to immediately cancel this Agreement, stop, delay or withhold any payment or payments on account of its undertakings hereunder, or reduce the amount of any such payment and/or receive a refund of all moneys advanced by it to the Agent hereunder, including without limitation, moneys spent for the purposes of this Agreement.
- 9.2 Should the Agent fail to carry out the Charitable Project in accordance with the timetable established in the applicable Governing Document or should JNF have any reasonable concern as to the due implementation of the Charitable Project, JNF may, without prejudice to any of its other rights or remedies under this Agreement or by law, cancel this Agreement and/or stop, delay or withhold any payment or payments on account of its undertakings hereunder, or reduce the amount of any such payment.

**10. GENERAL**

- 10.1 No person employed by the Agent, or otherwise engaged in implementing the Charitable Project, shall in any way be considered an employee of JNF nor shall such person have any rights as an employee of JNF, nor shall such person be eligible to receive any payments, compensation, social or other benefits in connection with the performance of his or her services relating to the Charitable Project or with the termination or cancellation of this Agreement, except as provided herein.
- 10.2 Neither party may assign this Agreement in whole or in part, including the performance of any Charitable Project, without the prior written consent of the other party. The Agent may not subcontract any of its obligations hereunder except as contemplated in this Agreement.
- 10.3 The Agent is responsible for the payment of all taxes, Social Security and other payments which employer must pay according to law or custom.
- 10.4 Should any damage or expense be incurred by JNF as a result of a claim filed against JNF by an employee or third party otherwise engaged in implementing the Charitable Project on behalf of or at the request of the Agent, the Agent hereby undertakes to compensate JNF for all such damage and expense upon first receipt of notice of such sent to him or her by JNF, provided that JNF gives the Agent prompt notice of any such suit or claim filed and allows the Agent to defend against the same, at its own expense and in coordination with JNF.
- 10.5 This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall constitute one and the same agreement and notwithstanding their date of execution shall be deemed to be executed on the date set out above.
- 10.6 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

10.7 The parties hereby submit to the jurisdiction of the courts of the Province of Ontario and agree to comply with the provisions of the *Income Tax Act* (Canada) as it may relate to this Agreement; provided however, that a party shall be entitled to commence proceedings elsewhere. The parties hereto agree to comply with the provisions of the *Income Tax Act* (Canada) as it relates to the activities being carried on as contemplated in this Agreement.

10.8 Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and shall be given by personal delivery, fax, registered mail or electronic means of communication to the following addresses:

(a) to JNF at:



(b) to the Agent at:

[•]

or to such other address, individual or electronic communication number as may be designated by notice given by either party to the other. Any demand, notice or other communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered mail, on the seventh business day following the deposit thereof in the mail and, if given by electronic communication, on the day of transmittal thereof if given during the normal business hours of the recipient and on the business day during which such normal business hours next occur if not given during such hours on any day. If the party giving any demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system which might affect the delivery of mail, any such demand, notice or other communication shall not be mailed but shall be given by personal delivery or by electronic communication.

10.9 All obligations which, by their nature, are intended to survive the expiration or termination of this Agreement shall remain in effect after the expiration or termination of this Agreement until such obligations expire according to their respective terms or intent.

10.10 The parties hereto shall sign further and other documents, cause such meetings to be held, resolutions passed and by laws enacted, exercise their vote and influence, do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part thereof.

IN WITNESS WHEREOF the parties have signed this Agreement by their duly authorized representatives as of the Effective Date.

**JEWISH NATIONAL FUND OF** [●]  
**CANADA (KEREN KAYEMETH**  
**LE'ISRAEL) INC.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **SCHEDULE 1 GOVERNING DOCUMENT**

This document is a schedule to the General Agency Agreement (“**Agreement**”) dated ● and entered into between **JEWISH NATIONAL FUND OF CANADA (KEREN KAYEMETH LE’ISRAEL) INC.** and [●]. It contains supplementary terms and conditions relating to a Charitable Project to be carried out pursuant to it. All of the terms and conditions of the Agreement apply to the Charitable Project and no provision of this schedule shall be applied or interpreted in a manner which contradicts or frustrates it. Where a provision of this schedule contradicts a provision of the Agreement, the provision of the Agreement shall prevail.

### **I. DESCRIPTION OF THE CHARITABLE PROJECT**

[NTD: The CRA and the Agreement require a clear, complete, and detailed description of the activities to be carried out by the agent(s), and an explanation of how the activities further the JNF charitable purpose set out on the first page of the Agreement. The location(s) where the activity will be carried on (for example, physical address, town or city) must also be set out.]

### **II. TERM OF THE CHARITABLE PROJECT**

[NTD: The CRA and the Agreement require all time frames and deadlines to be described clearly.]

### **III. BUDGET OF THE CHARITABLE PROJECT**

[NTD: The CRA and the Agreement require a detailed budget that is specific with respect to amounts, expenditure items, timing and methods and conditions governing the transfer of funds.]

### **IV. SPECIFIC REPORTING OBLIGATIONS OF THE AGENT**

[NTD: The CRA and the Agreement require a description of the content and timing of reports. The reports of the agent(s) must be sufficient to show that the expenditures are in accordance with the description of the Charitable Project and the Budget.]

### **V. MANNER OF ADVANCES OF FUNDS AND REIMBURSEMENT OF FUNDS**

[NTD: The CRA and the Agreement require a detailed budget that is specific with respect to amounts, expenditure items, timing, methods of transfer and conditions governing the transfer of funds. The CRA and the Agreement require all time frames and deadlines to be described clearly.]

### **VI. SPECIFIC DUTIES OF THE PERFORMING AGENT**

[NTD: If a Performing Agent is to be retained, list their name and all of their duties and amounts payable to them here.]

### **VII. PUBLICITY**

[NTD: The CRA and the Agreement require that the Charitable Project be appropriately

recognized as a Charitable Project of JNF.]

IN WITNESS WHEREOF the parties have signed this schedule to the Agreement by their duly authorized representatives as of the date first above written.

**JEWISH NATIONAL FUND OF [•]  
CANADA (KEREN KAYEMETH  
LE'ISRAEL) INC.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## SCHEDULE 2

### AGENCY AGREEMENT

**THIS AGENCY AGREEMENT** (the “**Agreement**”) is made as of the [●] day of [●], 2017 (the “**Effective Date**”)

#### **BETWEEN:**

**[THE ‘AGENT’ FROM THE GENERAL AGENCY AGREEMENT]**, a [corporation without share capital incorporated under the laws of Israel] with its registered office in Jerusalem, Israel

(hereinafter called “**Supervising Agent**”)

- and -

**[THE PERFORMING AGENT]**, a [corporation without share capital incorporated under the laws of Israel] with its registered office in [Jerusalem, Israel]

(hereinafter called the “**Performing Agent**”)

#### **RECITALS:**

- A.** The Supervising Agent has entered into a General Agency Agreement with JEWISH NATIONAL FUND OF CANADA (KEREN KAYEMETH LE’ISRAEL) INC. (“**JNF**”), a registered Canadian charity, in which Supervising Agent has agreed to implement or supervise the implementation of various charitable projects from time to time on behalf of JNF (each, a “**Charitable Project**”).
- B.** In the interest of efficiency of operation and maximum utilization of the funds at its disposal, Supervising Agent wishes to employ the facilities, services and personnel of the Performing Agent to assist the Supervising Agent to implement one or more Charitable Projects on behalf of JNF.
- C.** The Performing Agent has the requisite facilities, services and personnel to implement the Charitable Projects, and wishes to make available such facilities, services and personnel to implement the Charitable Projects on behalf of JNF in accordance with this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants herein contained and other good and valuable consideration, the parties agree as follows:

#### **1. RELATIONSHIP OF SUPERVISING AGENT AND PERFORMING AGENT**

- 1.1** The Supervising Agent hereby designates the Performing Agent to act as its non-exclusive agent from time to time in matters relating to the implementation and operation of the

Charitable Project, as may be authorized from time to time by the Supervising Agent in accordance with this Agreement.

- 1.2 For greater clarification of the relationship between the parties in the performance of Charitable Projects, JNF shall maintain direction, control and supervision over the Supervising Agent, who shall maintain direction, control and supervision over the Performing Agent, and any of the rights or obligations of the Supervising Agent hereunder may be exercised or performed by JNF. Without limiting the generality of the foregoing:
  - (a) the Performing Agent will comply with all instructions of the Supervising Agent or JNF under this Agreement; and
  - (b) JNF may exercise such direction, control and supervision, or any of its other rights under this Agreement, through a committee made up of at least five (5) individuals in Jerusalem (such committee, "**JNF Caniscom**") together with the assistance of one or more paid officials.
- 1.3 If the Performing Agent will be procuring any goods or services on behalf of JNF, the Performing Agent shall, where practical, adopt a competitive process for procurement of goods and services for the Charitable Project that enhances transparency, competition and fairness and results in best value. The Performing Agent agrees to ensure, where practical, that a reasonable number of suppliers are given an opportunity to bid and should avoid situations where there may be a bias toward awarding a contract for goods or services for the Charitable Project to a specific person or entity. The Performing Agent will not accept, directly or indirectly, any payment or benefit from any supplier of goods or services for the negotiation or obtainment of a contract with the Performing Agent to purchase such goods and services from the supplier.
- 1.4 All employees and contractors required for the operation of the Charitable Project shall be hired or engaged by the Performing Agent in accordance with this Agreement and their employment or contractor relationship with the Performing Agent shall be governed by Israel law. The Performing Agent shall have internal staff dedicated to overseeing the Charitable Project. The Performing Agent, based on its greater experience and expertise working in Israel, shall have authority over its employees and contractors.
- 1.5 The Performing Agent shall carry adequate insurance against any liability arising in relation to the Charitable Project. JNF and the Supervising Agent shall be named as additional insured parties in all such insurance policies. The Performing Agent will provide the Supervising Agent with confirmation from the insurer as to the insurance coverage, and an undertaking from the insurer to immediately notify the Supervising Agent prior to any cancellation, significant change or lapse of the insurance policy.

## 2. SCOPE OF WORK

- 2.1 Each Project to be carried out by the Performing Agent pursuant to the terms of this Agreement shall be described in detail in a document that is in substantial conformity with Schedule 1 (a "**Governing Document**"), which includes the expected expenditures required for the operation of the Charitable Project (the "**Budget**"). Each Governing

Document, once executed by the parties, will be part of and subject to the terms of this Agreement.

- 2.2 For certainty, the Supervising Agent will have authority to approve, amend or reject the proposed Budget and other details of a Charitable Project listed in a Governing Document upon reasonable notice to the Performing Agent, including the authority to approve, amend or reject the proposed staffing requirements and salaries.
- 2.3 As more particularly described in a Governing Document, the Charitable Project shall be publicly identified as a project of JNF carried on by the Performing Agent as an agent of JNF, both on-site and in all literature and promotional materials.

### **3. FUNDS**

- 3.1 Based on the final form of Budget approved hereunder for the Charitable Project, the Performing Agent may be required to disburse its own funds and submit to the Supervising Agent for reimbursement accounts and receipts for all expenses of the Charitable Project. If the Supervising Agent determines that the Performing Agent's submission is in order, the Supervising Agent shall reimburse the Performing Agent for its expenditures. Alternatively, funds may be advanced to the Performing Agent by JNF Caniscom as the Charitable Project progresses.
- 3.2 The Performing Agent undertakes to hold all JNF funds received from the Supervising Agent, in trust, separate and apart from its other funds and agrees to return any unexpended funds forthwith upon demand by the Supervising Agent. In this regard, the Performing Agent shall deposit all funds received from the Supervising Agent and/or JNF in an account at a financial institution which is clearly designated as an account for the sole benefit of JNF and will disburse such funds only as directed by the Supervising Agent. Except to the extent that financial commitments made by the Performing Agent on behalf of JNF in accordance with the provisions of this Agreement remain unpaid, the Supervising Agent shall be entitled to withdraw or withhold its funds or other resources at its discretion.
- 3.3 All expenditures of the funds of JNF by the Performing Agent will be pursuant to written directions of the Supervising Agent and/or JNF and the Performing Agent shall obtain a written acknowledgement from all third parties to which funds are given pursuant to such written directions of the Supervising Agent and/or JNF.

### **4. PROPERTY**

- 4.1 JNF reserves to itself the sole and exclusive right to decide what personal property is to be purchased or leased on its behalf and the prices or rentals to be paid therefor, and the Performing Agent has no power or authority to commit JNF in that regard without specific written instructions from JNF or the Supervising Agent. The Supervising Agent may designate, from time to time, the specific type of property, equipment, materials, supplies or facilities which it will provide on behalf of JNF and/or the total amount of funds allocated for the particular purpose, as the case may be. The Supervising Agent may seek the advice of the Performing Agent in designating the type of property, equipment, materials, supplies or facilities which it will provide.

4.2 All of the property, equipment, materials, supplies, facilities or teaching aids acquired by the Performing Agent on behalf of JNF shall be used exclusively for charitable purposes, shall be maintained and shall be made available to third parties for only the stated purposes of JNF and shall be operated by the Performing Agent in accordance with the directions of the Supervising Agent and/or JNF. If funds are used in the acquisition, construction or improvement of any capital property, the property will be used exclusively for charitable purposes. Title to all property, equipment, materials, supplies, and facilities, including realty, purchased or acquired with JNF's funds (the "**Purchased Property**") shall be used as directed by the Supervising Agent and/or JNF. The Performing Agent shall acknowledge in writing and obtain a written acknowledgment from third parties who may be in possession of the Purchased Property, to the effect that the party, holds such property on behalf of JNF and is responsible for the maintenance and insurance of such property. JNF Caniscom, the Supervising Agent and/or the Performing Agent shall from time to time visit or communicate with the operators of the Purchased Property to ensure that it is being maintained, insured and used for charitable purposes.

## 5. **REPORTING**

5.1 The Performing Agent will keep the Supervising Agent currently and fully informed of its activities and of general developments in the areas of activity in which it acts from time to time as operating agent for the Supervising Agent in the manner specified in the applicable Governing Document.

5.2 The Performing Agent agrees to be available, upon request by the Supervising Agent for consultation with a representative or representatives of the Supervising Agent in the manner specified in the applicable Governing Document.

5.3 The Performing Agent will permit the Supervising Agent, JNF, and/or the JNF Caniscom to enter at reasonable times, any premises used by the Performing Agent in connection with the activities and programs of JNF, in order to evaluate and observe their activities and programs and to inspect all records relating to the same.

## 6. **RECORDS AND AUDIT**

6.1 The Performing Agent will keep adequate books and records to substantiate compliance with the obligations of the Performing Agent hereunder, including records relating to the procurement processes described above, of all funds received from or for the account of JNF and for all expenditures incurred, and shall provide the Supervising Agent and/or JNF with access and copies of these books and records on a quarterly basis. The Performing Agent shall keep copies of all such books and records for at least six (6) years.

6.2 The Supervising Agent and/or JNF may, or may appoint an auditor of its own choosing to, examine the books and records of the Performing Agent at any time, including in the six (6) years following the termination of this Agreement, in connection with those matters involving the income and expenditure of funds, and the purchase, maintenance, possession and insurance of property in its capacity as the agent of the Supervising Agent and the subagent of JNF.

- 6.3 The Performing Agent will render to the Supervising Agent annual unaudited statements of account of funds received from or for the account of JNF and of any and all expenditures incurred or committed for its account during such period as required. The Supervising Agent may request at any time from the Performing Agent, the preparation of unaudited financial statements or any other type of report as may be required to enable JNF and/or the Supervising Agent to maintain control over the expenditure of JNF's funds by the Performing Agent. Such statements of account shall be in such form, including computerized records accessible over the internet, as may be directed by the Supervising Agent. The Performing Agent shall furnish to the Supervising Agent each year a full and complete report of the allotment of JNF's funds for the preceding calendar year, which report shall outline in detail all amounts received by the Performing Agent from or on behalf of JNF together with a detailed breakdown of expenditures made by the Performing Agent pursuant to the written directions of the Supervising Agent to enable the Supervising Agent and/or JNF to make informed decisions as to the application of its funds and to maintain full and complete records.

## 7. TERM AND TERMINATION

- 7.1 This Agreement shall have a term of [three (3) years] (the "Term"), commencing on the date first written above, unless terminated earlier in accordance with this Agreement. This Agreement shall be renewed automatically at the end of the Term, and from year to year thereafter, for successive terms of [one-year] each (the "Renewal Term").
- 7.2 This Agreement may be terminated prior to the end of the Term or of the Renewal Term at the option of any party upon [two (2) months'] written notice to the other parties. In the event of termination, the Performing Agent will refund forthwith to the Supervising Agent any monies advanced by the Supervising Agent and not expended in accordance with the Supervising Agent's directions.

## 8. REMEDIES

- 8.1 Any use of JNF funds other than as specified in this Agreement shall constitute an essential breach of this Agreement, and the Supervising Agent shall be entitled to immediately cancel this Agreement, stop, delay or withhold any payment or payments on account of its undertakings hereunder, or reduce the amount of any such payment and/or receive a refund of all moneys advanced by it to the Performing Agent hereunder, including without limitation, moneys spent for the purposes of this Agreement.
- 8.2 Should the Performing Agent fail to carry out the Charitable Project in accordance with the timetable established in Schedule 1 or should the Supervising Agent have any reasonable concern as to the due implementation of the Charitable Project, the Supervising Agent may, without prejudice to any of its other rights or remedies under this Agreement or by law, cancel this Agreement and/or stop, delay or withhold any payment or payments on account of its undertakings hereunder, or reduce the amount of any such payment.

**9. GENERAL**

- 9.1 No person employed by the Performing Agent, or otherwise engaged in implementing the Charitable Project, shall in any way be considered an employee of the Supervising Agent or JNF, nor shall such person have any rights as an employee of the Supervising Agent or JNF, nor shall such person be eligible to receive any payments, compensation, social or other benefits in connection with the performance of his or her services relating to the Charitable Project or with the termination or cancellation of this Agreement, except as provided herein.
- 9.2 The Performing Agent is responsible for the payment of all taxes, Social Security and other payments which employer must pay according to law or custom.
- 9.3 Should any damage or expense be incurred by the Supervising Agent or JNF as a result of a claim filed against the Supervising Agent or JNF by an employee or third party otherwise engaged in implementing the Charitable Project on behalf of or at the request of the Performing Agent, the Performing Agent hereby undertakes to compensate the Supervising Agent or JNF for all such damage and expense upon first receipt of notice of such sent to him or her by the Supervising Agent or JNF, provided that the Supervising Agent or JNF gives the Performing Agent prompt notice of any such suit or claim filed and allows the Performing Agent to defend against the same, at its own expense and in coordination with the Supervising Agent or JNF.
- 9.4 This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall constitute one and the same agreement and notwithstanding their date of execution shall be deemed to be executed on the date set out above.
- 9.5 This Agreement shall be governed by and construed in accordance with the laws of Israel.
- 9.6 The parties hereto agree to comply with the provisions of the *Income Tax Act* (Canada) as it relates to the activities being carried on as contemplated in this Agreement.
- 9.7 Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and shall be given by personal delivery, fax, registered mail or electronic means of communication to the following addresses:
- (a) to the Supervising Agent at:  
[•]
  - (b) to the Performing Agent at:  
[•]
- or to such other address, individual or electronic communication number as may be designated by notice given by either party to the other. Any demand, notice or other communication given by personal delivery shall be conclusively deemed to have been

given on the day of actual delivery thereof and, if given by registered mail, on the fifth business day following the deposit thereof in the mail and, if given by electronic communication, on the day of transmittal thereof if given during the normal business hours of the recipient and on the business day during which such normal business hours next occur if not given during such hours on any day. If the party giving any demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system which might affect the delivery of mail, any such demand, notice or other communication shall not be mailed but shall be given by personal delivery or by electronic communication.

- 9.8 There are no third-party beneficiaries to the Agreement, except JNF is an intended third party beneficiary of the Agreement.
- 9.9 All obligations which, by their nature, are intended to survive the expiration or termination of this Agreement shall remain in effect after the expiration or termination of this Agreement until such obligations expire according to their respective terms or intent.
- 9.10 The parties hereto shall sign further and other documents, cause such meetings to be held, resolutions passed and by laws enacted, exercise their vote and influence, do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part thereof.

IN WITNESS WHEREOF the parties have signed this Agreement by their duly authorized representatives as of the Effective Date.

[•]

[•]

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE 1  
GOVERNING DOCUMENT**

This document is a schedule to the Agency Agreement (“**Agreement**”) dated ● and entered into between [●] and ●. It contains supplementary terms and conditions relating to a Charitable Project to be carried out pursuant to it on behalf of **JEWISH NATIONAL FUND OF CANADA (KEREN KAYEMETH LE’ISRAEL) INC.** (“**JNF**”). All of the terms and conditions of the Agreement apply to the Charitable Project and no provision of this schedule shall be applied or interpreted in a manner which contradicts or frustrates it. Where a provision of this schedule contradicts a provision of the Agreement, the provision of the Agreement shall prevail.

**I. DESCRIPTION OF THE CHARITABLE PROJECT**

[NTD: The CRA and the Agreement require a clear, complete, and detailed description of the activities to be carried out by the agent(s), and an explanation of how the activities further the JNF charitable purpose “To create, provide, enlarge and administer a fund to be made up of voluntary contributions from the Jewish community and others, to be used for charitable purposes”. The location(s) where the activity will be carried on (for example, physical address, town or city) must also be set out.]

**II. TERM OF THE CHARITABLE PROJECT**

[NTD: The CRA and the Agreement require all time frames and deadlines to be described clearly.]

**III. BUDGET OF THE CHARITABLE PROJECT**

[NTD: The CRA and the Agreement require a detailed budget that is specific with respect to amounts, expenditure items, timing and methods and conditions governing the transfer of funds.]

**IV. SPECIFIC REPORTING OBLIGATIONS OF THE PERFORMING AGENT**

[NTD: The CRA and the Agreement require a description of the content and timing of reports. The reports of the agent(s) must be sufficient to show that the expenditures are in accordance with the description of the Charitable Project and the Budget.]

**V. MANNER OF ADVANCES OF FUNDS AND REIMBURSEMENT OF FUNDS**

[NTD: The CRA and the Agreement require a detailed budget that is specific with respect to amounts, expenditure items, timing, methods of transfer and conditions governing the transfer of funds. The CRA and the Agreement require all time frames and deadlines to be described clearly.]

**VI. PUBLICITY**

[NTD: The CRA and the Agreement require that the Charitable Project be appropriately recognized as a Charitable Project of JNF.]

IN WITNESS WHEREOF the parties have signed this Schedule to the Agreement by their duly authorized representatives as of the date first above written.



Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE 2 — GENERAL AGENCY AGREEMENT (WITH SUPERVISING AGENT  
AND PERFORMING AGENT)**

**GENERAL AGENCY AGREEMENT**

**THIS GENERAL AGENCY AGREEMENT** (the “**Agreement**”) is made as of the [●] day of [●], 2017 (the “**Effective Date**”)

**BETWEEN:**

**JEWISH NATIONAL FUND OF CANADA (KEREN KAYEMETH LE’ISRAEL) INC. / FONDS NATIONAL JUIF DU CANADA (KEREN KAYEMETH LE’ISRAEL) INC.**, a corporation without share capital incorporated under the laws of Canada with its registered office in Montreal, Quebec, Canada

(hereinafter called “**JNF**”)

- and -

[●], a [corporation without share capital incorporated under the laws of Israel] with its registered office in [Jerusalem, Israel]

(hereinafter called the “**Supervising Agent**”)

- and -

[●], a [corporation without share capital incorporated under the laws of Israel] with its registered office in [Jerusalem, Israel]

(hereinafter called the “**Performing Agent**”)

**RECITALS:**

- A.** JNF is a registered Canadian charity, and has as its charitable purposes: “To create, provide, enlarge and administer a fund to be made up of voluntary contributions from the Jewish community and others, to be used for charitable purposes”.
- B.** In the interest of efficiency of operation and maximum utilization of the funds at its disposal, JNF wishes to employ the facilities, services and personnel of the Supervising Agent to implement, or supervise the implementation of, one or more charitable projects (each, a “**Charitable Project**”) that will be determined following the Effective Date in accordance with this Agreement.

- C. The Supervising Agent has the requisite facilities, services and personnel to implement, or supervise the implementation of, the Charitable Projects, and wishes to make available such facilities, services and personnel to implement, or supervise the implementation of, the Charitable Projects on behalf of JNF in accordance with this Agreement.
- D. The Performing Agent has the requisite facilities, services and personnel to implement the Charitable Projects, and wishes to make available such facilities, services and personnel to implement the Charitable Projects under the supervision of the Supervising Agent on behalf of JNF in accordance with this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants herein contained and other good and valuable consideration, the parties agree as follows:

**1. RELATIONSHIP OF THE PARTIES**

- 1.1 JNF hereby designates the Supervising Agent and the Performing Agent to act as its non-exclusive agents from time to time in matters relating to the implementation and operation of the Charitable Projects, as may be authorized from time to time by JNF in accordance with this Agreement.
- 1.2 For greater clarification of the relationship between the parties in the performance of Charitable Projects, JNF shall maintain direction, control and supervision over the Supervising Agent, who shall maintain direction, control and supervision over the Performing Agent, and any of the rights or obligations of the Supervising Agent hereunder may be exercised or performed by JNF. Without limiting the generality of the foregoing:
  - (a) the Performing Agent will comply with all instructions of the Supervising Agent or JNF under this Agreement; and
  - (b) JNF may exercise such direction, control and supervision, or any of its other rights under this Agreement, through a committee made up of at least five (5) individuals in Jerusalem (such committee, "**JNF Caniscom**") together with the assistance of one or more paid officials.
- 1.3 If the Supervising Agent and or Performing Agent will be procuring any goods or services on behalf of JNF, the applicable agent shall, where practical, adopt a competitive process for procurement of goods and services for the Charitable Project that enhances transparency, competition and fairness and results in best value. The Supervising Agent and/or Performing Agent agree to ensure, where practical, that a reasonable number of suppliers are given an opportunity to bid and should avoid situations where there may be a bias toward awarding a contract for goods or services for the Charitable Project to a specific person or entity. The Supervising Agent and/or Performing Agent will not accept, directly or indirectly, any payment or benefit from any supplier of goods or services for the negotiation or obtainment of a contract with the applicable agent to purchase such goods and services from the supplier.
- 1.4 All employees and contractors required for the operation of a Charitable Project shall be hired or engaged by the Supervising Agent and/or Performing Agent and their employment

or contractor relationship with the applicable agent shall be governed by Israel law. The Supervising Agent shall have internal staff dedicated to overseeing the Charitable Projects. The Supervising Agent and Performing Agent, based on their greater experience and expertise working in Israel, shall have authority over their respective employees and contractors. JNF shall not be liable for any act or omission of the employees or contractors of the Supervising Agent or the Performing Agent.

- 1.5 The Supervising Agent and the Performing Agent shall carry adequate insurance against any liability arising in relation to each Charitable Project. JNF shall be named as an additional insured party in all such insurance policies. The Supervising Agent and the Performing Agent will provide the JNF with confirmation from the insurer as to the insurance coverage, and an undertaking from the insurer to immediately notify JNF prior to any cancellation, significant change or lapse of the insurance policy.

## 2. SCOPE OF WORK

- 2.1 Each Charitable Project to be carried out by the Performing Agent under the supervision of the Supervising Agent pursuant to the terms of this Agreement shall be described in detail in a document ("**Governing Document**") that is in substantial conformity with Schedule 1 and that is approved by JNF. Each Governing Document will include a proposed budget for the Charitable Project in conformity with the requirements of Schedule 1 with respect to the expected expenditures required for the operation of the Charitable Project (the "**Budget**").
- 2.2 Each Budget shall set out the roles of any employees and contractors which are required by the Supervising Agent and Performing Agent for the operation of the Charitable Project, and the salaries that are expected to be payable by the Supervising Agent and Performing Agent to them in the next year.
- 2.3 For certainty, JNF will have authority to approve, amend or reject the proposed Budget and other details of a Charitable Project listed in a Governing Document upon reasonable notice to the Supervising Agent, including the authority to approve, amend or reject (a) the proposed staffing requirements and salaries, and (b) the proposed arrangements with the Performing Agent.
- 2.4 As more particularly described in a Governing Document, the Charitable Project shall be publicly identified as a project of JNF carried on by the Supervising Agent as an agent of JNF, both on-site and in all literature and promotional materials.

## 3. FUNDS

- 3.1 Based on the final form of Budget approved by JNF for the Charitable Project, each of the Supervising Agent and Performing Agent may be required to disburse their own funds and submit to JNF for reimbursement accounts and receipts for all expenses of the Charitable Project. If JNF determines that the Supervising Agent's and/or Performing Agent's submission is in order, JNF will reimburse the applicable agent for its expenditures through JNF Caniscom. Alternatively, funds may be advanced to JNF Caniscom and then to the Supervising Agent and/or Performing Agent as the Charitable Project progresses.

- 3.2 The Supervising Agent undertakes to hold all funds received from JNF, including via JNF Caniscom, in trust, separate and apart from its other respective funds and agrees to return any unexpended funds forthwith upon demand by JNF. In this regard, the Supervising Agent shall deposit all funds received from JNF in an account at a financial institution which is clearly designated as an account for the sole benefit of JNF and will disburse such funds only as directed by JNF. Except to the extent that financial commitments made by the Supervising Agent on behalf of JNF in accordance with the provisions of this Agreement remain unpaid, JNF shall be entitled to withdraw or withhold its funds or other resources at its discretion.
- 3.3 The Performing Agent undertakes to hold all JNF funds received from the Supervising Agent or JNF, in trust, separate and apart from its other funds and agrees to return to JNF any unexpended funds forthwith upon demand by the Supervising Agent. In this regard, the Performing Agent shall deposit all funds received from the Supervising Agent and/or JNF in an account at a financial institution which is clearly designated as an account for the sole benefit of JNF and will disburse such funds only as directed by the Supervising Agent. Except to the extent that financial commitments made by the Performing Agent on behalf of JNF in accordance with the provisions of this Agreement remain unpaid, the Supervising Agent shall be entitled to withdraw or withhold its funds or other resources at its discretion.
- 3.4 All expenditures of the funds of JNF by the Supervising Agent will be pursuant to written directions of JNF and the Supervising Agent shall obtain a written acknowledgement from all third parties to which funds are given, including any Performing Agent, pursuant to such written directions of JNF.
- 3.5 All expenditures of the funds of JNF by the Performing Agent will be pursuant to written directions of the Supervising Agent and/or JNF and the Performing Agent shall obtain a written acknowledgement from all third parties to which funds are given pursuant to such written directions of the Supervising Agent and/or JNF.

#### 4. **PROPERTY**

- 4.1 JNF reserves to itself the sole and exclusive right to decide what personal property is to be purchased or leased on its behalf and the prices or rentals to be paid therefor, and neither the Supervising Agent nor the Performing Agent has any power or authority to commit JNF in that regard without specific written approval from JNF. JNF may designate, from time to time, the specific type of property, equipment, materials, supplies or facilities which it will provide and/or the total amount of funds allocated for the particular purpose, as the case may be. JNF may seek the advice of the Supervising Agent and/or Performing Agent in designating the type of property, equipment, materials, supplies or facilities which it will provide.
- 4.2 All of the property, equipment, materials, supplies, facilities or teaching aids acquired by the Performing Agent on behalf of JNF shall be used exclusively for charitable purposes, shall be maintained and shall be made available to third parties for only the stated purposes of JNF and shall be operated by the Performing Agent in accordance with the directions of

the Supervising Agent and/or JNF. If funds are used in the acquisition, construction or improvement of any capital property, the property will be used exclusively for charitable purposes. Title to all property, equipment, materials, supplies, and facilities, including realty, purchased or acquired with JNF's funds (the "**Purchased Property**") shall be used as directed by the Supervising Agent and/or JNF. The Performing Agent shall acknowledge in writing and obtain a written acknowledgment from third parties who may be in possession of the Purchased Property, to the effect that the party, holds such property on behalf of JNF and is responsible for the maintenance and insurance of such property. JNF Caniscom, the Supervising Agent and/or the Performing Agent shall from time to time visit or communicate with the operators of the Purchased Property to ensure that it is being maintained, insured and used for charitable purposes.

## **5. REPORTING**

- 5.1 The Performing Agent will keep the Supervising Agent currently and fully informed of its activities and of general developments in the areas of activity in which it acts from time to time as operating agent for the Supervising Agent in the manner specified in the applicable Governing Document.
- 5.2 The Supervising Agent will keep JNF currently and fully informed of its activities, activities of the Performing Agent, and of general developments in the areas of activity in which it or the Performing Agent acts from time to time as operating agent for JNF in the manner specified in the applicable Governing Document.
- 5.3 Each of the Supervising Agent and the Performing Agent agrees to be available, upon request by JNF for consultation with a representative or representatives of JNF in the manner specified in a Governing Document.
- 5.4 Each of the Supervising Agent and the Performing Agent will permit JNF and/or JNF Caniscom to enter at reasonable times, any premises used by the applicable agent in connection with the activities and programs of JNF, in order to evaluate and observe their activities and programs and to inspect all records relating to the same.

## **6. RECORDS AND AUDIT**

- 6.1 Each of the Supervising Agent and the Performing Agent will keep adequate books and records to substantiate compliance with the obligations of the applicable agent hereunder, including records relating to the procurement processes described above, of all funds received from or for the account of JNF and for all expenditures incurred, and shall provide JNF with access and copies of these books and records on a quarterly basis. Each of the Supervising Agent and the Performing Agent shall keep copies of all such books and records for at least six (6) years.
- 6.2 JNF may, or may appoint an auditor of its own choosing to, examine the books and records of the Supervising Agent and/or the Performing Agent at any time, including in the six (6) years following the termination of this Agreement, in connection with those matters involving the income and expenditure of funds, and the purchase, maintenance, possession and insurance of property in its capacity as the agent of JNF.

- 6.3 Each of the Supervising Agent and the Performing Agent will render to JNF annual unaudited statements of account of funds received from or for the account of JNF and of any and all expenditures incurred or committed for its account during such period as required. JNF may request at any time from each of the Supervising Agent and the Performing Agent, the preparation of unaudited financial statements or any other type of report as may be required to enable JNF to maintain control over the expenditure of its funds by the applicable agent. Such statements of account shall be in such form, including computerized records accessible over the internet, as may be directed by JNF. Each of the Supervising Agent and the Performing Agent shall furnish to JNF each year a full and complete report of the allotment of JNF's funds for the preceding calendar year, which report shall outline in detail all amounts received by the applicable agent from or on behalf of JNF together with a detailed breakdown of expenditures made by the applicable agent pursuant to the written directions of JNF to enable JNF to make informed decisions as to the application of its funds and to maintain full and complete records.

## 7. TERM AND TERMINATION

- 7.1 This Agreement shall have a term of [three (3) years] (the "Term"), commencing on the date first written above, unless terminated earlier in accordance with this Agreement. This Agreement shall be renewed automatically at the end of the Term, and from year to year thereafter, for successive terms of [one-year] each (the "Renewal Term").
- 7.2 This Agreement may be terminated prior to the end of the Term or of the Renewal Term at the option of any party upon [three (3) months'] written notice to the other parties. In the event of termination, each of the Supervising Agent and the Performing Agent will refund forthwith to JNF any monies advanced by JNF and not expended in accordance with JNF's directions.

## 8. REMEDIES

- 8.1 Any use of JNF funds other than as specified in this Agreement shall constitute an essential breach of this Agreement, and JNF shall be entitled to immediately cancel this Agreement, stop, delay or withhold any payment or payments on account of its undertakings hereunder, or reduce the amount of any such payment and/or receive a refund of all moneys advanced by it to the Supervising Agent and/or Performing Agent hereunder, including without limitation, moneys spent for the purposes of this Agreement.
- 8.2 Should the Supervising Agent and/or Performing Agent fail to carry out the Charitable Project in accordance with the timetable established in the applicable Governing Document or should JNF have any reasonable concern as to the due implementation of the Charitable Project, JNF may, without prejudice to any of its other rights or remedies under this Agreement or by law, cancel this Agreement and/or stop, delay or withhold any payment or payments on account of its undertakings hereunder, or reduce the amount of any such payment.

9. GENERAL

- 9.1 No person employed by the Supervising Agent and/or the Performing Agent, or otherwise engaged in implementing a Charitable Project, shall in any way be considered an employee of JNF nor shall such person have any rights as an employee of JNF, nor shall such person be eligible to receive any payments, compensation, social or other benefits in connection with the performance of his or her services relating to the Charitable Project or with the termination or cancellation of this Agreement.
- 9.2 Neither the Supervising Agent nor the Performing Agent may assign this Agreement in whole or in part, including the performance of any Charitable Project, without the prior written consent of JNF. The Supervising Agent or Performing Agent may not subcontract any of its obligations hereunder except as contemplated in this Agreement.
- 9.3 The Supervising Agent or the Performing Agent, as the case may be, is responsible for the payment of all taxes, Social Security and other payments which employer must pay according to law or custom.
- 9.4 Should any damage or expense be incurred by JNF as a result of a claim filed against JNF by an employee or third party otherwise engaged in implementing a Charitable Project on behalf of or at the request of the Supervising Agent or the Performing Agent, as the case may be, hereby undertakes to compensate JNF for all such damage and expense upon first receipt of notice of such sent to him or her by JNF, provided that JNF gives the Supervising Agent or the Performing Agent, as the case may be, prompt notice of any such suit or claim filed and allows the Supervising Agent or the Performing Agent to defend against the same, at its own expense and in coordination with JNF.
- 9.5 This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall constitute one and the same agreement and notwithstanding their date of execution shall be deemed to be executed on the date set out above.
- 9.6 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.
- 9.7 The parties hereby submit to the jurisdiction of the courts of the Province of Ontario and agree to comply with the provisions of the *Income Tax Act* (Canada) as it may relate to this Agreement; provided however, that JNF shall be entitled to commence proceedings elsewhere. The parties hereto agree to comply with the provisions of the *Income Tax Act* (Canada) as it relates to the activities being carried on as contemplated in this Agreement.
- 9.8 All notices or other communications by the terms hereof required or permitted to be given by one party to the other parties shall be given in writing by personal delivery or by registered mail, postage prepaid or by commercial courier to such other party as follows:

- (a) to JNF at:





(b) to the Supervising Agent at:

[•]

(c) to the Performing Agent at:

[•]

or to such other address, individual or electronic communication number as may be designated by notice given by either party to the other. Any demand, notice or other communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered mail, on the seventh business day following the deposit thereof in the mail and, if given by electronic communication, on the day of transmittal thereof if given during the normal business hours of the recipient and on the business day during which such normal business hours next occur if not given during such hours on any day. If the party giving any demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system which might affect the delivery of mail, any such demand, notice or other communication shall not be mailed but shall be given by personal delivery or by electronic communication.

- 9.9 All obligations which, by their nature, are intended to survive the expiration or termination of this Agreement shall remain in effect after the expiration or termination of this Agreement until such obligations expire according to their respective terms or intent.
- 9.10 The parties hereto shall sign further and other documents, cause such meetings to be held, resolutions passed and by laws enacted, exercise their vote and influence, do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part thereof.

IN WITNESS WHEREOF the parties have signed this Agreement by their duly authorized representatives as of the Effective Date.

**JEWISH NATIONAL FUND OF  
CANADA (KEREN KAYEMETH  
LE'ISRAEL) INC.**

[● SUPERVISING AGENT]

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[● PERFORMING AGENT]

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE 1  
GOVERNING DOCUMENT**

This document is a schedule to the agreement ("Agreement") dated ● and entered into between **JEWISH NATIONAL FUND OF CANADA (KEREN KAYEMETH LE'ISRAEL) INC.**, [Supervising Agent] and [Performing Agent]. It contains supplementary terms and conditions relating to a Charitable Project to be carried out pursuant to it. All of the terms and conditions of the Agreement apply to the Charitable Project and no provision of this schedule shall be applied or interpreted in a manner which contradicts or frustrates it. Where a provision of this schedule contradicts a provision of the Agreement, the provision of the Agreement shall prevail.

**I. DESCRIPTION OF THE CHARITABLE PROJECT**

[NTD: The CRA and the Agreement require a clear, complete, and detailed description of the activities to be carried out by the agent(s), and an explanation of how the activities further the JNF charitable purpose set out on the first page of the Agreement. The location(s) where the activity will be carried on (for example, physical address, town or city) must also be set out.]

**II. TERM OF THE CHARITABLE PROJECT**

[NTD: The CRA and the Agreement require all time frames and deadlines to be described clearly.]

**III. BUDGET OF THE CHARITABLE PROJECT**

[NTD: The CRA and the Agreement require a detailed budget that is specific with respect to amounts, expenditure items, timing, methods of transfer and conditions governing the transfer of funds.]

**IV. SPECIFIC REPORTING OBLIGATIONS OF THE SUPERVISING AGENT**

[NTD: The CRA and the Agreement require a description of the content and timing of reports. The reports of the agent(s) must be sufficient to show that the expenditures are in accordance with the description of the Charitable Project and the Budget.]

**V. MANNER OF ADVANCES OF FUNDS AND REIMBURSEMENT OF FUNDS**

[NTD: The CRA and the Agreement require a detailed budget that is specific with respect to amounts, expenditure items, timing, methods of transfer and conditions governing the transfer of funds. The CRA and the Agreement require all time frames and deadlines to be described clearly.]

**VI. SPECIFIC DUTIES OF THE PERFORMING AGENT**

[NTD: The CRA and the Agreement require a description of the content and timing of reports. The reports of the agent(s) must be sufficient to show that the expenditures are in accordance with the description of the Charitable Project and the Budget.]

**VII. PUBLICITY**

[NTD: The CRA and the Agreement require that the Charitable Project be appropriately recognized as a Charitable Project of JNF.]

**JEWISH NATIONAL FUND OF  
CANADA (KEREN KAYEMETH  
LE'ISRAEL) INC.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
\_\_\_\_\_

[SUPERVISING AGENT]

[PERFORMING AGENT]

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
\_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
\_\_\_\_\_

**SCHEDULE 3 — GENERAL AGENCY AGREEMENT (WITHOUT SUB-AGENT)**

**GENERAL AGENCY AGREEMENT**

**THIS GENERAL AGENCY AGREEMENT** (the “**Agreement**”) is made as of the [●] day of [●], 2017 (the “**Effective Date**”)

**BETWEEN:**

**JEWISH NATIONAL FUND OF CANADA (KEREN KAYEMETH LE'ISRAEL) INC. / FONDS NATIONAL JUIF DU CANADA (KEREN KAYEMETH LE'ISRAEL) INC.**, a corporation without share capital incorporated under the laws of Canada with its registered office in Montreal, Quebec, Canada

(hereinafter called “**JNF**”)

- and -

[●], a [corporation without share capital incorporated under the laws of Israel] with its registered office in [Jerusalem, Israel]

(hereinafter called the “**Agent**”)

**RECITALS:**

- A. JNF is a registered Canadian charity, and has as its charitable purposes: “To create, provide, enlarge and administer a fund to be made up of voluntary contributions from the Jewish community and others, to be used for charitable purposes”.
- B. In the interest of efficiency of operation and maximum utilization of the funds at its disposal, JNF wishes to employ the facilities, services and personnel of the Agent to implement, or supervise the implementation of, one or more charitable projects (each, a “**Charitable Project**”) that will be determined following the Effective Date in accordance with this Agreement.
- C. The Agent has the requisite facilities, services and personnel to implement, or supervise the implementation of, the Charitable Projects, and wishes to make available such facilities, services and personnel to implement, or supervise the implementation of, the Charitable Projects on behalf of JNF in accordance with this Agreement.

**THEREFORE**, in consideration of the mutual covenants herein contained and other good and valuable consideration, the parties agree as follows:

## 1. RELATIONSHIP OF JNF AND AGENT

- 1.1 JNF hereby designates the Agent to act as its non-exclusive agent from time to time in matters relating to the implementation and operation of the Charitable Project, as may be authorized from time to time by JNF in accordance with this Agreement.
- 1.2 For greater clarification of the relationship between JNF and the Agent:
- (a) JNF will maintain direction, control and supervision over the application of its funds by the Agent;
  - (b) the Agent will comply with all instructions of JNF under this Agreement; and
  - (c) JNF may exercise such direction, control and supervision, or any of its other rights under this Agreement, through a committee made up of at least five (5) individuals in Jerusalem ("**JNF Caniscom**") in Israel together with the assistance of one or more paid employees of JNF.
- 1.3 If the Agent will be procuring any goods or services on behalf of JNF, the Agent shall, where practical, adopt a competitive process for procurement of goods and services for the Charitable Project that enhances transparency, competition and fairness and results in best value. The Agent agrees to ensure, where practical, that a reasonable number of suppliers are given an opportunity to bid and should avoid situations where there may be a bias toward awarding a contract for goods or services for the Charitable Project to a specific person or entity. The Agent will not accept, directly or indirectly, any payment or benefit from any supplier of goods or services for the negotiation or obtainment of a contract with the Agent to purchase such goods and services from the supplier.
- 1.4 All employees and contractors required for the operation of the Charitable Project shall be hired or engaged by the Agent in accordance with this Agreement and their employment or contractor relationship with the Agent shall be governed by Israel law. The Agent shall have internal staff dedicated to overseeing the Charitable Project. The Agent, based on its greater experience and expertise working in Israel, shall have authority over its employees and contractors. JNF shall not be liable for any act or omission of the employees or contractors of the Agent.
- 1.5 The Agent shall carry adequate insurance against any liability arising in relation to the Charitable Project. JNF shall be named as an additional insured party in all such insurance policies. The Agent will provide JNF with confirmation from the insurer as to the insurance coverage, and an undertaking from the insurer to immediately notify JNF prior to any cancellation, significant change or lapse of the insurance policy

## 2. SCOPE OF WORK

- 2.1 Each Charitable Project to be carried out by the Agent pursuant to the terms of this Agreement shall be described in detail in a document ("**Governing Document**") that is in substantial conformity with Schedule 1 and that is approved by JNF. Each Governing Document will include a proposed budget for the Charitable Project in conformity with the

requirements of Schedule 1 with respect to the expected expenditures required for the operation of the Charitable Project (the “**Budget**”).

- 2.2 Each Budget shall set out the roles of any employees and contractors which are required by the Agent for the operation of the Charitable Project, and the salaries that are expected to be payable by the Agent to them in the next year.
- 2.3 For certainty, JNF will have authority to approve, amend or reject the proposed Budget and other details of a Charitable Project listed in a Governing Document upon reasonable notice to the Agent, including the authority to approve, amend or reject the proposed staffing requirements and salaries.
- 2.4 As more particularly described in a Governing Document, the Charitable Project shall be publicly identified as a project of JNF carried on by the Agent as an agent of JNF, both on-site and in all literature and promotional materials.

### **3. FUNDS**

- 3.1 Based on the final form of Budget approved by JNF for the Charitable Project, the Agent may be required to disburse its own funds and submit to JNF for reimbursement accounts and receipts for all expenses of the Charitable Project. If JNF determines that the Agent’s submission is in order, JNF will reimburse the Agent for its expenditures through JNF Caniscom. Alternatively, funds may be advanced to JNF Caniscom and then to the Agent as the Charitable Project progresses.
- 3.2 The Agent undertakes to hold all funds received from JNF, including via JNF Caniscom, in trust, separate and apart from its other funds and agrees to return any unexpended funds forthwith upon demand by JNF. In this regard, the Agent shall deposit all funds received from JNF in an account at a financial institution which is clearly designated as an account for the sole benefit of JNF and will disburse such funds only as directed by JNF. Except to the extent that financial commitments made by the Agent on behalf of JNF in accordance with the provisions of this Agreement remain unpaid, JNF shall be entitled to withdraw or withhold its funds or other resources at its discretion.
- 3.3 All expenditures of the funds of JNF by the Agent will be pursuant to written directions of JNF and the Agent shall obtain a written acknowledgement from all third parties to which funds are given pursuant to such written directions of JNF.

### **4. PROPERTY**

- 4.1 JNF reserves to itself the sole and exclusive right to decide what personal property is to be purchased or leased on its behalf and the prices or rentals to be paid therefor, and the Agent has no power or authority to commit JNF in that regard without specific written instructions from JNF. JNF may designate, from time to time, the specific type of property, equipment, materials, supplies or facilities which it will provide and/or the total amount of funds allocated for the particular purpose, as the case may be. JNF may seek the advice of the Agent in designating the type of property, equipment, materials, supplies or facilities which it will provide.

- 4.2 All of the property, equipment, materials, supplies, facilities or teaching aids acquired by the Agent on behalf of JNF shall be used exclusively for charitable purposes, shall be maintained and shall be made available to third parties for only the stated purposes of JNF and shall be operated by the Agent in accordance with the directions of JNF. If funds are used in the acquisition, construction or improvement of any capital property, the property will be used exclusively for charitable purposes. Title to all property, equipment, materials, supplies, and facilities, including realty, purchased or acquired with funds supplied by JNF (the “**Purchased Property**”) shall be used as directed by JNF. The Agent shall acknowledge in writing and obtain a written acknowledgment from third parties who may be in possession of the Purchased Property, to the effect that the third party holds such property on behalf of JNF and is responsible for the maintenance and insurance of such property. JNF Caniscom and/or the Agent shall from time to time visit or communicate with the operators of the Purchased Property to ensure that it is being maintained, insured and used for charitable purposes.

## 5. **REPORTING**

- 5.1 The Agent will keep JNF currently and fully informed of its activities and of general developments in the areas of activity in which it acts from time to time as operating agent for JNF in the manner specified in the Governing Document.
- 5.2 The Agent agrees to be available, upon request by JNF for consultation with a representative or representatives of JNF in the manner specified in Schedule 1.
- 5.3 The Agent will permit JNF and/or JNF Caniscom to enter at reasonable times, any premises used by the Agent in connection with the activities and programs of JNF, in order to evaluate and observe their activities and programs and to inspect all records relating to the same.

## 6. **RECORDS AND AUDIT**

- 6.1 The Agent will keep adequate books and records to substantiate compliance with the obligations of the Agent hereunder, including records relating to the procurement processes described above, of all funds received from or for the account of JNF and for all expenditures incurred, and shall provide JNF with access and copies of these books and records on a quarterly basis. The Agent shall keep copies of all such books and records for at least six (6) years.
- 6.2 JNF may, or may appoint an auditor of its own choosing to, examine the books and records of the Agent at any time, including in the six (6) years following the termination of this Agreement, in connection with those matters involving the income and expenditure of funds, and the purchase, maintenance, possession and insurance of property in its capacity as the agent of JNF.
- 6.3 The Agent will render to JNF annual unaudited statements of account of funds received from or for the account of JNF and of any and all expenditures incurred or committed for its account during such period as required. JNF may request at any time from the Agent, the preparation of unaudited financial statements or any other type of report as may be

required to enable JNF to maintain control over the expenditure of its funds by the Agent. Such statements of account shall be in such form, including computerized records accessible over the internet, as may be directed by JNF. The Agent shall furnish to JNF each year a full and complete report of the allotment of JNF's funds for the preceding calendar year, which report shall outline in detail all amounts received by the Agent from or on behalf of JNF together with a detailed breakdown of expenditures made by the Agent pursuant to the written directions of JNF to enable JNF to make informed decisions as to the application of its funds and to maintain full and complete records.

## **7. TERM AND TERMINATION**

- 7.1 This Agreement shall have a term of [three (3) years] (the "Term"), commencing on the date first written above, unless terminated earlier in accordance with this Agreement. This Agreement shall be renewed automatically at the end of the Term, and from year to year thereafter, for successive terms of [one-year] each (the "Renewal Term").
- 7.2 This Agreement may be terminated prior to the end of the Term or of the Renewal Term at the option of either party upon [three (3) months'] written notice to the other party. In the event of termination, the Agent will refund forthwith to JNF any monies advanced by JNF and not expended in accordance with JNF's directions.

## **8. REMEDIES**

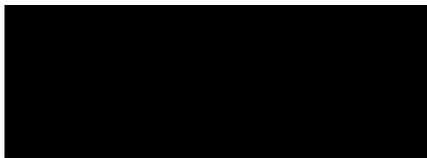
- 8.1 Any use of JNF funds other than as specified in this Agreement shall constitute an essential breach of this Agreement, and JNF shall be entitled to immediately cancel this Agreement, stop, delay or withhold any payment or payments on account of its undertakings hereunder, or reduce the amount of any such payment and/or receive a refund of all moneys advanced by it to the Agent hereunder, including without limitation, moneys spent for the purposes of this Agreement.
- 8.2 Should the Agent fail to carry out the Charitable Project in accordance with the timetable established in the applicable Governing Document or should JNF have any reasonable concern as to the due implementation of the Charitable Project, JNF may, without prejudice to any of its other rights or remedies under this Agreement or by law, cancel this Agreement and/or stop, delay or withhold any payment or payments on account of its undertakings hereunder, or reduce the amount of any such payment.

## **9. GENERAL**

- 9.1 No person employed by the Agent, or otherwise engaged in implementing the Charitable Project, shall in any way be considered an employee of JNF nor shall such person have any rights as an employee of JNF, nor shall such person be eligible to receive any payments, compensation, social or other benefits in connection with the performance of his or her services relating to the Charitable Project or with the termination or cancellation of this Agreement, except as provided herein.

- 9.2 Neither party may assign this Agreement in whole or in part, including the performance of any Charitable Project, without the prior written consent of the other party. The Agent may not subcontract any of its obligations hereunder except as contemplated in this Agreement.
- 9.3 The Agent is responsible for the payment of all taxes, Social Security and other payments which employer must pay according to law or custom.
- 9.4 Should any damage or expense be incurred by JNF as a result of a claim filed against JNF by an employee or third party otherwise engaged in implementing the Charitable Project on behalf of or at the request of the Agent, the Agent hereby undertakes to compensate JNF for all such damage and expense upon first receipt of notice of such sent to him or her by JNF, provided that JNF gives the Agent prompt notice of any such suit or claim filed and allows the Agent to defend against the same, at its own expense and in coordination with JNF.
- 9.5 This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall constitute one and the same agreement and notwithstanding their date of execution shall be deemed to be executed on the date set out above.
- 9.6 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.
- 9.7 The parties hereby submit to the jurisdiction of the courts of the Province of Ontario and agree to comply with the provisions of the *Income Tax Act* (Canada) as it may relate to this Agreement; provided however, that a party shall be entitled to commence proceedings elsewhere. The parties hereto agree to comply with the provisions of the *Income Tax Act* (Canada) as it relates to the activities being carried on as contemplated in this Agreement.
- 9.8 All notices or other communications by the terms hereof required or permitted to be given by one party to the other shall be given in writing by personal delivery or by registered mail, postage prepaid or by commercial courier to such other party as follows:

(a) to JNF at:



(b) to the Agent at:

[•]

or to such other address, individual or electronic communication number as may be designated by notice given by either party to the other. Any demand, notice or other communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered mail, on the seventh

business day following the deposit thereof in the mail and, if given by electronic communication, on the day of transmittal thereof if given during the normal business hours of the recipient and on the business day during which such normal business hours next occur if not given during such hours on any day. If the party giving any demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system which might affect the delivery of mail, any such demand, notice or other communication shall not be mailed but shall be given by personal delivery or by electronic communication.

- 9.9 All obligations which, by their nature, are intended to survive the expiration or termination of this Agreement shall remain in effect after the expiration or termination of this Agreement until such obligations expire according to their respective terms or intent.
- 9.10 The parties hereto shall sign further and other documents, cause such meetings to be held, resolutions passed and by laws enacted, exercise their vote and influence, do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part thereof.

IN WITNESS WHEREOF the parties have signed this Agreement by their duly authorized representatives as of the Effective Date.

**JEWISH NATIONAL FUND OF [●AGENT]  
CANADA (KEREN KAYEMETH  
LE'ISRAEL) INC.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## SCHEDULE 1

This document is a schedule to the General Agency Agreement (“Agreement”) dated ● and entered into between JEWISH NATIONAL FUND OF CANADA (KEREN KAYEMETH LE’ISRAEL) INC. and [●]. It contains supplementary terms and conditions relating to a Charitable Project to be carried out pursuant to it. All of the terms and conditions of the Agreement apply to the Charitable Project and no provision of this schedule shall be applied or interpreted in a manner which contradicts or frustrates it. Where a provision of this schedule contradicts a provision of the Agreement, the provision of the Agreement shall prevail.

### I. DESCRIPTION OF THE CHARITABLE PROJECT

[NTD: The CRA and the Agreement require a clear, complete, and detailed description of the activities to be carried out by the agent(s), and an explanation of how the activities further the JNF charitable purpose set out on the first page of the Agreement. The location(s) where the activity will be carried on (for example, physical address, town or city) must also be set out.]

### II. TERM OF THE CHARITABLE PROJECT

[NTD: The CRA and the Agreement require all time frames and deadlines to be described clearly.]

### III. BUDGET OF THE CHARITABLE PROJECT

[NTD: The CRA and the Agreement require a detailed budget that is specific with respect to amounts, expenditure items, timing and methods and conditions governing the transfer of funds.]

### IV. SPECIFIC REPORTING OBLIGATIONS OF THE AGENT

[NTD: The CRA and the Agreement require a description of the content and timing of reports. The reports of the agent(s) must be sufficient to show that the expenditures are in accordance with the description of the Charitable Project and the Budget.]

### V. MANNER OF ADVANCES OF FUNDS AND REIMBURSEMENT OF FUNDS

[NTD: The CRA and the Agreement require a detailed budget that is specific with respect to amounts, expenditure items, timing, methods of transfer and conditions governing the transfer of funds. The CRA and the Agreement require all time frames and deadlines to be described clearly.]

### VI. PUBLICITY

[NTD: The CRA and the Agreement require that the Charitable Project be appropriately recognized as a Charitable Project of JNF.]

JEWISH NATIONAL FUND OF  
CANADA (KEREN KAYEMETH  
LE'ISRAEL) INC.

[●AGENT]

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## SCHEDULE 4 — SERVICES AGREEMENT

### SERVICES AGREEMENT

THIS SERVICES AGREEMENT (the “Agreement”) is made as of the [●] day of [●], 2017 (the “Effective Date”)

#### BETWEEN:

**JEWISH NATIONAL FUND OF CANADA (KEREN KAYEMETH LE'ISRAEL) INC. / FONDS NATIONAL JUIF DU CANADA (KEREN KAYEMETH LE'ISRAEL) INC.**, a corporation without share capital incorporated under the laws of Canada with its registered office in Montreal, Quebec, Canada

(hereinafter called “JNF”)

- and -

[●], a [corporation without share capital incorporated under the laws of Israel] with its registered office in [Jerusalem, Israel]

(hereinafter called the “Contractor”)

#### RECITALS:

- A. JNF is a registered Canadian charity, and has as its charitable purposes: “To create, provide, enlarge and administer a fund to be made up of voluntary contributions from the Jewish community and others, to be used for charitable purposes”.
- B. In the interest of efficiency of operation and maximum utilization of the funds at its disposal in the pursuit of the foregoing charitable purpose, JNF wishes to engage the Contractor to perform certain services relating to the JNF’s charitable projects.
- C. The Contractor has the requisite facilities, experience, and personnel to perform those services.

**THEREFORE**, in consideration of the mutual covenants herein contained and other good and valuable consideration, the parties agree as follows:

#### 1. SERVICES AND DELIVERABLES

- 1.1 Subject to the terms and conditions of this Agreement, JNF hereby engages the Contractor to perform the Services (as defined below) as specified in one or more Statement of Work referencing this Agreement and signed by authorized representatives of each party (each, a “Statement of Work”). Each Statement of Work will be in substantial conformity with Schedule 1, and will, among other things, set forth a detailed description of the services to

be performed by Contractor (the “Services”), any deliverables to be provided by the Contractor (the “Deliverables”), and the fees required to complete the Services and provide the Deliverables.

- 1.2 The Contractor acknowledges that it is aware of JNF’s charitable purposes, and agrees to perform the Services and provide any Deliverables in order to assist JNF to carry out the JNF charitable purposes.

## **2. RELATIONSHIP BETWEEN THE PARTIES**

- 2.1 For greater clarification of the relationship between JNF and the Contractor:
  - (a) JNF will maintain direction, control and supervision over the performance of the Services and the provision of any Deliverables by the Contractor;
  - (b) the Contractor will comply with all instructions of JNF under this Agreement; and
  - (c) JNF may exercise such direction, control and supervision, or any of its other rights under this Agreement, through a committee made up of at least five (5) individuals in Jerusalem (“JNF Caniscom”) in Israel together with the assistance of one or more paid employees of JNF.
- 2.2 All employees and contractors required for the performance of the Services and provision of any Deliverables shall be hired or engaged by the Contractor and their employment or contractor relationship with the Contractor shall be governed by Israel law. The Contractor, based on its greater experience and expertise working in the Israel context, shall have authority over its employees and contractors. JNF shall not be liable for any act or omission of the employees or contractors of the Contractor.
- 2.3 The Contractor shall carry adequate insurance against any liability arising in relation to the Services and Deliverables. JNF shall be named as an additional insured party in all such insurance policies. The Contractor will provide the JNF with confirmation from the insurer as to the insurance coverage, and an undertaking from the insurer to immediately notify the JNF prior to any cancellation, significant change or lapse of the insurance policy.

## **3. COMPENSATION**

- 3.1 JNF agrees to compensate the Contractor for all Services and Deliverables satisfactorily and timely performed or provided, as set forth in each Statement of Work, and to reimburse the Contractor for reasonable expenses incurred that have been approved by JNF in writing prior to any such expenses being incurred. The Contractor shall invoice JNF [monthly] for Services performed and any Deliverables provided and pre-approved expenses incurred during that period. Each invoice submitted to JNF shall be submitted to the address and contact designated by JNF and be accompanied by all documented receipts upon request. JNF shall pay the Contractor within [sixty (60)] days of receipt of the Contractor’s invoice. JNF shall have no obligation to the Contractor for any fees for Services performed or Deliverables provided which are not invoiced by the Contractor within [ninety (90)] days of the Contractor’s completion of such Services or Deliverables.

3.2 [Alternatively, funds may be advanced at the discretion of JNF to the Contractor in accordance with the applicable Statement of Work. In that case, the Contractor undertakes to hold all funds received from JNF in trust, separate and apart from its other funds and agrees to return any unexpended funds forthwith upon demand by JNF. In this regard, the Contractor shall deposit all funds received from JNF in an account at a financial institution which is clearly designated as an account for the sole benefit of JNF and will disburse such funds only as directed by JNF and in accordance with the Statement of Work. Except to the extent that financial commitments made by the Contractor on behalf of JNF in accordance with the provisions of this Agreement remain unpaid, JNF shall be entitled to withdraw or withhold its funds or other resources at its discretion.]

#### **4. PROPERTY**

4.1 JNF reserves to itself the sole and exclusive right to decide what personal property is to be purchased or leased on its behalf and the prices or rentals to be paid therefor, and the Contractor has no power or authority to commit JNF in that regard without specific written approval from JNF.

#### **5. REPORTING**

5.1 The Contractor will keep JNF currently and fully informed of its activities and of general developments relating to the performance of the Services and the provision of any Deliverables for JNF in the manner specified in the Statement of Work.

5.2 The Contractor agrees to be available, upon request by JNF for consultation with a representative or representatives of JNF in the manner specified in the Statement of Work.

5.3 The Contractor will permit JNF and/or JNF Caniscom to enter at reasonable times, any premises used by the Contractor in connection with the Services, in order to evaluate and observe the Contractor's activities and to inspect all records relating to the same.

#### **6. RECORDS AND AUDIT**

6.1 The Contractor will keep adequate books and records to substantiate compliance with the obligations of the Contractor hereunder, including records of all funds received from or for the account of JNF and for all expenditures incurred, and shall provide JNF with access and copies of these books and records on a quarterly basis. The Contractor shall keep copies of all such books and records for at least six (6) years.

6.2 JNF may, or may appoint an auditor of its own choosing to, examine the books and records of the Contractor at any time, including in the six (6) years following the termination of this Agreement, in connection with those matters involving the income and expenditure of funds, and the purchase, maintenance, possession and insurance of property in its capacity as the Contractor of JNF.

6.3 The Contractor will render to JNF annual unaudited statements of account of funds received from or for the account of JNF and of any and all expenditures incurred or committed for its account during such period as required. JNF may request at any time

from the Contractor, the preparation of unaudited financial statements or any other type of report as may be required to enable JNF to maintain control over the expenditure of its funds by the Contractor. Such statements of account shall be in such form, including computerized records accessible over the internet, as may be directed by JNF. The Contractor shall furnish to JNF each year a full and complete report of the allotment of JNF's funds for the preceding calendar year, which report shall outline in detail all amounts received by the Contractor from or on behalf of JNF together with a detailed breakdown of expenditures made by the Contractor pursuant to the written directions of JNF to enable JNF to make informed decisions as to the application of its funds and to maintain full and complete records.

## **7. TERM AND TERMINATION**

- 7.1 This Agreement shall have an initial term of [one (1) year] (the "Initial Term"), commencing on the date first written above, unless terminated earlier in accordance with this Agreement. This Agreement shall be renewed automatically at the end of the Initial Term, and from year to year thereafter, for successive terms of one-year each (the "Renewal Term").
- 7.2 This Agreement, and any Statements of Work hereunder, may be terminated prior to the end of the Initial Term or of the Renewal Term at the option of either party upon [thirty (30) days'] prior written notice to the other party. In the event of termination, the Contractor will refund forthwith to JNF any monies advanced by JNF and not expended in accordance with JNF's directions.
- 7.3 Notwithstanding the foregoing, if no Statement of Work is in force for a period of two (2) years, this Agreement will automatically terminate.

## **8. REMEDIES**

- 8.1 Any use of JNF funds other than as specified in this Agreement shall constitute an essential breach of this Agreement, and JNF shall be entitled to immediately cancel this Agreement, stop, delay or withhold any payment or payments on account of its undertakings hereunder, or reduce the amount of any such payment and/or receive a refund of all moneys advanced by it to the Contractor hereunder, including without limitation, moneys spent for the purposes of this Agreement.
- 8.2 Should the Contractor fail to carry out the Services or provide the Deliverables in accordance with the timetable established in the Statement of Work or should JNF have any reasonable concern as to the implementation of the Services, JNF may, without prejudice to any of its other rights or remedies under this Agreement or by law, cancel this Agreement and/or stop, delay or withhold any payment or payments on account of its undertakings hereunder, or reduce the amount of any such payment.

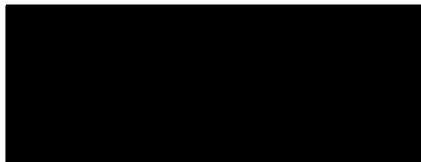
## **9. GENERAL**

- 9.1 No person employed by the Contractor, or otherwise engaged in performing the Services or providing any Deliverables, shall in any way be considered an employee of JNF nor

shall such person have any rights as an employee of JNF, nor shall such person be eligible to receive any payments, compensation, social or other benefits in connection with the performance of his or her services or with the termination or cancellation of this Agreement, except as provided herein.

- 9.2 Neither party may assign this Agreement in whole or in part without the prior written consent of the other party. The Contractor may not subcontract any of its obligations hereunder except as contemplated under this Agreement.
- 9.3 The Contractor is responsible for the payment of all taxes, Social Security and other payments which employer must pay according to law or custom.
- 9.4 Should any damage or expense be incurred by JNF as a result of a claim filed against JNF by an employee or third party otherwise engaged in performing the Services and providing any Deliverables on behalf of or at the request of the Contractor hereby undertakes to compensate JNF for all such damage and expense upon first receipt of notice of such sent to him or her by JNF, provided that JNF gives the Contractor prompt notice of any such suit or claim filed and allows the Contractor to defend against the same, at its own expense and in coordination with JNF.
- 9.5 This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall constitute one and the same agreement and notwithstanding their date of execution shall be deemed to be executed on the date set out above.
- 9.6 Except as expressly provided herein, this Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.
- 9.7 The parties hereby submit to the jurisdiction of the courts of the Province of Ontario and agree to comply with the provisions of the *Income Tax Act* (Canada) as it may relate to this Agreement; provided however, that a party shall be entitled to commence proceedings elsewhere. The parties hereto agree to comply with the provisions of the *Income Tax Act* (Canada) as it relates to the activities being carried on as contemplated in this Agreement.
- 9.8 Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and shall be given by personal delivery, fax, registered mail or electronic means of communication to the following addresses:

(a) to JNF at:



(b) to the Contractor at:

[•]

or to such other address, individual or electronic communication number as may be designated by notice given by either party to the other. Any demand, notice or other communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered mail, on the seventh business day following the deposit thereof in the mail and, if given by electronic communication, on the day of transmittal thereof if given during the normal business hours of the recipient and on the business day during which such normal business hours next occur if not given during such hours on any day. If the party giving any demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system which might affect the delivery of mail, any such demand, notice or other communication shall not be mailed but shall be given by personal delivery or by electronic communication.

- 9.9 All obligations which, by their nature, are intended to survive the expiration or termination of this Agreement shall remain in effect after the expiration or termination of this Agreement until such obligations expire according to their respective terms or intent.
- 9.10 The parties hereto shall sign further and other documents, cause such meetings to be held, resolutions passed and by laws enacted, exercise their vote and influence, do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part thereof.

IN WITNESS WHEREOF the parties have signed this Agreement by their duly authorized representatives as of the Effective Date.

**JEWISH NATIONAL FUND OF [●CONTRACTOR]  
CANADA (KEREN KAYEMETH  
LE'ISRAEL) INC.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE 1  
STATEMENT OF WORK**

This document is a Statement of Work to the Services Agreement (“**Agreement**”) dated ● and entered into between **JEWISH NATIONAL FUND OF CANADA (KEREN KAYEMETH LE’ISRAEL) INC.** and ●. It contains supplementary terms and conditions relating to the Services and Deliverables to be carried out or provided pursuant to it. All of the terms and conditions of the Agreement apply to the Services and Deliverables and no provision of this Statement of Work shall be applied or interpreted in a manner which contradicts or frustrates it. Where a provision of this Statement of Work contradicts a provision of the Agreement, the provision of the Agreement shall prevail.

**I. DESCRIPTION OF THE WORK**

[NTD: The CRA and the Agreement require a clear, complete, and detailed description of the activities to be carried out by the parties, and an explanation of how the activities further the JNF charitable purpose set out on the first page of the Agreement. The location(s) where the activity will be carried on (for example, physical address, town or city) must also be set out.]

**II. TERM**

[NTD: The CRA requires all time frames and deadlines to be described clearly.]

**III. COMPENSATION**

[NTD: The CRA and the Agreement require a detailed budget that is specific with respect to amounts, expenditure items, timing and methods and conditions governing the transfer of funds.]

**IV. SPECIFIC REPORTING OBLIGATIONS OF THE CONTRACTOR**

[NTD: The CRA and the Agreement require a description of the content and timing of reports. The reports of the Contractor must be sufficient to show that the expenditures are in accordance with the description of the work and the compensation amounts contemplated in this Statement of Work.]

**V. MANNER OF ADVANCES OF FUNDS AND REIMBURSEMENT OF FUNDS**

[NTD: If applicable, the CRA and the Agreement require a detailed budget that is specific with respect to amounts, expenditure items, timing, methods of transfer and conditions governing the transfer of funds.]

**JEWISH NATIONAL FUND OF [● CONTRACTOR]  
CANADA (KEREN KAYEMETH  
LE'ISRAEL) INC.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## SCHEDULE 5 — JOINT VENTURE AGREEMENT

### JOINT VENTURE AGREEMENT

THIS JOINT VENTURE AGREEMENT (the “**Agreement**”) is made as of the [●] day of April, 2018 (the “**Effective Date**”)

**BETWEEN:**

**JEWISH NATIONAL FUND OF CANADA (KEREN KAYEMETH LE’ISRAEL) INC. / FONDS NATIONAL JUIF DU CANADA (KEREN KAYEMETH LE’ISRAEL) INC.**, a corporation without share capital incorporated under the laws of Canada with its registered office in Montreal, Quebec, Canada

(hereinafter called “**JNF**”)

- and -

**KEREN KAYEMETH LE’ISRAEL**, a public benefit company governed by Israeli law with its registered office in Jerusalem, Israel

(hereinafter called the “**KKL**”)

**RECITALS:**

- A.** JNF is a registered Canadian charity, and has as its charitable purposes: “To create, provide, enlarge and administer a fund to be made up of voluntary contributions from the Jewish community and others, to be used for charitable purposes”.
- B.** KKL is a non-governmental organization (NGO) registered as a public benefit company governed by Israeli law and is regulated by the Israeli Corporations Authority. KKL aims to work toward developing the land, strengthening the bond between the Jewish people and their homeland, responding to the needs of the country and preserving Israel’s natural and cultural heritage.
- C.** Each party is legally and operationally in all respects a separate and independent entity, each with its own separate Board of Directors, employees, and donors, but the parties share a common purpose and objective in strengthening the land and people of Israel for all of its citizens and Jews throughout the diaspora.
- D.** The parties wish to collaborate from time to time, and enter into this Agreement to govern the manner in which existing and future charitable projects in Israel are, or are to be, implemented jointly by them (each, a “**Charitable Project**”).

**THEREFORE**, in consideration of the mutual covenants herein contained and other good and valuable consideration, the parties agree as follows:

## 1. JOINT VENTURE

- 1.1 JNF and KKL hereby form a joint venture (the “**Joint Venture**”) to carry out the Charitable Projects in Israel, as identified, defined and determined pursuant to the terms and conditions of this Agreement from time to time. Notwithstanding the foregoing, any on-going Charitable Projects that commenced prior to this Agreement shall, unless the parties determine otherwise on a case by case basis, be governed by the terms and conditions of this Agreement.
- 1.2 Each party will perform its obligations under this Agreement and contribute to the Joint Venture such resources as the parties agree are necessary to perform the Charitable Projects.

## 2. CHARITABLE PROJECTS

- 2.1 Each Charitable Project to be carried out by the Joint Venture shall be described in a document (“**Governing Document**”) that is in substantial conformity with Schedule 1. Each Governing Document, once agreed upon by the parties, will be part of and subject to the terms of this Agreement.
- 2.2 Each Governing Document will provide for, at a minimum:
  - (a) a detailed description of the Charitable Project, including how the Charitable Project is consistent with the JNF’s charitable purpose and KKL’s purpose and the roles and responsibilities of Joint Venture’s personnel in the field; and
  - (b) a proposed budget (the “**Budget**”) for the Charitable Project that sets out the expected expenditures required for the operation of the Charitable Project, including the salaries that are expected to be payable to any employees and contractors.
- 2.3 Notwithstanding the foregoing, if the parties determine that the documentation describing on-going Charitable Projects that commenced prior to the date of this Agreement may not satisfy applicable Canadian charities laws and/or Israeli laws, the parties shall cooperate together to amend that documentation to render it compliant with such laws or enter into a new Governing Document to describe the Charitable Project.

## 3. RELATIONSHIP OF THE PARTIES

- 3.1 All matters pertaining to decisions of the Joint Venture, including the selection, oversight, and performance of any and all Charitable Projects, as well as the approval or modification of any Charitable Project will be made by the Joint Venture’s board (the “**Board**”). The Board shall initially consist of four (6) directors, of whom:
  - (a) three (3) shall be representatives of the JNF, who shall initially be the Executive Director, the Chief Financial Officer, and legal counsel of JNF; and

- (b) three (3) shall be representatives of KKL, who shall initially be the Executive Director, the Chief Financial Officer and Legal Advisor of KKL.

Additional directors may be appointed by mutual agreement of the parties; provided each party has an equal number of directors on the Board, not to exceed four (4) directors for each party. Each party will have the right to remove one or more directors appointed by it and to appoint the successor(s), and will advise the other party promptly, but in any case, no later than thirty (30) days of any change to any of its representatives.

- 3.2 The Board will meet bi-annually at either the registered office of the JNF, the registered office of KKL or via telephone or teleconferencing. The Board may meet more frequently via telephone or teleconferencing, as one party or both parties may require, to dictate and account for how their respective resources are being used and to discuss the progress of one or more Charitable Projects and related issues.
- 3.3 No decision of the Board shall be effective:
  - (a) unless a majority of the representatives, consisting of equal number of representatives from both parties, are present at a Board meeting, either in person or electronically, when the decision is made;
  - (b) if it purports to eliminate the ability of JNF or KKL to approve or reject any amendments to the Budget; or
  - (c) if it purports to eliminate the ability of JNF or KKL to provide input into the performance of a Charitable Project or to direct or modify the Charitable Project, or to establish deadlines or other performance benchmarks.
  - (d) All decisions will be binding. Only the Board will be authorised to make changes to Board decisions.
  - (e) All decisions must coincide with both Israeli and Canadian charitable laws.
- 3.4 In addition to Board meetings and other reporting obligations hereunder, each party will keep the other party currently and fully informed of its activities and of general developments in the areas of activity in which it acts from time to time hereunder.
- 3.5 The official language of the relationship between the parties will be English.
- 3.6 The parties acknowledge that if a party allows the resources that the other party has contributed to the Joint Venture to be used other than as authorized under this Agreement, including any change to a Charitable Project that might cause the overall project to no longer be charitable under applicable Canadian and / or Israeli laws, the other party may, upon notice, withdraw such resources from the Charitable Project or the Joint Venture.
- 3.7 The personnel who will perform the Charitable Project may be hired or contracted or sub contracted or engaged by each party separately. If the Joint Venture wishes to retain any

personnel, no party may hire or terminate personnel on behalf of the Joint Venture without the authorization of the other party.

- 3.8 If KKL or the Joint Venture procures any goods or services on its behalf pursuant to this Agreement, it shall do so in accordance with KKL internal tendering regulations or quotations processes ("**Tendering Regulations**"), as may be amended from time to time, and JNF agrees and accepts that such procurements will be governed by the Tendering Regulations.
- 3.9 For greater certainty, the signature of both parties will be required on all loans, contracts and other agreements of the Joint Venture.
- 3.10 Each Charitable Project will be publicly identified as a project of the parties carried on by the Joint Venture, both on-site and in literature and promotional materials.
- 3.11 Each party will co-author all procedures manuals, training guides, standards of conduct and other literature prepared by the Joint Venture, if any.

#### **4. PROPERTY**

- 4.1 Each party may acquire assets or property in connection with the performance of a Charitable Project. However, all assets and property acquired by the Joint Venture shall be jointly owned by the parties and shall be used exclusively for charitable purposes, in accordance with the directions of the Board. Any divestment by JNF of its ownership interest in the assets or property of the Joint Venture, or in any assets or property that it may acquire in connection with a Charitable Project, will be subject to all applicable laws, and may be specified in the applicable Governing Document.

#### **5. RECORDS AND AUDIT**

- 5.1 The parties shall appoint an auditor for the Joint Venture. The Joint Venture shall keep copies of all books and records for at least seven (7) years. Each party will have the right to examine the books and records of the Joint Venture in connection with those matters involving the income and expenditure of funds, and the purchase, maintenance, possession and insurance of property.
- 5.2 The Joint Venture shall deliver an annual report to each party on or before each anniversary of the Effective Date containing:
  - (a) a duplicate copy of the Joint Venture's detailed books and records;
  - (b) a full and complete financial report dealing in detail with the uses of the Joint Venture's funds for the preceding year, and all amounts received by the Joint Venture from each party. The financial report shall be duly certified by a certified public accountant; and
  - (c) a narrative report of each Charitable Project performed or in progress during that year.

- 5.3 The Joint Venture shall hold all funds received from each party, in trust, separate and apart from the funds of each party in an account at a financial institution which is clearly designated as a trust account for the sole benefit of the Joint Venture, and will disburse such funds only as approved by the Board. All deposits, withdrawals and other transactions with respect to the Joint Venture's account shall require the signature of such person or persons as the Board may from time to time determine. Notwithstanding the foregoing, except where commitments have been made by the Joint Venture in accordance with the provisions of this Agreement, each party shall be entitled to withdraw or withhold their funds or other resources at their discretion and each party shall use reasonable efforts to cooperate with the other party to allow the other party to exercise its rights hereunder.
- 5.4 A party may request at any time from the Joint Venture, the preparation of unaudited financial statements or any other type of report as may be required to enable such party to maintain control over the expenditure of its funds by the Joint Venture.
- 5.5 The Joint Venture shall provide each party with all vouchers and receipts received by the Joint Venture in respect of its activities hereunder.
- 5.6 Each party may enter at any premises used by the Joint Venture, in order to evaluate and observe the activities and programs being carried out and to inspect all records relating to the same.

## **6. TERM AND TERMINATION**

- 6.1 This Agreement shall have a term of one (1) year (the "**Term**"), commencing on the Effective Date, unless terminated earlier in accordance with this Agreement. This Agreement shall be renewed automatically at the end of the Term, and from year to year thereafter, for successive terms of one-year each (the "**Renewal Term**").
- 6.2 This Agreement may be terminated prior to the end of the Term or of the Renewal Term at the option of either party upon three (3) months' written notice to the other party. In the event of termination, the Joint Venture will return forthwith to both parties the monies advanced by each party and not committed or expended.

## **7. LIABILITIES AND INSURANCE**

- 7.1 In no event shall a party be liable to the other party for any consequential, exemplary, special, punitive or indirect losses or damages, whether arising in contract, warranty, tort (including negligence), strict liability, fundamental breach or otherwise, including loss of use, profit, business, or reputation.
- 7.2 Each party shall carry adequate insurance against any liability arising in relation to each Charitable Project. Each party shall be named as an additional insured party in all applicable insurance policies of the other party. Each party will provide the other party with confirmation from the insurer as to the insurance coverage, and an undertaking from the insurer to immediately notify the other party prior to any cancellation, significant change or lapse of the insurance policy.

**8. GENERAL**

- 8.1 No person employed by KKL, or otherwise engaged in implementing the Charitable Project, shall in any way be considered an employee of JNF nor shall such person have any rights as an employee of JNF, nor shall such person be eligible to receive any payments, compensation, social or other benefits in connection with the performance of his or her services relating to the Charitable Project or with the termination or cancellation of this Agreement, except as provided herein.
- 8.2 No person employed by JNF, or otherwise engaged in implementing the Charitable Project, shall in any way be considered an employee of KKL nor shall such person have any rights as an employee of KKL, nor shall such person be eligible to receive any payments, compensation, social or other benefits in connection with the performance of his or her services relating to the Charitable Project or with the termination or cancellation of this Agreement, except as provided herein.
- 8.3 Neither party may assign this Agreement in whole or in part, including the performance of any Charitable Project, without the prior written consent of the other party. The parties may not subcontract any of their obligations hereunder except as contemplated in this Agreement.
- 8.4 KKL is responsible for the payment of all taxes, Social Security and other payments which employer must pay according to law or custom if applicable in Israel and this only for the personnel engaged by KKL.
- 8.5 JNF will be responsible for the payment of all taxes, Social Security and others payments which employer must pay according to law or custom if applicable in Canada and this only for the personnel engaged by JNF.
- 8.6 [Intentionally deleted.]
- 8.7 All expenses in relation with the Joint Venture will be paid by the Joint Venture.
- 8.8 This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall constitute one and the same agreement and notwithstanding their date of execution shall be deemed to be executed on the date set out above.
- 8.9 This Agreement shall be governed by and construed in accordance with the laws of the Israel.
- 8.10 The parties hereby submit to the jurisdiction of the courts of the State of Israel.
- 8.11 Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and shall be given by personal delivery, fax, registered mail or electronic means of communication or by commercial courier to such other party as follows:

(a) to JNF at:



(b) to KKL at:



or to such other address, individual or electronic communication number as may be designated by notice given by either party to the other. Any demand, notice or other communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered mail, on the seventh business day following the deposit thereof in the mail and, if given by electronic communication, on the day of transmittal thereof if given during the normal business hours of the recipient and on the business day during which such normal business hours next occur if not given during such hours on any day. If the party giving any demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system which might affect the delivery of mail, any such demand, notice or other communication shall not be mailed but shall be given by personal delivery or by electronic communication.

- 8.12 All obligations which, by their nature, are intended to survive the expiration or termination of this Agreement shall remain in effect after the expiration or termination of this Agreement until such obligations expire according to their respective terms or intent.
- 8.13 The parties hereto shall sign further and other documents, cause such meetings to be held, resolutions passed and by laws enacted, exercise their vote and influence, do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part thereof.

IN WITNESS WHEREOF the parties have signed this Agreement by their duly authorized representatives as of the Effective Date.

**JEWISH NATIONAL FUND OF CANADA (KEREN KAYEMETH LE'ISRAEL) INC.**      **KEREN KAYEMETH LE'ISRAEL**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE 1  
GOVERNING DOCUMENT**

This Governing Document is a schedule to the agreement (“Agreement”) dated ● and entered into between **JEWISH NATIONAL FUND OF CANADA (KEREN KAYEMETH LE’ISRAEL) INC.** and **KEREN KAYEMETH LE’ISRAEL (“KKL”)**. It contains supplementary terms and conditions relating to a Charitable Project to be carried out pursuant to it. All of the terms and conditions of the Agreement apply to the Charitable Project and no provision of this Governing Document shall be applied or interpreted in a manner which contradicts or frustrates it. Where a provision of this Governing Document contradicts a provision of the Agreement, the provision of the Agreement shall prevail.

**I. DESCRIPTION OF THE CHARITABLE PROJECT**

[NTD: The CRA and the Agreement require a clear, complete, and detailed description of the activities to be carried out by the parties, and an explanation of how the activities further the JNF charitable purpose set out on the first page of the Agreement. The location(s) where the activity will be carried on (for example, physical address, town or city) must also be set out.]

**II. ACTIVITIES OF THE PROJECT AND RESPONSIBILITIES OF THE PARTIES**

The Joint Venture will undertake the following activities in furtherance of its objectives:

- [NTD: detailed description required]

The respective responsibilities of the parties will be as follows:

Party	Responsibilities
JNF	[NTD: The CRA requires that the roles and responsibilities of JNF’s personnel in the field be described.]
KKL	●

**III. TERM OF THE CHARITABLE PROJECT**

[NTD: The CRA requires all time frames and deadlines to be described clearly.]

#### IV. BUDGET OF THE CHARITABLE PROJECT

[NTD: The CRA and the Agreement require a detailed budget that is specific with respect to amounts, expenditure items, timing and methods and conditions governing the transfer of funds.]

#### V. CAPITALIZATION AND REIMBURSEMENT OF FUNDS

The Joint Venture will be capitalized as follows:

Party	Total Percentage of Funding Supplied
JNF	●% to be provided as described below
KKL	●% to be provided as described below

The Joint Venture will use the funds advanced by the JNF solely to fund reasonable costs directly in support of the activities described in the Agreement, including this Governing Document. The JNF will advance funds to the Joint Venture in the following manner:

Payment Date	Payment Amount
Within ● days following receipt of countersigned agreement	\$ ●
Upon satisfactory performance/ completion of ●	\$ ●

The advanced funds may be expended subject to the conditions set out in the Agreement during the Term of the Charitable Project commencing from the effective date of this Governing Document.

#### VI. PUBLICITY

[NTD: The CRA and the Agreement require each Charitable Project to be publicly identified as a project of the parties carried on by the Joint Venture, both on-site and in literature and promotional materials.]

**VII. OWNERSHIP OF PROPERTY**

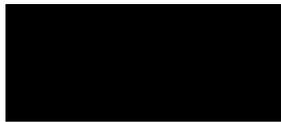
[NTD: CRA and the Agreement require that any property purchased by the Joint Venture be jointly owned by the parties. By exception, provided the CRA guidance is complied with, property may be transferred by JNF. If such a transfer is contemplated, the manner of compliance with the CRA guidance should be described in this Governing Document in this section and the required documents appended as schedules to this Governing Document.]

IN WITNESS WHEREOF the parties have signed this Governing Document by their duly authorized representatives as of the date first above written.

**JEWISH NATIONAL FUND OF KEREN KAYEMETH LE'ISRAEL  
CANADA (KEREN KAYEMETH  
LE'ISRAEL) INC**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



better be articulated as a rejection of projects favouring the dissemination of political propaganda. This would be, in our view, a valid reason. Our suggestion at this point is that accepting this as a valid reason does not argue in favour of drawing distinctions among types of knowledge.

(ii) The Practical Utility of Projects Advancing the Good of Knowledge

None of the foregoing is to argue that the law should not be diligent in applying the practical utility test in this domain. To do this properly courts should pay attention to distinctions among kinds of knowledge so that they can make evaluations as to the practical utility of specific projects advancing, or purportedly advancing, the good of knowledge. For example, to the forty-letter alphabet proposed in *Re Shaw*,<sup>80</sup> the proper objection might have been that the knowledge sought to be advanced and disseminated in that project was practical knowledge, and the specific project was therefore open to the objection that once information on the feasibility of a forty-letter alphabet was acquired, in terms of practicality it would have been useless.<sup>81</sup>

5. PUBLIC POLICY AND PUBLIC WORKS

There are a number of ways that public policy has been thought relevant to the task of evaluating the validity of charitable projects. We examine two of these briefly before focusing on the most important problem in this domain, charitable projects that are discriminatory.

(a) WHETHER A CHARITABLE PURPOSE CAN BE CONTRARY TO PUBLIC POLICY

It is clear law that a valid charitable purpose cannot be contrary to the law or public policy.<sup>82</sup> This rule is obviously correct. It can be interpreted in two distinct ways. First, it can be interpreted as a super-added criterion addressed after the various parts of the definition of charity have been addressed. On this view, a project could be *prima facie* charitable, but denied recognition because it violates public policy. This way of reasoning might be facilitated by a doctrinal distinction between the legal and the common meaning of charity. Second, it can be interpreted merely as a necessary implication of the requirement that the purpose pursued be charitable, since if the purpose pursued is charitable, it cannot also be against public policy. On this view, a project that violates public policy could not be even *prima facie* charitable.

(Fed. C.A.) (a society founded to change social opinions about pornography was held not to be educational). For other examples, see cases cited in Waters, *supra*, note 3, at 566.

<sup>80</sup> *Supra*, note 63.

While both understandings can be found, it is clear the basic and reasonable assumption that at least to the extent that the state does not prohibit valid charitable pursuits are in conflict with it.

(b) WHETHER ALL ELEMENTS OF PUBLIC POLICY

Sometimes it is argued that if the purpose of public policy, however defined, then the view, for example, an organization founded to promote the *Charter of Rights and Freedoms*,<sup>84</sup> or to promote Canadian law in general, is charitable. We suggest reasons, depending on the type of organization, for rejecting the proposition.

(i) The Non-charitable Status of Government Policies

First, if the dominant objective of an organization is a way that could be defended plausibly as serving the public interest, for example, by encouraging people to do good, to promote patriotism, or to observe and respect human rights, is political in the broadest, but still standard, sense of the word, then the organization's principal activity is influencing opinion on what the law or public policy should be. This is not charitable. Similarly, if the dominant objective is the enforcement of the law, in part, through the organization's principal activity, then the organization's principal activity is doing charity.<sup>85</sup> Every reasonable political

<sup>83</sup> Although this is not true of every state, one hopes to see the argument, see J. Phillips, Case Comment, "Everywhere is Charity: 11 Philanthrop. (No. 1) 3, at 7.

<sup>84</sup> Part I of the *Constitution Act, 1882*, being Schedule B to the *Constitution Act, 1882*.

<sup>85</sup> Hence, we would argue that the following objection to the definition of charity is not valid: "Charity: Any Longer Adequate?", in D.W.M. Waters, *Charity: Any Longer Adequate?*, in D.W.M. Waters (ed.), *Charity: Any Longer Adequate?* (1993) 59, at 84:

(3) [T]he promotion of human and civil rights, in particular, to secure the enforcement of the Charter of Rights and Freedoms set out therein and the Constitution.



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Canadian Magen David Adom for Israel v. Canada (Minister of National Revenue), 2002 FCA 323 (CanLII)

Date: 2002-09-13  
File A-433-01  
number:  
Other 293 NR 144; 218 DLR (4th) 718; [2002] 4 CTC 422; 56 DTC 7353  
citations:  
Citation: Canadian Magen David Adom for Israel v. Canada (Minister of National Revenue), 2002 FCA 323 (CanLII), <<http://canlii.ca/t/4hvz>>, retrieved on 2018-08-30

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Date: 20020913

Docket: A-433-01

Neutral citation: 2002 FCA 323

CORAM: LÉTOURNEAU J.A.

**ROTHSTEIN J.A.**

**SHARLOW J.A.**

BETWEEN:

CANADIAN MAGEN DAVID ADOM FOR ISRAEL/  
MAGEN DAVID ADOM CANADIEN POUR ISRAËL

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

Heard at Ottawa, Ontario on June 18, 2002.

Judgment delivered at Ottawa, Ontario on September 13, 2002.

REASONS FOR JUDGMENT BY:  
J.A.

SHARLOW

CONCURRED IN BY:  
J.A.

LÉTOURNEAU

DISSENTING REASONS BY:  
J.A.

ROTHSTEIN

Date: 20020913

Docket: A-433-01

Neutral citation: 2002 FCA 323

CORAM: LÉTOURNEAU J.A.

**ROTHSTEIN J.A.**

**SHARLOW J.A.**

BETWEEN:

CANADIAN MAGEN DAVID ADOM FOR ISRAEL/  
MAGEN DAVID ADOM CANADIEN POUR ISRAËL

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

REASONS FOR JUDGMENT

**SHARLOW J.A.**

[1] This is an appeal under subsection 172(3) of the *Income Tax Act*, R.S.C. 1985 (5<sup>th</sup> Supp.), c. 1, from a notification dated July 10, 2001 that the Minister of National Revenue proposes to revoke the appellant's registration as a charitable organization. For the reasons stated below, I have concluded that this appeal should be dismissed.

Statutory framework

- [2] Registration under the *Income Tax Act* gives a charity two important tax advantages. One is that, like other organizations established and operated for a purpose other

than profit, a registered charity is exempt from tax on its own income. The other advantage is that a registered charity is entitled to issue official receipts for gifts it receives, so that its donors may claim tax relief. This tax relief represents an indirect tax subsidy to encourage the work of registered charities.

- [3] Simply serving the public good does not entitle an organization to become registered as a charity under the *Income Tax Act*. Parliament has targeted the tax advantages of registration to organizations that meet specific requirements as to their formal objectives and their actual activities. The statutory requirements vary depending in part upon whether the charity is a "charitable organization" or a "charitable foundation" as defined in section 149.1 of the *Income Tax Act* (enacted by S.C. 1976-77, c. 4, s. 60, effective January 1, 1977).
- [4] A "charitable foundation" is a charity that raises money for one or more other organizations that meet the definition of "qualified donee". That definition is met by a registered charity, a registered Canadian amateur athletic association, a housing corporation that meets certain criteria, a Canadian municipality, the United Nations or an agency of the United Nations, a foreign university that meets certain criteria, a foreign charity to which a gift has been made by the Crown in right of Canada within a certain period, and the Crown in right of Canada or a province.
- [5] The term "charitable organization" is defined in subsection 149.1(1) of the *Income Tax Act*. As far as is relevant for the purposes of this case, that definition reads as follows:

"charitable organization" means an organization « oeuvre de bienfaisance » Oeuvre, constituée ou non, whether or not incorporated, ou non en société :

(a) all the resources of which are devoted to charitable activities carried on by the organization itself, a) dont la totalité des ressources est consacrée à des activités de bienfaisance qu'elle mène elle-même,

[...]

[...]

[6] The requirement that a charitable organization must devote all of its resources to charitable activities carried on by itself is relaxed somewhat by subsection 149.1(6) of the *Income Tax Act*, which provides among other things that a charitable organization is considered to be devoting its resources to charitable activities carried on by itself to the extent that it carries on a related business, or disburses in any year not more than 50% of its income for that year to qualified donees.

- [7] Any charity that ceases to meet the statutory requirements for registration may have its registration revoked, in which event the charity must be shut down. After the revocation of its registration, the charity can no longer issue official receipts, and it may become subject to a tax equal to the value of all of its assets remaining one year after the revocation. During that terminal year, the charity may use its assets only to discharge its liabilities and for specified charitable purposes.



(a) carries on a business that is a) soit exerce une activité commerciale qui n'est pas une activité commerciale complémentaire de cet organisme de bienfaisance; or

(b) fails to expend in any taxation year, or b) soit ne dépense pas au cours d'une année d'imposition, pour les activités de bienfaisance qu'elle mène par le moyen de dons ou de dons à des donataires reçus, amounts the total of which is at least equal to the total of total des montants suivants :

(i) the amount that would be the value of A for the year, and (i) le montant qui représenterait, à son égard pour l'année, la valeur de l'élément A de la formule figurant dans la définition de « contingent de versements » au paragraphe (1) si elle était une fondation de bienfaisance,

(ii) the amount that would be the value of A.1 for the year,

in the definition "disbursement quota" in subsection (1) in respect of the organization if it were a charitable foundation. (ii) le montant qui représenterait, à son égard pour l'année, la valeur de l'élément A.1 de cette formule si elle était une fondation de bienfaisance.

[11] This provision imports the rather complex definition of "disbursement quota" into the statutory obligations of charitable organizations. It is not necessary to understand that definition in detail. It is enough to note that, subject to certain adjustments, it requires a charitable organization to spend at least 80% of its receipted donations on charitable activities it carries on itself, and on gifts to qualified donees. Failure to meet that disbursement quota is grounds for revocation of the charity's registration.

### Facts

[12] The appellant was incorporated on March 24, 1976 as a corporation without share capital under Part II of the *Canada Corporations Act*, R.S.C. 1970, c. 32. Its corporate object is stated as follows in Part III of its application for Letters Patent (Appeal Book, Volume I, page 21):

To donate emergency medical supplies and ambulances directly to the people of Israel.

[13] When the appellant applied for registration as a charity on July 21, 1976, it indicated that it proposed to carry on the following activities (Appeal Book, Volume I, page 23):

To donate emergency medical supplies and ambulances directly to the people of Israel.

The organisation will aid any disaster areas and poor and disadvantaged people in Israel.

The organisation will appoint a Canadian representative in Israel to look after the implementation of this plan. In order to do so he will be assisted by a committee which now exists in Israel of Canadians who presently permanently reside in Israel and who are sympathetic to the aims of this organisation.

[14] By letter dated September 9, 1976, the appellant was notified that its application for registration was accepted effective March 24, 1976 (Appeal Book, Volume I, pages 24-5). The appellant thus became a "registered charity" as defined in the *Income Tax Act* as it then read. The letter includes some general information, including the following statement substantially reflecting what was then the statutory definition of "registered charity" (Appeal Book, Volume I, page 24):

No part of the income of the organization may be distributed to other charitable organizations; its income must be expended on some charitable project carried on under the direct supervision and control of the organization itself.

[15] The appellant, like all organizations that were registered charities on January 1, 1977, when section 149.1 of the *Income Tax Act* came into force, automatically fell within the new statutory definition of "charitable organization" on that date. That was not in itself a substantial change, because the definition of the new term, "charitable organization", is similar to the definition of the former term, "registered charity". The appellant continued to be subject to the requirement that it carry on its charitable activities itself, and the requirement that it could not make gifts to other organizations, even foreign charities, except "qualified donees".

[16] What follows is an account of the rather long record of correspondence between the appellant and the Minister dealing with a number of issues, including the question of whether the appellant was carrying on charitable activities itself. Another recurring question was whether the appellant was issuing official receipts correctly. At the hearing of this appeal, counsel for the Minister conceded that the problems relating to official receipts would not by themselves have justified the revocation of the appellant's registration as a charity. In light of that concession, counsel for the appellant understood, reasonably in my view, that he was not required to make any submissions on the question of official receipts. I propose to say no more about that subject.

#### Audit of the appellant's 1983 and 1984 fiscal years

[17] The appellant was audited by the Minister for its 1983 and 1984 taxation years. In a letter to the appellant dated August 14, 1986 relating to that audit (Appeal Book, Volume I, pages 32-4), the following concerns were raised:

- 1) ambulances and medical supplies are being purchased and arranged for shipment to Israel by the American Red Magen David for Israel Inc. on behalf of the Organization; and

2) funds collected for the construction of a blood analysis centre are transferred to Magen David Adom in Israel.

[18] In response to the concerns raised in the August 14, 1986 letter, the appellant sent a letter to the Minister dated August 25, 1986 (Appeal Book, Volume I, pages 35-6). That letter reads in part as follows:

This organization [the appellant] devotes its' [sic] resources primarily to the people of the State of Israel through services which are rendered of a medical emergency nature. The funds, generally, are not used for current operating budgets, but are expended to acquire goods, services, and equipment to be used in a manner identical to many of the services rendered by the International Red Cross.

In particular, supplies, such as blood packs, emergency two-way radios, and ambulances are supplied on a regular basis. With regard to the ambulances, these mobile units must meet the unified specifications established by the Red Cross in Israel. Currently, the only company manufacturing the ambulance to these specifications is General Motors in the United States. For this reason, whenever an ambulance is acquired by the Canadian organization, funds are disbursed to the American sister organization to be used to acquire ambulances in conjunction with their own purchase order. We believe, that if there is a technical significance to this, we could arrange to purchase the ambulances directly from General Motors in the United States. It should be noted that the ambulances acquired by the Canadian organization bears the name of the Canadian organization and can always be so identified.

Recently, the organization made a commitment to build part of a blood refraction centre in Israel, in conjunction with a major project financed by various sister organizations in the world. As the Canadian undertaking represents only a small part of this project, it is virtually impossible for the Canadian organization to contract separately for its' [sic] undertaking and alternatively it had no choice but to disburse these funds to a central organization who would undertake to contract the entire project into a single plan for construction and erection.

The Canadian organization does not make contributions to other organizations for their general use, but instead, funds specific medical projects, and all disbursements in that regard are made specifically for an identifiable medical activity.

[19] This response apparently led to consideration of an internal staff memorandum dated December 11, 1985 (Appeal Book, Volume I, pages 39-40) which sets out what I will refer to as the "charitable goods policy". It reads as follows (emphasis added):

RE: Transfer of Goods and Services to Non-Qualified Donees

Section 149.1 of the Income Tax Act allows a registered charity to operate in two different ways: other [sic] by devoting its resources to charitable activities carried on by itself and/or by gifti

ng to qualified donees. The inference sometimes drawn from this is that therefore gifts or other transfers to non-qualified donees can never be made by registered charities.

Such, of course is not the case. Gifts - and other transfers of goods and services - are often made by registered charities to non-qualified donees in complete compliance with the Act. Scholarships to students, assistance to the needy, salaries for the charity's employees, and payments for goods received are all examples of transfers of resources to non-qualified donees which are quite legitimate. They are transfers made in furtherance of charitable purposes and, more importantly, the expenditures are, themselves, evidence of charitable activities. The issue therefore, when determining whether a particular expenditure, activity or practice can be viewed as a charitable activity carried on by the activity [sic] or an inappropriate expenditure, depending on the nature of the transfer (i.e. cash, goods, services), who the recipient is and on the control exercised by the charity in the particular case at hand.

Where the recipient is an employee or agent of the charity who is obliged under the terms of a contract to use the resources that are transferred in the manner stipulated by the charity, objections should not be raised.

Equally acceptable are transfers of goods and services that are directed to a particular use by the very nature of the goods and services so transferred. Examples of such transfers include:

- transfers, by a research organization, of books and scientific reports to anyone interested (including foreign governments, libraries, schools, etc.),
- transfers of books - on a subject of particular interest to an educational charity - to public libraries in major cities all over the world,
- transfers of medical supplies to a refugee camp,
- transfers of food, blankets, etc. to a charity coping with a natural disaster,
- transfers of drugs, medical equipment, etc. to poorly equipped hospitals,
- transfers of personnel to schools or hospitals (on loan).

There will, of course, be suspicious transfers which will require obtaining as much information as possible to avoid approving sham transactions. Since the issue is really one of interpretation of the facts in a particular case and not a "policy" issue, it is impossible to give precise guidelines to cover all situations.

However, some general comments, in addition to the examples given above, can be made. An applicant, whose only activity is to support (especially by cash) another organisation, could be viewed with suspicion. Generally, gifts of cash to another organization would indicate that the applicant was not operating within the requirements of the Act. Gifts of cash to an individual would less likely give rise to such concerns, in that individuals, unlike organizations, can themselves be objects of charity whose needs can [sic] be alleviated by cash. For example, giving money to a poor person [sic] will relieve their poverty, but giving money to an organization acting on behalf of poor people will not directly relieve their poverty (assuming there is no agency relationship). Of course there are exceptions, such as the funding of individual (independent) missionaries (refer Staff memorandum II.1.f).

Transfers of goods or services can more easily be viewed as charitable activities per se. The transfer of a piece of equipment that is meant to be used only for charitable purposes to an organization that will clearly use it for such purposes is likely to be a charitable activity. The examples given earlier would be applicable here.

However, a gift of cash to such an organization merely on the basis of an understanding or assumption that the money will be used for charitable activities would likely be in contravention of the Act. There may be applicants or charities who cannot or will not accept such a distinction, and will argue that if a gift of goods or services is charitable, then so is a gift of cash. Our response should be that the transfer is only acceptable where it can reasonably be viewed as a direct charitable activity itself. In many instances (though [sic] not all) a transfer of cash will only indirectly promote a charitable purpose whereas a transfer of goods or services will more [sic] often directly accomplish a charitable purpose.

Aside from being in keeping with the wording of the Act, this approach allows us some flexibility. We can thus avoid having to take the rigid position that either all gifts to non-qualified donees are never acceptable, or that all such gifts are acceptable if they somehow eventually serve a charitable purpose.

Finally, it should be noted that our determination should not be influenced by whether or not the non-qualified donee is a Canadian or foreign entity. Where the transfer is to a foreign non-qua

lified donee who is an agent of the charity or who is a partner of a joint venture, or involves capital property, reference should be made to Staff Memo III.1.c.

[20] In reply to the August 25, 1986 letter from the appellant, the Minister sent the appellant a letter dated October 22, 1986 (Appeal Book, Volume I, pages 41-3), which contains these comments about the ambulances (at page 42):

... it is my opinion that the Organization does not maintain direction, control and supervision over the equipment it transfers to Israel and that the Magen David Adom for Israel does not act as an agent for the Organization. Furthermore the title of ownership of some of the equipment such as the ambulances is transferred to the Magen David Adom for Israel. The gifting or lending of assets by one entity to another entity to be used by the latter entity in the conduct of its own charitable activities does not constitute a charitable activity on the part of the first entity. Therefore, it appears that the Organization is not devoting all of its resources to charitable activities carried on by itself as required under subparagraph 149.1(1)(b)(i) of the Act.

[21] The same letter also indicates that the Minister did not consider the appellant's funding of the construction of the blood refraction centre to constitute a charitable activity carried on by the appellant itself. The letter invited a response by a certain date, failing which revocation proceedings would be considered. The appellant replied as follows by letter dated October 30, 1986 (Appeal Book, Volume I, pages 44-5):

... The relationship of this organization to the one in Israel is analogous to the relationship between the Canadian Red Cross and the International Red Cross.

The English translation of Magen David Adom is the Red Shield of David similar to the Red Cross or the Red Crescent for the Arabic countries. As the Canadian Red Cross supplies aid throughout the world through its' [sic] international organization, the Canadian Magen David Adom for Israel provides medical and emergency assistance through the Israeli organization.

We, therefore, believe that our problem does not rest with the nature of our activity but instead with the technical agreements between our organization and our sister organization in Israel, which apparently does not conform to Canadian regulations.

We have discussed this problem with Mr. Rainville of your department and we have informed him firstly that ambulances are now being purchased, and will be purchased in the future directly from the manufacturer. We understand from him that this would be acceptable to your department.

With regard to the disbursement of funds, we are in the process of creating an agency relationship, to be covered by an agency agreement with the Israeli Red Shield. However, there is a need to obtain approval of the Board of Directors of both organizations which are half the world apart and this will take some time. We are therefore requesting a delay of sixty (60) days beyond the December 12<sup>th</sup> deadline which you have imposed.

We shall forward to Mr. Rainville a draft of the agreement for his review and approval as soon as it is available and prior to any official endorsement of such agreement.

[22] This response was apparently deemed satisfactory as far as the ambulances were concerned. It appears that the Minister accepted that the charitable goods policy applied to the appellant's provision of ambulances to Magen David Adom in Israel (MDA). I reach that conclusion because of the following comments in a letter dated October 19, 1987 from the Minister to the appellant (Appeal Book, Volume I, pages 47-9, at page 47) (emphasis added):

The Canadian Magen David Adom for Israel (hereinafter referred to as the "Organization") proposes to purchase ambulances and medical supplies directly from the manufacture [sic] and then transfer the items to Magen David Adom in Israel. If such an arrangement is put into place the resources used to acquire the items will be considered devotion of resources to charitable activities carried on by the Organization itself provided it can support the use of the funds with appropriate documentation such as vouchers indicating the use of the funds.

[23] However, the Minister was not satisfied with the appellant's response to the issue of the blood refraction centre. In the October 19, 1987 letter, the Minister advised the appellant as follows (Appeal Book, Volume I, pages 47-9, at page 48):

24) 2) Blood Refraction Center

25)

The Organization proposes to create an agency relationship to be covered by an agency agreement between it and the Israeli Red Shield. Before I can comment any further on this subject, a copy of the agreement should be submitted for my review, however I wish to remind you [sic] the following guidelines when establishing an agency agreement. To satisfy the requirement that a charity devotes its resources to charitable activities carried on by itself, funds transferred to an agent must be expended strictly in furtherance of the charity's own purposes. A satisfactory agency relationship does not exist where funds are supplied by a charity simply to fund projects of another organization. Furthermore, in carrying out its activities through an agent, a charity must ensure that the following conditions concerning expenditure of its funds are fulfilled:

(a) the charity must maintain direction, control and supervision over the application of its funds by the agent;

- (b) the charity's funds must remain apart from those of its agent so that the charity's role in any particular project or endeavour is separately identifiable as its own charitable activity;
- (c) the financial statements submitted in support of the charity's annual information returns must include a detailed breakdown of expenditures made in respect of the charitable activities performed on behalf of the charity by its agent; and
- (d) adequate books and records must be kept by the charity and its agent to substantiate compliance with the conditions outlined above.

Direction, control and supervision over the application of the funds by the agent include the concept of accountability by the agent to the principal. In turn, the principal must be able to account how the funds were spent on its behalf by the agent. The records in support of these disbursements must be maintained at the principal's address in Canada.

Amongst other possible arrangements where a registered charity will be considered carrying on its own charitable activities are partnerships and joint ventures.

[24] A letter dated November 17, 1987 from the appellant to the Minister (Appeal Book, Volume I, pages 50-1) indicates that the blood refraction centre issue soon became moot, or at least was represented by the appellant as having become moot. In any event, the appellant did not then enter into a formal agency agreement with MDA, although in its November 17, 1987 letter, it acknowledged the need to do so if a project similar to the blood refraction centre project were to be undertaken in the future. Again, the Minister appeared to be content with that response. By letter dated November 24, 1987 (Appeal Book, Volume I, page 53), the Minister advised the appellant that the audit for the 1983 and 1984 fiscal years was complete and that the appellant's status as a registered charity would remain unchanged.

#### Audit of the appellant's 1987 and 1988 fiscal years

[25] The appellant was audited again for its 1987 and 1988 fiscal years. The audit report is dated October 31, 1989 (Appeal Book, Volume I, pages 56-67). For present purposes, the only finding of note is that the appellant had, as of the end of 1988, a cumulative shortfall in its disbursement quota of \$169,404 (an amount the appellant disputes; its calculation indicated a shortfall of \$140,818). The Minister apparently did not consider the 1988 shortfall to be sufficiently grave to warrant a notification to revoke the appellant's registration. The matter of the disbursement quota, however, was followed up in subsequent audits.

#### Correspondence relating to special projects

[26] By letter dated October 5, 1993 (Appeal Book, Volume I, page 76), the appellant requested the Minister's permission to help MDA with the purchase of an identification system in the amount of \$84,000 (US) and a new ambulance telecommunication system. That request led to discussions about the legal requirement that the appellant devote all of its resources to charitable activities it carries on itself. The following comments were made in a letter to the appellant from the Minister dated October 21, 1993 (Appeal Book, Volume I, pages 77-9, at pages 77-8) (emphasis in original):

... A registered charity may not simply act as a conduit to channel funds to those organizations to which a Canadian taxpayer could not directly make a gift and acquire some tax relief. Since there are very few "qualified donees" operating outside of Canada, it is therefore usually necessary for a registered charity interested in charitable relief abroad to become directly involved in those foreign charitable activities.

Revenue Canada acknowledges that this is not always practical either because of the registered charity's own limited financial resources, because of the size of the project or because the charity lacks the necessary expertise to operate effectively in a foreign country. Accordingly, Revenue Canada will consider that a registered charity is involved outside Canada in its own charitable activities if the charity demonstrates that it has a sufficient amount of responsibility and control over those activities. A charitable organization is not at liberty to transfer funds unless the recipient is an employee of the charity, an agent of the charity under contract, or a qualified donee.

A registered Canadian charity is expected to maintain the same degree of administrative control over the use of its resources outside Canada as it would if its activities were conducted in Canada.

[27] The letter continues with a detailed list of the elements of an agency agreement that, if adhered to, would meet the statutory requirements. The appellant followed up with a letter dated November 30, 1993 (Appeal Book, Volume I, pages 80-1) providing more information about the two expenditures it wished to have the Minister approve. The letter reads in part as follows:

We have been requested by MDA, Israel to pay for a new system of telecommunications between the headquarters and the ambulances. This system consists of approximately 100 Motorola transceivers which both receive and transmit radio signals. The old radios in the ambulances are nearly 20 years old and are not functioning efficiently. The main transmitter located in Tel Aviv will also be replaced at a later date.

As you know, the dispatching system of ambulances just as it is in Canada is done through radio dispatch signals only and is vital for the proper functioning of the ambulance system.

We trust that your department will accept this one-time expenditure since the radios should be good for at least 10 years.

The second non-medical expense consists of a new identification system. This will enable the administration of the headquarters and the blood centre in Israel to determine which people came to work, at what time, and how long they worked. It is at the same time a security system as well as a time study system which permits computerization of payroll.

Each member of MDA, Israel carries a badge with a photograph and an incoded [sic] message on a microchip which when inserted into a slot of an uncoder [sic] machine will identify the person as well as make note of the date and time of arrival and upon leaving, identify the time and thereby establish the number of hours worked.

It is essential to streamline this particular aspect of the administration of the blood services and other functions as the present system of punch cards is unreliable, slow and provides no security. The new system will lead to considerable savings, especially in security staff and accounting procedures in the years to come.

Again, this is a one-time expense which we believe to be good for anywhere from 10 to 20 years.

[28] The Minister replied by letter dated March 23, 1994, which reads in part as follows (Appeal Book, Volume I, page 86):

Based upon the information provided, your organization may cover the expense incurred for the telecommunication system for the ambulances as it may be viewed as directly fulfilling your charity's charitable purposes. A charity may transfer certain goods or provide services to another organization in order that those goods and services can be used in the recipient's charitable programs if the goods and services provided can, by their very nature, be used only for a charitable purpose. Accordingly, we have determined that the purchase of the identification system is an administrative expense and, therefore, too indirect to be considered charitable.

[29] The Minister must have been aware at this time that there was no formal agency agreement between the appellant and MDA with respect to the ambulances, and that the telecommunication system was purchased for the ambulances. Again, it appears that the basis for permitting the purchase of the telecommunication system as a charitable activity was the charitable goods policy described above.

[30] Shortly thereafter, in September of 1994, MDA appealed to the appellant for \$650,000 (US) (Appeal Book, Volume I, pages 89-90). MDA wished to use \$350,000 (US) of that amount to purchase medical equipment for its first aid stations and ambulances (including semi-automatic monitors/defibrillators), \$100,000 (US) to computerize their new telecommunication system and \$200,000 (US) for "command cars", described as mobile command posts intended to facilitate disaster response. The appellant apparently put an oral request to the Minister.

[31] The Minister notified the appellant by telephone that the purchase of a single frequency transmitter for the ambulance communication system was approved, but not the purchase of command cars, because the cost of command cars was considered too remote from the appellant's charitable purposes (Appeal Book, Volume I, pages 91-3). Again, the charitable goods policy referred to above was the most likely justification for approving the purchase of the transmitter as a charitable activity.

#### Audit of the appellant's 1993 fiscal year

[32] The appellant was again audited by the Minister for its 1993 fiscal year. The audit report dated January 13, 1995 (Appeal Book, Volume I, page 95-101) includes the following comments (at pages 97-98):

#### [B.2] Failure to maintain adequate books and records.

The charity has transferred funds to Magen David Adom in Israel for the purchase of emergency medical supplies, ambulances and other equipments [sic]. It has also purchased equipments [sic] and transferred it to the same organization in Israel. Magen David Adom in Israel acts as the agent of the charity in Israel. On the other hand there is no formal agreement between the two parties. See Paragraph C.3 of this report. [...]

#### Response

The charity's representative told us that he will try strongly to have a formal agreement with the organization in Israel but that he can not force them to sign an agreement. He told us that previous requests have been made to Magen David Adom in Israel regarding a formal agreement but that the organization does not appear to be interested.

#### [B.3] T3010 - Incorrect information

The charity has included in its charitable expenditures an amount of \$113,994 transferred to Magen David Adom in Israel for the purchase of a magnetic card punch system. [...] This amount should have been considered as an administrative expense instead of a charitable expense.

In a letter dated November 30, 1993, the Charity asked Revenue Canada the [sic] authorization to utilize its funds for the purchase of a telecommunication system and an identification system (magnetic punch card system) for Magen David Adom in Israel. Revenue Canada has indicated in its response dated March 23, 1994 that based upon the information provided, the telecommunication system may be viewed as directly fulfilling the charity's charitable purposes but that the purchase of the identification system is an administrative expense and, therefore, too indirect to be considered charitable.

### Response

The charity's representative told us that he was not aware of that letter. He told us that the purchase of the magnetic card punch system is necessary to operate ambulances in Israel. He told us that this expense should be accepted as a charitable expense. He also told us that representations can be made by the charity to explain the situation if Revenue Canada requires it.

[33] The conclusion of the auditor that the purchase of the magnetic card punch system was not a charitable expense resulted in a shortfall in the appellant's disbursement quota, so that the cumulative shortfall as of the end of 1993, as calculated by the auditor, was \$113,377 (this was based in part on the auditor's former calculation indicating a cumulative shortfall of \$169,404 as of the end of 1988; see above).

[34] The January 13, 1995 audit report also contains these statements (at page 101):

### [C.3] Charitable activities and expenditures

A review of the activities and expenditures was carried out to compare them to the stated objectives of the charity. The activities undertaken are consistent with those of the stated objectives and are charitable in nature. [...] The expenditures reviewed relate to those expected considering the activities undertaken and are also considered charitable in nature.

The charity's objective is to donate emergency medical supplies and ambulances directly to the people of Israel. The charity buys ambulances, spare parts and emergency medical supplies for Magen David Adom in Israel, which act [sic] as their agent. According to the documentation provided, Magen David Adom in Israel operates more than 600 ambulances and Mobile Intensive Care Units to respond to emergencies all throughout Israel. The charity does not, however, have an agency agreement with Magen David Adom in Israel as mentioned in Paragraph B.2 of this report.

[35] The January 13, 1995 audit report is important for two reasons. The first is that it discloses evidence that the appellant apparently paid for an identification system for MDA in the face of the express disapproval of the Minister. The second is the indication that the auditor

considered the existence of a formal agency relationship to be an aspect of the appellant's activities with respect to the provision of ambulances to MDA. As noted above, the record suggests that the Minister had until then accepted the notion that the provision of ambulances to MDA fell within the charitable goods policy.

[36] By letter dated January 23, 1997 (Appeal Book, Volume I, pages 102-3), the Minister advised the appellant of the result of the audit, stating its concerns about the lack of an agency agreement, the unauthorized purchase of the identification system for MDA for \$113,994 and the resulting shortfall in the appellant's disbursement quota. That letter indicated that if the appellant "addressed these concerns", its status as a registered charity would not be affected. The record does not contain any written response to this letter.

#### Audit of the appellant's 1996 fiscal year

[37] On June 24, 1997, the Minister instructed an auditor to conduct an audit of the appellant for its 1996 fiscal year, to follow up on deficiencies identified in the previous audit and to verify the validity of certain anonymous allegations of wrongdoing by the appellant (Appeal Book, Volume I, pages 104-5). The audit report dated October 31, 1997 (Appeal Book, Volume I, pages 106-10) indicates that the auditor noted and apparently accepted the representations of the appellant that the anonymous allegations were false. However, the auditor noted that the appellant was still providing emergency medical supplies, ambulances and related equipment to MDA without having in place a formal agency agreement, and that the appellant had accumulated further shortfalls in its disbursement quota of \$26,931 for the 1995 fiscal year and \$141,519 for the 1996 fiscal year.

[38] On April 15, 1998, the Minister sent the appellant a letter relating to the audit for the 1996 fiscal year (Appeal Book, Volume I, pages 111-4). That letter states among other things that the concerns being raised at that time were sufficiently serious to consider revoking the appellant's registration. The letter raises a number of issues, of which I will mention three. The first is the absence of an agency agreement between the appellant and MDA. The letter says the following with respect to that issue (at page 112):

... the Charity transferred funds to Magen David Adom in Israel for the purchase of emergency medical supplies, ambulances and other equipment. It also purchased equipment and transferred [sic] to the same organization in Israel. However, there is no formal agency agreement between the two parties. This deficiency was also identified during our last audit for the fiscal period ending August 31, 1993 in our letter dated January 23, 1997. A review of the file has indicated that the need for and the purpose of the agency relationship was also communicated to you in our letter dated October 18, 1987.

[39] The second issue is the persistent failure of the appellant to meet its disbursement quota, with the shortfall of \$113,377 as of the end of 1993 being increased by \$26,931 in 1995 and a further \$141,519 in 1996.

[40] The third issue is the auditor's discovery that the charity had acquired bullet proof vests for MDA. On that point the April 15, 1998 letter says this (at page 113):

The objects of the Charity, as filed with the Department, are to donate emergency medical supplies and ambulances directly to the people of Israel. The audit indicated that the *Charity* was involved in the purchase of 60 bullet proof vests at a cost of \$US146.00 each for a total expenditure of \$US10,249.00. A deposit of \$US3,075 was transferred to Hagor Industries Ltd. in Israel, with the balance payable upon receipt of the merchandise by the Magen David Adom in Israel.

Purchasing of bullet proof vests is not considered [...] to be an expenditure on a charitable activity. Accordingly, under paragraph 168(1)(b) of the Act, the minister may give notice to the *Charity* that he proposes to revoke its registration because it fails to comply with the requirements of this Act for registration as such.

[41] The appellant replied by letter dated April 21, 1998 (Appeal Book, Volume I, pages 115-7, at page 116):

... Concerning an agency agreement, there has been a tacit agreement with Magen David Adom in Israel since the inception of the Canadian charity, as evidenced by the use of the Canadian equivalent of the Israeli name. The objective of this charity [sic] to provide medical assistance and ambulance service to the people of Israel, as does the Canadian Red Cross in many countries worldwide. This mission is contained in the by-laws of the charity. We would be interested in your advising us specifically of the nature and form of [sic] agency agreement that your department requires so that we may pursue this matter. It should be noted that this charity does not give funds directly to its Israeli counterpart but acquires on its own, medical supplies and ambulances which it provides to the Israeli Red Cross.

Concerning the disbursement quota, this charity has been donating medical supplies and ambulances to the Israeli Red Cross since its inception. These donations have qualified for the disbursement quotas since 1981. If there has been a change in policy by your department, kindly provide me with a the [sic] appropriate interpretation bulletin.

Although the charity has been deficient in the quotas required at the end of 1996, this has been rectified in 1997. We are enclosing a copy of the 1997 statistics to illustrate this. We wish to add that the shortfall in 1995 and 1996 resulted from delays in disbursing funds for charitable purposes in order to safeguard and ensure that the funds disbursed fulfills the intentions of the Canadian board of directors.

You have commented that the purchase of bullet proof vests is not an expenditure of a charitable activity. We wish to point out that the ambulances that we supply are required to service areas unlike Canada, that are most dangerous, often having to assist people who have been subjected to terrorist attacks. To enter into such a scene requires equipment to protect the injured as well as the drivers. These vests provide such protection and cannot be separated from the rest of the equipment that is included with the ambulances.

The Minister's letter of December 14, 1998 putting revocation in issue

[42] The Minister found the appellant's April 21, 1998 response unsatisfactory, and sent the appellant a letter dated December 14, 1998 (Appeal Book, Volume I, pages 123-8) explaining why. The discussion about the need for an agency agreement begins as follows (at pages 124-5):

The Government of Canada's long standing position with respect to Israeli settlements in the Occupied Territories is that it does not recognize permanent control over territories occupied in 1967 (the Golan Heights, the West Bank, East Jerusalem and the Gaza [sic] Strip), and opposes all unilateral actions intended to predetermine the outcome of negotiations concerning these territories. This includes the establishment of Israeli settlements in the territories and Israel's unilateral moves to annex East Jerusalem and the Golan Heights, which Canada regards as being contrary to international law and unhelpful to the peace process. This policy is grounded in Canada's support for the United Nations Security Council Resolutions 242, 338 and 478 and in the belief that the Geneva Convention Relative to the Protection of Civilian Persons in the Time of War of August 12, 1949 (the "Fourth Geneva Convention") is applicable to the Occupied Territories and imposes certain obligations on Israel, as the occupying power.

Resolutions 242 and 338 call for Israeli withdrawal from territories occupied in 1967 in exchange for secure and recognized boundaries. Resolution 478 censures the annexation of East Jerusalem by Israel, reaffirms the Fourth Geneva Convention to Jerusalem, and determines that any measures taken by Israel and altering the character of Jerusalem are null and void.

Article 49 of the Fourth Geneva Convention (which both Canada and Israel have ratified) provides that the "Occupying Power shall not deport or transfer part of its own civilian population into the territory it occupies". Canada has also ratified the 1977 Protocols to the Geneva Conventions. Article 85 of Protocol I makes "the transfer by the Occupying Power of parts of its own civilian population into the territory it occupies" a grave breach of that Protocol.

Consistent with these instruments, and with the position articulated by successive Canadian governments since 1967, it is the Department's view that providing assistance to Israeli settlements in the Occupied Territories, including assistance in establishing and maintaining physical and social infrastructure elements, serves to encourage and enhance the permanency of settlements a

and therefore is contrary to Canada's public policy on this issue. Consequently, it is our position that Canadian organizations that wish to sustain or augment services provided by the institutions within Israeli settlements outside Israel's 1967 borders are not eligible for registration as charities for Canadian income tax purposes.

Based on the above, a Canadian charity may operate in Israel, other than in the Occupied Territories under an agency agreement, the requirements for which are explained hereunder....

[43] There follows an explanation of the reason for the requirement of a formal agency agreement, which essentially repeats the explanation given in previous letters. There is also a detailed list of the kinds of provisions the agency agreement should contain. The agency discussion concludes with this (at pages 126-7):

Please note that if a Canadian charity operates outside the country without a written agreement in the suggested form, it will probably have serious difficulty establishing that a project is charitable and that it is carrying on its own activities. This could jeopardize the charity's registered status under the Act.

A charity also has to ensure that its resources are devoted to charitable purposes. Therefore, where resources the charity is proposing to send outside Canada are of [sic] general nature and could be used in a wide variety of non-charitable ways (money, for example, could be used for many things, while medicines, such as insulin, are only likely to be used to treat patients), the charity must be particularly careful to retain sufficient control to satisfy the requirements of the law. The more general the nature of the assets, the more structured and formal the arrangements should be for its distribution or use.

All of the above were explained to you in our letters dated October 22, 1986, October 19, 1987 and October 21, 1993. Despite your subsequent undertakings to comply accordingly per your letters dated October 30, 1986 and November 17, 1987, no corrective measures were taken by you to implement the agency requirement. It is noted that our letter of October 21, 1993 went unanswered, hence it is uncertain of your stance on this matter.

[44] On the question of the disbursement quota, the December 14, 1998 letter says this (at page 127):

It is understood that the title of ownership in ambulances is transferred to Magen David Adom of Israel. The gifting or lending of assets by one entity to another entity to be used by the latter entity in the conduct of its own charitable activities does not constitute a charitable activity on the part of the first entity. Therefore it appears that the organization is not devoting all of its reso

ources to charitable activities carried on by itself as required under subsection 149.1(6) of the Act. Since the Magen David Adom for Israel is not a qualified donee, the donations fall within the meaning of gifting to another entity and therefore the amounts so expended do not get included in the computation of the disbursement quota per subsection 149.1(1) of the Act.

In response to your question, we confirm that there is no change in the policy of the Department in the calculation of the disbursement quota.

[45] Finally, on the question of the bullet proof vests, the December 14, 1998 letter states as follows (at page 127):

The object of the Charity as per Letters Patent registered with the Minister of Consumer and Corporate Affairs of Canada is "To donate emergency medical supplies and ambulances directly to the people of Israel." With regards to the bullet proof vests, you claim that "the ambulances that we supply are required to service areas unlike Canada, that are most dangerous, often having to assist people who have been subject to terrorist attacks. To enter into such a scene requires equipment to protect the injured as well as the drivers." It would therefore be appreciated if you could provide us with at least ten instances of the locations (e.g. streets, towns or cities) where these ambulance drivers, while rendering their services, had to encounter terrorist bullets.

In our opinion, the donation of bullet proof vests (which may be used by anyone) are too indirect to be considered charitable.

[46] A number of observations may be made about the Minister's December 14, 1998 letter. First, the purported policy that a Canadian charity cannot operate in the Occupied Territories had not previously been raised with the appellant. Counsel for the Minister indicated at the hearing of this appeal that this alleged policy has never been published by Revenue Canada in any interpretation bulletin or in any other publication made available to the general public or to registered charities and their advisers. Nor does the record contain any indication that the position stated in this letter has been authorized by Parliament or the Governor in Council.

[47] Second, while this is not the first time the appellant had been told that there ought to be an agency agreement with MDA with respect to the ambulances, it is the first time that the absence of a formal agency agreement was expressly named as a possible basis for the revocation of the registration of the appellant as a charity. It is also the first express explanation of the connection between the absence of an agency agreement and the failure to meet the disbursement quota. There is no indication in prior audits that any such expenditures were not included in the disbursement quota. Indeed, given the amount of money that the appellant must have spent on ambulances since 1976, the only inference that can be drawn from the various audit reports is that the cost of ambulances had in the past been accepted as qualified

expenditures. Before this letter, the only expenditures relating to MDA that were identified as not qualified for the disbursement quota were the cost of the identification system and the cost of bullet proof vests.

[48] Third, the paragraphs about the bullet proof vests can be read in a number of ways. It may be a genuine request for further information about the use of the bullet proof vests by the MDA. More likely it is an expression of the conclusion that the provision of the vests to MDA is not a permitted charitable activity. I would not quarrel with that conclusion, although I note that it is made in conjunction with a purported request for information that is unduly sarcastic. In any case, the letter of July 10, 2001, which states the basis for the Minister's intention to revoke the appellant's registration as a charity (see the discussion below), makes no mention of bullet proof vests. From that I conclude that ultimately the Minister did not rely on the appellant's purchase of bullet proof vests as a basis for revocation.

#### Correspondence and meetings in 1999

[49] The appellant responded to the Minister's letter on January 18, 1999 (Appeal Book, Volume I, pages 129-30). That letter acknowledges once again that there had been no written agency agreement during the years under audit, but asserts that all expenditures of the appellant's funds were under its control because of unwritten understandings between the appellant and MDA. The letter also indicates that the parties had finally entered into a formal agency agreement. Enclosed with the letter was an agreement dated January 11, 1999, apparently signed by the appropriate officials of the appellant and MDA, in which the latter undertakes to act as the appellant's agent in Israel, except in the Occupied Territories, for the supply of blood and blood plasma, the supply of ambulances, the supply of medical equipment and the construction of medical facilities. The appellant asked the Minister to review the agreement, and to meet with them to discuss the remaining issues.

[50] The record includes notes of a meeting on May 17, 1999 between representatives of the appellant and officials of the Minister (Appeal Book, Volume I, pages 133-4). The notes were apparently taken by one of the Minister's officials. It is not clear whether the notes were made at the meeting or sometime later. In any event, taking the notes at face value, it appears that the issues referred to in the Minister's December 14, 1998 letter were discussed. The appellant was also presented with a request, expressed as follows in the notes: "Charity to provide a list of all the ambulances owned by it and the areas where they are located". It is common ground that this was intended to be a question about the location of the ambulances that the appellant had provided to MDA, but there is controversy as to whether the appellant had agreed at that meeting that it was the owner of the ambulances.

[51] On July 6, 1999, the appellant gave the Minister a list of the 23 ambulances it had "donated to Israel" (Appeal Book, Volume I, pages 135-6) from 1994 to 1996. Beside the name of each ambulance was the name of a station. The note beside one ambulance sent to Israel in 1996, however, said this: "Given to I.D.F. (14.6.99)" ("I.D.F." refers to the Israeli Defence Force, which is the Israeli army).

#### The notification of proposed revocation

[52] After the appellant sent the July 6, 1999 letter, it heard nothing more from the Minister for two years. During that period, discussions occurred among the Minister's officials, and some internal memoranda were prepared (Appeal Book, Volume I, pages 137-45). On July 10, 2001, following the internal communications, the letter of notification which is the subject of this appeal was sent to the appellant (Appeal Book, Volume I, pages 6-17).

[53] Three grounds are stated as justification for the revocation. One relates to alleged improper receipting practices, which I will ignore. The second ground refers to "gifting of resources to MDA". The third ground relates to activities of the appellant that were said to be in contravention of Canadian public policy. The discussion about the second and third grounds indicates that the Minister's real concern was the relationship between the appellant and MDA, and in particular the appellant's failure to control and monitor the use of ambulances and related equipment provided to MDA. I will discuss first the argument relating to Canadian public policy, and then the remaining issues.

#### Canadian public policy

[54] The portion of the July 10, 2001 notification letter dealing with Canadian public policy repeats what was said in the December 14, 1998 letter on that subject, and concludes with the assertion that any activity of a Canadian charity that provides assistance to Israeli settlements in the Occupied Territories cannot be considered a charitable activity. Under the heading "CCRA findings" (Appeal Book, Volume I, at pages 12-3), the letter states as follows:

As it [MDA] has unfettered control over the use of its ambulances, nothing prevents MDA from using the ambulances where it wishes in fulfilling its stated mandate of operating throughout all of Israel. It should be emphasized that for MDA, "All of Israel" includes the Occupied Territories. For instance, on its Internet site at page <http://magendavidadom.org/newsflash6.html>, MDA speaks of its involvement in Arab Jerusalem as well as in Gaza. Furthermore, many of the first aid stations it lists at <http://magendavidadom.org/stations.html> are located in the Occupied Territories.

We further note that the aforementioned list compiled by MDA does not indicate where the ambulance gifted to the Israeli Defense Forces is stationed. But like all the other ambulances, where the ambulance is stationed is rather inconsequential given that there is no reason why it could not be used in the Occupied Territories by the I.D.F., or otherwise used for non-charitable purposes by its owners, the I.D.F.

As you may note from our guide RC 4106 *Registered Charities: Operating Outside Canada*, the CCRA exceptionally allows certain gifts of certain goods to non-qualified donees where it is demonstrated that the goods in question (i.e. medical supplies) can only be used by the recipient for charitable purposes. However, where the non-qualified donee plans to use those goods in a non-charitable manner for which the charity had prior knowledge, the gift in question cannot qualify as being for a charitable purpose and would thus not be allowed by the *Act ab initio*. On October 5, 1994, CAMDI wrote to ask permission to buy a telecommunication system in the amount

nt of \$84,000 to replace MDA's old ambulance communication system. We approved the project on the understanding that the goods would be used exclusively for a charitable purpose. However, CAMDI failed to inform us at the time that:

"MAGEN DAVID ADOM in Israel provides all the Emergency Medical Services in times of PEACE and WAR. The entire High Frequency FM Radio Network of the MDA system is immediately available to the Israeli Defense Forces in times of crises." (emphasis as found on CAMDI's Internet site) (Copy attached for your convenience)

When CAMDI gifted the communication system and ambulances to MDA or the I.D.F., CAMDI should have known that these resources could be used for non-charitable purposes and purposes contrary to stated Canadian government policy. Therefore, these gifts could not be considered as charitable expenditures even by application of the aforementioned exception.

[55] This is followed by a paragraph entitled "Basis for revocation" (Appeal Book, Volume I, at page 13):

Gifts to non-qualified donees are not considered charitable expenditures for the purposes of the *Act*. For the most recent fiscal year that was audited, expenditures were made by CAMDI that were claimed to be charitable, but were in fact gifts made to non-qualified donees. Consequently, CAMDI has not demonstrated that these expenditures were charitable in nature. Moreover, CAMDI did not unequivocally show that all similar expenditures claimed in prior years were in fact charitable expenditures.

[56] The appellant argues that there is no legal foundation for the position of the Minister that, because of Canadian public policy, the appellant cannot be considered to be carrying out its charitable objectives to the extent that it or MDA operates in the Occupied Territories. I agree with that submission.

[57] The notion that public policy has a role in the determination of charitable status was recognized by this Court in *Everywoman's Health Care Society (1988) v. Canada (Minister of National Revenue - M.N.R.) (C.A.)*, [1992] 2 F.C. 52 (C.A.). In that case, the Minister had refused to register as a charity an organization that proposed to operate a health care clinic that would provide abortions. The Minister had argued that a charitable purpose could not be established if the object of the charity is politically controversial. Décaré J.A., speaking for the Court, disposed of this argument as follows (at paragraphs 14-5, footnotes omitted):

[14] It is well established that an organization will not be charitable in law if its activities are illegal or contrary to public policy. As already noted, it is conceded here that the Society's activities are not illegal; they are contrary neither to criminal law nor to civil or "Anglo-Canadian law". But, argues the respondent, in the absence of clear statements of public policy on the issue

of abortion, the Society's activities cannot be said to accord with public policy; the failure of Parliament to replace the provisions of the Criminal Code that were struck down in the Morgenthaler decision, leads the respondent to submit that "it cannot be concluded that first trimester abortions by choice of the patient, while clearly legal, reflects public policy on abortion."

[15] I have found no support for such an approach in the case law. It is one thing to act in a way which offends public policy; it is a totally different thing to act in a way which is not reflected in any, adverse or favourable, public policy. An activity simply cannot be held to be contrary to public policy where, admittedly, no such policy exists. It would impose an unbearable burden on those who apply for charity registration to require that there be a clear public policy favouring their activities. As I read the cases, for an activity to be considered as "contrary to public policy", there must be a definite and somehow officially declared and implemented policy.

[58] I also note the following concern of Iacobucci J., speaking for the majority of the Supreme Court of Canada in *65302 British Columbia Ltd. v. Canada*, 1999 CanLII 639 (SCC), [1999] 3 S.C.R. 804, at paragraph 59:

... public policy arguments ask courts to make difficult determinations with questionable authority. ...

[59] The Minister's public policy argument in this case is based on an interpretation of a number of United Nations resolutions and conventions, which have consistently been supported by Canada. However, it is far from clear that these resolutions support the proposition, as the Minister seems to believe, that a Canadian charitable organization cannot operate in the Occupied Territories without offending Canadian public policy. I perceive no logic in the proposition that the provision of emergency medical assistance can be a charitable activity in downtown Tel Aviv, but not in the Occupied Territories. I would also note that it is difficult to reconcile the existence of such a policy with the Canada-Israel Free Trade Agreement (*Canada-Israel Free Trade Agreement Implementations Act*, S.C. 1996, c. 33) and related legislation which, taken together, appear to permit preferential tariff treatment for goods imported to Canada from the Occupied Territories.

[60] The record in this appeal falls far short of establishing, to paraphrase Décaré J.A., that there is a "definite and somehow officially declared and implemented policy" that a Canadian charitable organization cannot operate in the Occupied Territories. Certainly no such policy has found expression in any Act of Parliament, in any regulation, or in any publicly available government document of any kind. I have no doubt that it is open to Parliament, if it sees fit, to amend the *Income Tax Act* to preclude Canadian charities from operating in the Occupied Territories or any other part of the world, or to empower the Governor in Council to make regulations to that effect. In the absence of such legislation or some equally compelling public pronouncement, it seems to me that the Minister cannot justify the revocation of the

registration of the appellant solely on the basis that it or MDA operates in the Occupied Territories.

[61] In this case, however, the existence of this supposed public policy was not the only basis for the proposal to revoke the registration of the appellant as a charity. The Minister's fundamental concern, even in the context of the stated public policy, was that the appellant did not take appropriate steps to ensure that the ambulances and related equipment it provided to MDA would be used for charitable purposes. I will therefore go on to consider that ground for the revocation.

#### Gifts to MDA: relationship between the appellant and MDA

[62] The July 10, 2001 notification letter substantially repeats much of what had been said to the appellant on other occasions about the need to establish an agency relationship between the appellant and MDA. There is an explanation of the relevant statutory provisions, and an explanation of the rationale for the requirement of an agency relationship between the appellant and MDA. Those explanations are followed by the following paragraphs under the heading "CCRA findings" (Appeal Book, Volume I, at pages 9-10):

As discussed at the May 17, 1999 meeting, the CCRA had audited the books and records of CAMDI [the appellant] on a number of occasions [...]. Each audit revealed that CAMDI exercised little or no control over the activities carried on in Israel to which its resources were devoted. In fact, CAMDI's only function was to raise funds in Canada and to gift its resources to MDA, a non-qualified donee [...].

Audit evidence, gathered during each of the previous audits shows that CAMDI did not implement an agency relationship between itself and MDA, notwithstanding our express recommendation to that effect, or CAMDI's undertakings to that effect. As a result, CAMDI could not prove that an appropriate principal-agent relationship existed between itself and MDA. In every tangible respect, CAMDI failed to establish that it acted as the principal in conformity with the *Act*. For all intents and purposes, all resources sent to Israel by CAMDI are controlled by non-qualified donees.

As a result of the meeting, it was decided that the CCRA would defer the revocation of CAMDI's status as a registered charity as long as CAMDI could meet the following conditions:

- t establish that it had not gifted its resources to non-qualified donees;
- t implement an agency agreement which would allow it to maintain effective direction and actual control over its resources and the programs undertaken on its behalf;

- t carry out exclusively charitable activities;
- t not have its activities carried out in the Occupied Territories;
- t not have its resources used in the Occupied Territories; and,
- t respect all the other requirements of the *Act* as they pertain to registered charities.

[...]

[63] The letter then refers to the appellant's letter of July 6, 1999 and the enclosed list that indicated that an ambulance had been "given to the I.D.F.", and continues with these statements (at page 10):

... We take special note that this ambulance was gifted to the I.D.F. less than 6 months after CAMDI signed an agency agreement with MDA on January 11, 1999, and less than a month after the meeting. We conclude that by gifting its resources to non-qualified donees such as the I.D.F., CAMDI did not devote its resources to the pursuit of exclusively charitable purposes.

In addition, I further conclude that if CAMDI's [sic] had directed and controlled its resources as it could have by virtue of the January 11, 1999 agency agreement, the transfer of the ambulance to the I.D.F. would not have occurred. However, CAMDI chose to simply gift its resources to non-qualified donees even after it supposedly put in place the January 11, 1999 agency agreement. Therefore, even after signing the January 11, 1999 agency agreement, CAMDI was not responsible in a direct, effectual, and constant manner over its resources in a manner consistent with the *Act*.

[64] After the above statements, there follows this paragraph entitled "Basis for revocation" (Appeal Book, Volume I, at page 10):

Despite the myriad of letters and communications that have ensued since CAMDI [the appellant] was registered as a Canadian charity, your letter confirms the results of the fourth audit; namely, that CAMDI has continued its practice of simply gifting its resources to non-qualified donees.

[65] That paragraph should be read together with the "Basis for revocation" quoted above, which I repeat here for ease of reference (Appeal Book, Volume I, at page 13):

Gifts to non-qualified donees are not considered charitable expenditures for the purposes of the *Act*. For the most recent fiscal year that was audited, expenditures were made by CAMDI that were claimed to be charitable, but were in fact gifts made to non-qualified donees. Consequently, CAMDI has not demonstrated that these expenditures were charitable in nature. Moreover, CAMDI did not unequivocally show that all similar expenditures claimed in prior years were in fact charitable expenditures.

[66] As explained earlier, a charitable organization is obliged to carry on its charitable activities itself. If it does not do so, its registration may be revoked. A charitable organization that wishes to operate in a location where it has no officers or employees must somehow act through a person in that location. That obviously could be done by establishing an agency relationship between the charity and the person. Evidence that such a relationship has been established by contract, and that the contract has been adhered to, might well be the most straightforward means of proving to the Minister that a person purporting to carry out the charitable activities of a charity in a particular location is in fact acting on behalf of the charity. It is possible that the same result might be achieved by other means. However, a charity that chooses to carry out its activities in a foreign country through an agent or otherwise must be in a position to establish that any acts that purport to be those of the charity are effectively authorized, controlled and monitored by the charity.

[67] It should also be said, although the point is obvious, that the Minister is entitled to investigate whether registered charities are operating in accordance with the applicable provisions of the *Income Tax Act*. The Minister is entitled to insist on credible evidence that the activities of a charitable organization are, in fact and law, activities being carried on by the charitable organization itself.

[68] The appellant argues that the existence of an agency relationship is not always essential, and in particular it is not essential in this case. The appellant argues that the Minister has in the past accepted that the 1985 charitable goods policy applies, and that policy should continue to apply. It follows, according to the appellant's argument, that the appellant fulfilled its charitable objectives merely by donating ambulances and related equipment to MDA. If that is so, then it would also follow that the appellant would have had no continuing obligation to control or monitor MDA's use of the donated goods.

[69] A preliminary question is whether the Minister, having taken the position in the past that the provision of ambulances and related equipment to MDA was within the charitable goods policy, must continue to take that position. In my view, the Minister is under no such obligation. The Minister's obligation is to interpret the relevant provisions of the *Income Tax Act* and to determine how those provisions should be administered in each case, while ensuring that the affected person is given the appropriate degree of procedural fairness. The Minister

does not breach any legal obligation merely by considering afresh the application of the relevant statutory provisions, even if the Act is applied less generously as a result.

[70] A second preliminary question is whether the charitable goods policy is valid, in the sense of being well founded in law. The answer is not clear. However, as the point was not argued, I am prepared to assume, without deciding, that a legal justification could be found for the policy. Given that assumption, the issue is whether the Minister erred in finding that the charitable goods policy does not apply to the appellant's provision of ambulances and related equipment to MDA.

[71] The application of the charitable goods policy requires the Minister to accept that even if the appellant gave ambulances and related equipment unconditionally to MDA, the Minister could reasonably expect MDA to use such goods solely for charitable purposes. Such a reasonable expectation would have to be based on evidence as to the status and activities of MDA. In that regard, the appellant has relied upon its repeated assertions that MDA is like the Red Cross except that it operates primarily in Israel, and thus implicitly is an organization with solely charitable purposes.

[72] The record discloses little evidence to support those assertions. The documentation relating to the Minister's audit of the appellant for 1987 and 1988 includes a page that purports to contain general information about MDA (Appeal Book, Volume IV, page 156). The source of that document is apparently the appellant itself, although it is not clear when, why or by whom it was written. The document reads as follows:

#### 11 GOOD REASONS WHY YOU SHOULD SUPPORT MAGEN DAVID ADOM

1 MAGEN DAVID ADOM is the SECOND LINE OF DEFENSE in Israel and provides all the Emergency Medical Services in times of PEACE and WAR. The entire High Frequency FM Radio Network of the MDA system is immediately available to the Israel Defense Forces in times of crisis.

2 MAGEN DAVID ADOM has now completed its new 16 million dollar National Blood Bank Centre in Ramat Gan which will provide all the BLOOD PLASMA SERVICES for the Israel Defense Forces and all the hospitals of Israel.

3 MAGEN DAVID ADOM has a CARDIAC SURVIVAL SYSTEM with a fleet of Mobile Intensive Care Units equipped with two-way telemetry communication that operates immediately between the emergency vehicle and the receiving hospital.

4 MAGEN DAVID ADOM cooperates with all the hospitals and clinics throughout Israel and has instituted an Emergency Premature and High Risk Infant Ambulance Service together with Hadassah Hospital at Mt. Scopus.

5 MAGEN DAVID ADOM has an ongoing program for Emergency Lifesaving Training for all civil employees including postmen, policemen, firemen, tour guides, teachers and civilian guards.

6 MAGEN DAVID ADOM has built and maintains 63 MDA First Aid Stations throughout all of Israel which are on alert every minute of the day, every day of the year. Auxiliary services are maintained with Ambulances at all the critical border kibbutzim.

7 MAGEN DAVID ADOM is recognized as the "Outstanding Volunteer Organization of Israel" and has helped other Red Cross Service organizations in Europe and Africa. MAGEN DAVID ADOM, even after forty years, is not recognized by the family of International Red Cross Societies.

8 MAGEN DAVID ADOM is celebrating almost 60 years of dedicated efforts on behalf of the People of Israel - Christians, Moslems and Jews. It was actually established 17 years before the birth of the State of Israel.

9 MAGEN DAVID ADOM provides a nationwide program of Youth Activities, with emphasis on First Aid instruction. Young people are trained to help in times of disaster and to administer rescue services in their own schools and communities.

10 MAGEN DAVID ADOM maintains a modern Ambulance fleet of 650 lifesaving vehicles that stand ready throughout all of Israel. They are replaced at the rate of 80 vehicles per year as they become inoperable.

11 MAGEN DAVID ADOM receives no allocation of funds from the United Israel. Appeal MAGEN DAVID ADOM must depend upon support from contributions from their own local fundraising and from friends, volunteers and Chapters throughout the world.

[73] This document may provide some basis for the representations of the appellant that MDA bears some resemblance to the Red Cross. However, it also discloses facts that make

such a comparison somewhat questionable. For example, the statement in item 7 to the effect that MDA "is not recognized by the family of International Red Cross Societies" calls for some explanation, although it must also be noted that the material does not disclose the significance, if any, of such non-recognition. Similarly, if there is cooperation between the MDA and the Israeli Defence Force with respect to the use of MDA's communication facility as suggested in item 1, questions might fairly be raised as to whether and to what extent MDA is involved in Israeli military operations.

[74] I am unable to find in the record evidence to support a reasonable expectation that the ambulances and related equipment provided to MDA by the appellant were used by the MDA only for charitable purposes. I conclude therefore that the Minister did not err in finding that the 1985 charitable goods policy does not apply to the ambulances and related goods the appellant provided to MDA. It follows that the Minister was entitled to insist on evidence that MDA's use of the donated goods in Israel is subject to an appropriate agency agreement, or at least alternative arrangements that are capable of demonstrating that MDA's use of those goods amounted to the carrying on by the appellant of its charitable activities.

[75] The appellant argues that although there is no written agreement, there is and always has been an agency relationship between the appellant and MDA, and that in any event that relationship has now been reduced to writing and so the requirement for a written agency agreement, if it exists, has been met. I am of the view that these arguments must fail. There is no evidence in the record that there was ever an agency relationship between the appellant and MDA except the appellant's bare assertions to that effect. Nor is there any evidence that the appellant took any steps to control or monitor the use by MDA of ambulances and related equipment that it provided to MDA.

[76] I do not ignore the fact that a document signed in 1999 was presented as evidence of an agency agreement, but that document is not capable of establishing the existence of an agency relationship prior to its execution. Also, the correspondence submitted with that document, far from suggesting that the appellant intended to adhere to the agency agreement, indicated that it was simply awaiting the Minister's review of the agreement.

[77] For the foregoing reasons, the revocation of the appellant's registration as a charity is justified. That would be sufficient to dismiss this appeal, except for the argument of the appellant that the process leading to the July 10, 2001 notification letter was fatally flawed by a breach of the requirement of procedural fairness. I will deal with that argument below.

#### Fairness of the process

[78] The appellant argues that the Minister's decision to issue the July 10, 2001 notification letter should be quashed because it was reached on the basis of evidence of which the appellant had no notice and upon which it had no opportunity to comment. The undisclosed material falls into two categories, the audit reports and the internal memoranda prepared in the two year period between the appellant's last submission in July of 1999 and the date of the notification letter, July 10, 2001.

[79] There is nothing of substance in any of the audit reports that was not disclosed to the appellant well in advance of the notification letter. Therefore, the Minister did not act unfairly in failing to disclose the audit reports.

[80] Material in the internal memoranda indicates that the Minister may have taken into account three factual allegations upon which the appellant claims it should have had an opportunity to comment.

[81] One factual allegation was that the MDA operates or may operate in the Occupied Territories. That information was apparently based on news stories and material the Minister found on the internet. Generally, it would be an error for the Minister to base the revocation of a charity on information from news reports and from the internet without giving the appellant an opportunity to refute the information or at least comment on it. However, in this case the error is of no consequence. The Minister believed that the location of MDA's activities was relevant because of the supposed Canadian public policy relating to MDA's activities in the Occupied Territories. For the reasons stated above, that ground of revocation is ill founded. However, it is not the only ground for the revocation notice, and the other grounds are not based in any way upon the location of MDA's activities. In these circumstances, the Minister's failure to elicit better facts about the location of MDA's operations was not an error that should vitiate the decision to issue the notification letter.

[82] The second factual allegation was that MDA shares its ambulance communication system with the Israeli Defence Force. In one of the internal memoranda, this was cited as support for the conclusion that the charitable goods policy does not or should not apply to the appellant's provision of ambulances and related equipment to MDA. In the July 10, 2001 notification letter, it was cited as an indication that MDA's activities may not be exclusively charitable. In my view, the appellant cannot complain that it was unaware that the Minister had this information, because the information is found in a document it had previously provided to the Minister (refer to the document quoted above entitled "11 Good Reasons Why You Should Support Magen David Adom").

[83] The third factual allegation was that in 1996 the appellant had given an ambulance to MDA which MDA gave to the Israeli Defence Force on June 14, 1999. That allegation was based on material provided by the appellant itself in its July 6, 1999 letter to the Minister. The Minister's interpretation of that information was reasonable. In my view, the Minister was under no obligation to ask the appellant to provide further particulars.

[84] The record is clear that the proposal to revoke the appellant's registration was based fundamentally on the absence of evidence demonstrating that the appellant maintained control over the use of ambulances and related equipment it provided to MDA, despite being advised many times since 1997 that it was required to do so. The appellant did not satisfy the Minister on this point because it could not do so. The fact is that the appellant exercised no control over MDA's activities. Therefore, even if the factual allegations referred to above had been disclosed in advance to the appellant and refuted, the revocation of the appellant's registration would still be justified.

[85] The appellant also argues that the provisions of the *Income Tax Act* relating to the process for revoking the registration of charities contravenes subsection 2(e) of the *Canadian Bill of Rights*, R.S.C. 1985, Appendix III. That argument must be rejected for the same reasons as it was rejected in *The Canadian Committee for the Tel Aviv Foundation v. Her Majesty the Queen*, 2002 FCA 72 (CanLII), 2002 D.T.C. 6843.

### Conclusion

[86] For the foregoing reasons, this appeal should be dismissed with costs.

"K. Sharlow"

J.A.

"I agree

Gilles Létourneau J.A."

ROTHSTEIN J.A. (Dissenting)

### INTRODUCTION

[87] I have read the reasons of Sharlow J.A. in this appeal but I am respectfully not in agreement with her conclusion to dismiss the appeal. In my opinion, the Minister's decision is flawed for two reasons. One is that it was based on irrelevant considerations. It is not for the Court to speculate as to what decision the Minister would have come to, had he taken account only of relevant considerations. In these circumstances, the appropriate remedy is to quash the Minister's decision and remit the matter for redetermination based solely on relevant considerations.

[88] The second reason for considering the Minister's decision flawed is that the proceedings taken have been tainted by breaches of procedural fairness. Where a result is inevitable, breaches of procedural fairness may not require that a decision be quashed. See *Mobil Oil Canada Ltd. v. Canada-Newfoundland Offshore Petroleum Board*, 1994 CanLII 114 (SCC), [1994] 1 S.C.R. 202 at paragraph 52. However, in all other circumstances, where there is a failure of procedural fairness, quashing the decision is the necessary result. See *Cardinal v. Director of Kent Institution*, 1985 CanLII 23 (SCC), [1985] 2 S.C.R. 643 at 660-661. The decision under appeal in this case is discretionary. It is not inevitable that the Minister would exercise his discretion to revoke the appellant's registration had breaches of procedural fairness not occurred. The appropriate result is to quash the Minister's decision and remit the matter for redetermination in accordance with the requirements of procedural fairness.

IRRELEVANT CONSIDERATIONS

[89] The provision in the *Income Tax Act* under which the Minister acted to give notice of revocation of the appellant's charitable registration was paragraph 168(1)(b).

<p>168. (1) Where a registered charity [...]</p> <p>(b) ceases to comply with the requirements of this Act for its registration as such,</p> <p>[...]</p> <p>the Minister may, by registered mail, give notice to the registered charity [...] that the Minister proposes to revoke its registration.</p>	<p>168. (1) Le ministre peut, par lettre recommandée, aviser un organisme de bienfaisance enregistré [...] de son intention de révoquer l'enregistrement lorsque l'organisme de bienfaisance enregistré [...]</p> <p>b) cesse de se conformer aux exigences de la présente loi relatives à son enregistrement comme telle;</p> <p>[...]</p>
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[90] There is no doubt that the provision confers a discretionary power on the Minister and that the Minister has exercised that discretion in the past, not to order revocation of a charity's registration, even though the Minister had been of the opinion that there had been failure by the charity to comply with the requirements of the Act.

[91] Where a discretionary decision, made pursuant to a statutory authority, is based upon irrelevant considerations, intervention by the Court will be justified. See *Maple Lodge Farms Ltd. v. Canada*, 1982 CanLII 24 (SCC), [1982] 2 S.C.R. 2 at 7-8 per McIntyre J.

[92] In his letter of July 10, 2001, to the appellant, the Minister gave three reasons for his proposal to revoke the appellant's charitable registration:

1. the gifting of resources by the appellant, Canadian Magen David Adom for Israel (CAMDI), to Magen David Adom (MDA);
2. CAMDI's activities in contravention of Canadian public policy - namely, operations in the Occupied Territories; and
3. improper receipting practices.

[93] I agree with Sharlow J.A. that the improper receipting practices must be ignored. At the hearing of this appeal, counsel for the Minister, in an effort to expedite proceedings, interrupted the argument of counsel for the appellant to state that the receipting issue would not have resulted in revocation. As a result, counsel for the appellant was instructed by the Court that no further argument was required on the point. Therefore, the receipting practices issue is necessarily ignored for purposes of this appeal.

[94] I also agree with Sharlow J.A.'s finding that there is no Canadian public policy expressed in any Act of Parliament, Regulation or in any publicly available government document that a Canadian charitable organization cannot operate in the Occupied Territories. This public policy issue, raised in the July 10, 2001 revocation letter, is without legal foundation and should not have been considered as a basis for giving notice of revocation of the appellant's charitable registration.

[95] That, then, leaves only the issue of the gifting of resources to MDA. For purposes of this discussion, I will ignore the January 11, 1999 agency agreement between the appellant and MDA which might be a complete answer to the gifting issue, and the charitable goods policy which, apparently, was the basis, in earlier years, for the Minister not requiring an agency agreement because ambulances were considered obviously charitable whether received by a qualified donee or not. I will proceed on the basis that the gifting of resources by CAMDI to MDA, as a non-qualified donee, is a valid basis to revoke CAMDI's registration. Even accepting this position, it is by no means obvious that the Minister would have exercised his discretion to revoke, had the gifting issue been the only basis for revocation. Rather, it was the cumulative effect of all three issues, improper receipting which must be ignored, Canadian public policy which is without legal foundation, and gifting which is a valid basis, that led to the Minister's decision.

[96] The July 10, 2001 letter, after elaborating on each of these three concerns of the Minister, states:

Consequently, I wish to advise that for the reasons outlined above and pursuant to the authority granted to the Minister in subsection 168(1)(b) of the Act and delegated me by the Minister, I propose to revoke the registration of CAMDI.

[97] The words "[...] for the reasons outlined above[...]" preclude me from distinguishing any one of the reasons as an independent ground for the Minister exercising his discretion to revoke. These words indicate that it is the cumulative effect of the three concerns mentioned that caused the Minister to reach his decision. In such circumstances, it is not for the Court to speculate as to whether the Minister would have decided to revoke, had he considered only the single relevant ground of the three to which he referred.

[98] As Sharlow J.A. has pointed out, the gifting issue was the subject of correspondence between the Minister and the appellant as far back as 1986. For in excess of a decade, it appears it was not of sufficient concern to the Minister to cause him to take revocation steps. If the gifting issue alone was sufficient to cause the Minister, on July 10, 2001, to exercise his discretion to revoke, it raises the obvious question as to why such revocation did not occur at an earlier date. There may be explanations. However, the long delay is evidence that the Minister did not consider the gifting issue, of itself, to be so serious as to warrant revocation.

[99] In addition, the Minister himself appears to have treated the gifting issue as inextricably linked with the public policy issue. This is evidenced by the December 14, 1998, letter from the Minister to the appellant, which put revocation in issue and which linked the gifting issue (or the appellant, as a Canadian charity, not having an agency agreement with the

Israeli charity, MDA) with operations of a Canadian charity in the Occupied Territories, contrary to alleged Canadian public policy:

Based on the above, a Canadian charity may operate in Israel, other than in the Occupied Territories under an agency agreement, the requirements for which are explained hereunder:  
[...]

[100] In summary, the record indicates that the Minister did not consider the gifting issue as an independent ground for revocation because:

1. the revocation letter treats all three reasons cited cumulatively to justify revocation; and
2. the gifting issue itself was linked by the Minister to the invalid and, therefore, irrelevant public policy issue.

[101] For these reasons, I am unable to agree with Sharlow J.A. that the appeal should be dismissed on the basis that the gifting issue alone was sufficient to justify revocation. Under that approach, the Court effectively substitutes its discretion for that of the Minister. It is not for the Court to exercise that discretion. In this respect, I would reiterate that the gifting issue was outstanding for some 15 years, suggesting that this single issue, in itself, was not of pressing importance to the Minister.

[102] I think Morden J.A. (as he then was) explained the appropriate approach in a case such as this in *DiNardo v. Ontario (Liquor Licence Board)* (1974), 1974 CanLII 703 (ON SC), 5 O.R. (2d) 124 at 132-133:

In the result, with respect to the November 30, 1973 decision, I have found that one of the reasons was based on an extraneous consideration, one either reflects an extraneous consideration or alternatively lacks any evidence in support of it and the third is relevant and there is some evidence on which it could be found. Can the decision stand? In my view it cannot. In coming to the decision that it did, the Board appears to rely upon the cumulative effect of the three findings. It has not based its decision on each of these findings considered alternatively. In the face of this, it is not for me to speculate on what the Board would have done if it had considered whether or not to base its decision on the one finding which I have held cannot be successfully challenged. In these circumstances, the decision itself must be set aside. In support of this reasoning I would refer to *Sadler v. Sheffield Corporation*, [1924] 1 Ch. 483 at pp. 504-5.

I would adopt these reasons as my own. Accordingly, I would quash the July 10, 2001, notice of revocation.

#### BREACH OF PROCEDURAL FAIRNESS

[103] In any event, the Minister's decision should be quashed on the grounds that the Minister denied the appellant procedural fairness. In particular, in my view, the Minister relied on "evidence" without giving the appellant the opportunity to be heard in relation to that evidence. An internal memorandum in the Minister's Department, dated March 28, 2002, the

last document on the record before the July 10, 2001 notice of revocation, refers to evidence gleaned from CBC news reports and other unnamed sources. This evidence related to the use of ambulances in the Occupied Territories and the use of ambulances in the transportation of armed personnel, ammunition and other Armed Forces activities. In my view, both of these "facts" are prejudicial to the appellant and the appellant should have been granted an opportunity to address them. See, for example, *Renaissance International v. Minister of National Revenue*, 1982 CanLII 2974 (FCA), [1983] 1 F.C. 860 at 868-871 per Heald J.A. (C.A.).

[104] Indeed, Sharlow J.A. accepts that it would be an error for the Minister to act on information from news reports without giving the appellant an opportunity to comment. However, she says the error here is of no consequence because the gifting issue, which she says is a valid basis for revocation, was not based upon activities in the Occupied Territories. For the reasons I have given, I believe the gifting issue and the operation in the Occupied Territories issue were linked by the Minister. Therefore, it cannot be said that not giving the appellant the opportunity to comment on the matter of operations in the Occupied Territories had no consequences. This was a breach of procedural fairness that must result in the quashing of the decision to revoke.

#### CONCLUSION

[105] It is important to be clear that this appeal is about the exercise of discretionary power by the Minister of National Revenue to revoke charitable status because a charity allegedly ceases to comply with technical requirements of the *Income Tax Act*. There is no suggestion here of any other type of impropriety by the appellant.

[106] The focus in an appeal from a discretionary decision is on the actions of the decision-maker. In my opinion, the Minister exercised his discretion to revoke, taking into account irrelevant considerations and, in the course of reaching his decision, denied the appellant procedural fairness. For these reasons, I would allow the appeal, quash the decision to give notice of revocation as set out in the letter of July 10, 2001 from the Minister to the appellant, and remit the matter to the Minister for redetermination based solely on relevant grounds and in accordance with the requirements of procedural fairness.

"Marshall Rothstein"

J.A.

#### FEDERAL COURT OF APPEAL

#### NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-433-01

**STYLE OF CAUSE:** CANADIAN MAGEN DAVID ADOM FOR ISRAEL/  
MAGEN DAVID ADOM CANADIEN POUR ISRAEL

v.

MINISTER OF NATIONAL REVENUE

**PLACE OF HEARING:** OTTAWA

**DATE OF HEARING:** JUNE 18, 2002

**REASONS FOR JUDGMENT :** SHARLOW, J.A.

**CONCURRED IN BY:** LÉTOURNEAU, J.A.

**DISSENTING REASONS BY:** ROTHSTEIN, J.A.

**DATED:** SEPTEMBER 13, 2002

APPEARANCES:

Mr. Arthur B.C. Drache FOR THE APPELLANT

Mr. Paul Lepsoe

Mr. Roger Leclaire FOR THE RESPONDENT

Mr. Pascal Tétrault

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Deputy Attorney General of Canada

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By **LEXUM** for the law societies members of the  Federation of Law Societies of  
Canada

Jewish National Fund of Canada (Keren Kayemeth Le'Israel) Inc. /  
Fonds National Juif du Canada (Keren Kayemeth Le'Israel) Inc.

Comments on Representations

In our administrative fairness letters dated May 12, 2016 (AFL 1), and April 19, 2018 (AFL 2), we explained that the audit conducted by the Canada Revenue Agency (CRA) for the period from January 1, 2011, to December 31, 2012, identified that the Jewish National Fund of Canada (Keren Kayemeth Le'Israel) Inc. / Fonds National Juif du Canada (Keren Kayemeth Le'Israel) Inc. (Organization) is not operating in compliance with the provisions of the Income Tax Act in the following areas:

1. It is not constituted and operated for exclusively charitable purposes
2. Failure to devote resources to charitable activities carried on by the Organization itself:
  - a) Lack of direction and control over the use of resources/resourcing non-qualified donees
  - b) Conduct of non-charitable activities
3. Failure to maintain adequate books and records

Notwithstanding your written responses dated September 12, 2016, May 17, 2018, and October 5, 2018, we maintain our position that the issues identified during the audit, with the exception of our position on activities undertaken during the audit period in Israeli settlements, represent a serious breach of the requirements of the Act. As a result of this non-compliance, the Organization's registration as a charity should be revoked.

The basis for our position is described in detail below, with reference to our comments from AFL 2, a summary of the Organization's most recent representations, and our analysis of those representations.

**1. Failure to be constituted for exclusively charitable purposes**

**AFL 2 summary**

In AFL 2, we reiterated our position from AFL 1, that the Organization's stated purposes are broad and vague. In its response dated September 12, 2016, the Organization agreed that its purposes could be more specific and presented new proposed purposes.

Possible relief of poverty

It is our position that the activities the Organization claims relieve poverty (the employment of indigent workers) in fact serve to advance an unstated non-charitable purpose that is broadly supporting the work of the Israeli corporation Keren Kayemeth Le'Israel-Jewish National Fund

(JNF). This position is based on concerns previously articulated in AFL 2. For example, AFL 2 included the following from the Organization's website:

Since its inception in 1901, the Jewish National Fund has been the sole agency responsible for the development and infrastructure of land in Israel. Our many programs include land reclamation, reforestation, and road building. The goal is to increase support and awareness for JNF's initiatives, and ultimately to raise funds for these projects in order to enhance the lives of the citizens of Israel.

The JNF directs 100% of its charitable dollars to support the Land of Israel. Therefore, you can be assured that your donation is going directly to fulfill the needs of one of our many development areas such as water, forestry and environment, education, community development, security, tourism and recreation, and research and development.<sup>1</sup>

### **Organization's representations**

Furthermore, we refer to the following comments, which are drawn from the Organization's representations dated October 5, 2018.

The submission explains that promotional materials focusing on JNF projects, and not relief of poverty, is a "gimmick" that was accepted as a fundraising technique in 1967 by the forerunner of the CRA. The response states:

Therefore, the [Organization] has been using it, as it believed it was permitted to do, for some time and with some success...In addition, while the relief of poverty through the employment of Indigent Workers has been the [Organization's] primary focus and that its projects have been incidental or ancillary to that purpose, the [Organization] recognizes that the historic approach to fundraising is no longer acceptable. The [Organization] agrees that the issue has not been helped by the [Organization's] purposes, which are admittedly anachronistic and would benefit from being updated.

### Possible advancement of religion

The Organization has further reasoned that its activities advance religion in the charitable sense.

In AFL 2, we advised that the leading common law decisions have established that advancing a religion in the charitable sense involves manifesting or promoting its three key attributes (i.e., faith in a 'higher unseen power' such as God, a Supreme Being or Entity, worship/reverence, and a particular and comprehensive system of doctrines and observances), spreading its message about them, and taking positive steps to sustain and increase belief in them. However, religious motivation, in and of itself, is not a determining factor, and will not transform a secular activity into one directed toward religious advancement. In the charitable context, to ensure delivery of the required public benefit, methods of advancing religion cannot be so subjective, understated, indirect, unstructured or informal that it cannot be determined that the organization's religion will be reasonably furthered as a sufficiently direct result and

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<sup>1</sup> <http://jnf.ca/index.php/about-jnf/mission> (accessed April 12, 2018).

consequence. Activities that advance religion cannot be proportionally incidental to non-religious activities; the focus should be on religion.

The Organization asserts that the selected projects are charitable themselves, as they further the advancement of religion because of the Organization's religious underpinnings; however, it is the CRA's position that the Organization's activities do not advance religion in the charitable sense.

Given the aforementioned requirements, it is our position that the Organization's purported activities do not fall under the advancement of religion.

#### Organization's representations

The Organization "acknowledges that its activities could have advanced religion in a more overt manner." Its latest response stated that the Organization proposes to change its activities to align with new purposes and does not intend to have any purposes that focus directly on the advancement of religion.

The Organization further proposed that the audit outcome be a compliance agreement that would include the Organization adopting new purposes, and committing to change its activities to be compliant.

#### CRA's position

We acknowledge the Organization's willingness to amend its purposes and change its activities accordingly, and its efforts to show that it is distinct from JNF.

While the proposed purposes are in and of themselves charitable purposes, the question of whether an organization is constituted exclusively for charitable purposes, as explained in both AFLs, cannot be determined solely by reference to its stated purposes, but must take into account the activities in which the organization currently engages.<sup>2</sup>

A charitable activity is one that directly furthers a charitable purpose<sup>3</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 form, a separate or collateral purpose. An organization with a collateral non-charitable purpose is ineligible for registration under the Act.

To comply with the requirement that it devote all of its resources to charitable activities carried on by the organization itself, a registered charity may only use its resources (funds, personnel and/or property) in two ways:

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<sup>2</sup> Vancouver Society of Immigrant and Visible Minority Women v. Minister of National Revenue [1999] 1 S.C.R. 10 at para. 194. See also A.Y.S.A. Amateur Youth Soccer Association v. Canada (Revenue Agency) [2007] 3 S.C.R. 217 at para. 42.

<sup>3</sup> See Vancouver Society, supra note 1 per Iacobucci J. at para. 154.

- 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>4</sup>

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

While we have received copies of proposed agreements and ventures, and the Directors’ Handbook, the representations lack sufficient detail about the Organization’s planned activities. Absent this information, we cannot conclude that the Organization meets the above-referenced criteria.

Moreover, while the Organization recognises that its historic approach to fundraising is not acceptable for a registered charity, it nonetheless appears to continue using this approach suggesting that it continues to use its resources in a manner that exceeds the bounds of the statutory rules for charities.

For example, in a recent review of the Organization’s website,<sup>5</sup> under the heading “WHO WE ARE”, we found:

For decades the [Organization] has served as the caretaker of the land of Israel. This mission took the role of planting trees, building water reservoirs, preparing land for new communities, and building parks and bicycle trails. More recently, [the Organization] has taken on projects to build the social infrastructure of the land of Israel for the benefit of the People of Israel. We have partnered with a variety of Israeli NGO’s to build infrastructure to benefit vulnerable populations such as youth-at-risk, victims of domestic abuse, special needs children, veterans and the poor. This is Who We Are: We are Building the Foundations of Israel’s Future.

In addition, on the webpage “Vision,”<sup>6</sup> we found:

### **Our Vision**

Since its inception in 1901, the Jewish National Fund has been the sole agency responsible for the development and infrastructure of land in Israel. Our many programs include land reclamation, reforestation, and road building.

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<sup>4</sup> A “qualified donee” means a donee described in any of paragraphs 110.1(1)(a) and (b) and the definitions “total charitable gifts” and “total Crown gifts” in subsection 118.1. As per subsection 149.1(6)(b), a charitable organization shall be considered to be devoting its resources to charitable activities carried on by it to the extent that, in any taxation year, it disburses not more than 50% of its income for that year to qualified donees.

<sup>5</sup> <https://jnf.ca/> accessed January 11, 2019, saved to archive.org at <https://web.archive.org/web/20181123050239/https://jnf.ca/>.

<sup>6</sup> <https://jnf.ca/index.php/about-jnf/vision>, accessed January 11, 2019, saved to archive.org at <https://web.archive.org/web/20180323052714/jnf.ca/index.php/about-jnf/vision>.

From the Negev Desert to the Galilee, lush green spaces, rich farmland and cities pulsating with life have blossomed out of swamp and mountain rock.

The JNF directs 100% of its charitable dollars to support the Land of Israel. Therefore, you can be assured that your donation is going directly to fulfill the needs of one of our many development areas such as water, forestry and environment, education, community development, security, tourism and recreation, and research and development.

**The Jewish National Fund is the caretaker of the land of Israel, on behalf of its owners – Jewish people everywhere.** [emphasis on webpage]

In the Fall 2018 online edition of “Roots,” the Organization’s bi-annual magazine,<sup>7</sup> on page 3, under the header “National President & Chief Executive Officer,” we found:

JNF began in 1901, as a dream and vision to re-establish a homeland in Israel for Jewish people everywhere. More than 117 years, JNF continues to offer Canadians of all generations a voice and a role in ensuring that Israel, both land and citizens, continue to prosper. [The Organization] unites Jewish communities from coast to coast with this common purpose.

The Organization’s representations have not alleviated our concern with the Organization’s purposes, as presented in its promotional materials. Given the Organization’s past and present statements, including its “vision,” descriptions of its purported activities, and its magazine, it is our position that beyond the purposes for which it was constituted, the preponderance of available information demonstrates the Organization also operates in a manner which furthers the following unstated collateral purposes:

1. To serve as the caretaker of the land of Israel;
2. To build the social infrastructure of the land of Israel for the benefit of the People of Israel; and
3. To build the foundations of Israel’s future.

While the second of these purposes is similar to the charitable purpose of providing public amenities, the first and third are not purposes the courts have found to be charitable. Therefore, even if it were to amend its constating purposes, as has been suggested, it is our view that the Organization does not operate in furtherance of exclusively charitable purposes, as a result of the unstated non-charitable collateral purposes identified above.

We are not commenting on the merits of the Organization’s purposes, or purported activities. Our position stems solely from our responsibility to ensure that the benefits provided to registered charities under the Act are made available only to those entities that operate within the legislated and judicial boundaries of charity.

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<sup>7</sup> <https://jnf.ca/wp-content/uploads/2018/09/roots-fall-18-final-2-1.pdf>, accessed April 25, 2019.

In view of our position that the Organization does not further exclusively charitable purposes, there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(b) of the Act.

**2) Failure to devote resources to charitable activities carried on by the Organization itself:**

**a) Lack of direction and control over the use of resources/resourcing non-qualified donees**

**AFL 2 summary**

The Organization has stated its activities were mainly conducted through an intermediary, JNF. The Organization also stated that, through JNF, it devoted all its resources to the relief of poverty by ensuring the employment of indigent workers in Israel who were hard-to-hire or unemployable by paying their salaries to work on projects selected by the Organization. However, our audit determined that the information and documentation provided by the Organization did not substantiate this position.

As well, we reviewed the JNF webpage,<sup>8</sup> which characterizes the Organization as a ‘donating country’ and not a registered charity directing and controlling its own activities, with the JNF acting as its intermediary. While the Organization has stated that it is independent of JNF, and involved in water, environmental, and development projects in the Middle East, we were unable to distinguish between the activities of the Organization and those of JNF.

AFL 2 stated our concerns with the unexecuted general agency agreement, written schedules attached to agreements, the annual budget, the lack of documentation showing monitoring and supervision of its purported activities, and the use of subcontractors.

**Organization’s representations**

With respect to the above, the following comments are drawn from the Organization’s representations dated October 5, 2018.

“Despite historic linkage between the [Organization] and [JNF], the [Organization] does operate independently from [JNF].”

“The [Organization] has taken concrete steps to improve its exercise of direction and control over [JNF],” citing the Joint Venture Agreement (JVA) dated June 1, 2018. The Organization advised that it “fully intends to ensure that the terms and provisions of the agreement are complied with.”

A copy of the signed JVA was provided as Exhibit A of the representations along with a blank template entitled Schedule 1. The JVA confirms that Schedule 1 is an essential element that

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<sup>8</sup> [https://hano.kkkf.org.il/KKL/ProjectPool/ProjectPool/DonatedProjects.aspx?WebIndex\\_5](https://hano.kkkf.org.il/KKL/ProjectPool/ProjectPool/DonatedProjects.aspx?WebIndex_5) (accessed April 18, 2018).

forms part of the JVA once it has been agreed upon by both the Organization and JNF. Once completed, each Schedule 1 will provide for, at a minimum:

- a) a detailed description of the Charitable Project, including how the Charitable Project is consistent with the [Organization]'s charitable purpose and [JNF]'s purpose and the roles and responsibilities of Joint Venture's personnel in the field; and
- b) a proposed budget (the "Budget"), for the Charitable Project that sets out the expected expenditures required for the operation of the Charitable Project, including the salaries that are expected to be payable to any employees and contractor.

The Organization has also developed a handbook, "to provide directors, officers and employees...with an understanding of how to exercise direction and control over the [Organization]'s intermediaries." It will continue to employ a manager in Israel, and have a committee (CANISCOM) "who assist in overseeing the activities of agents and joint venture partners." Its Executive Director will visit Israel three to five times per year. The whole Canadian management team will visit Israel at least once a year. The Organization "has adopted internal protocols...that will allow it to better exercise direction and control over its intermediaries."

### **CRA's position**

We acknowledge the steps that the Organization has taken to inform its volunteers, staff, and intermediaries of their responsibilities as leaders of a Canadian registered charity.

We note that the primary source for these new materials produced by the Organization is the CRA Guidance CG-002, Canadian registered charities carrying out activities outside Canada, a publication that was issued July 8, 2010. That guidance, which articulates multiple germane Canadian common law decisions, advises charities:

that their relationship with their intermediaries is not only judged on how well their agreements are written, but more importantly on **their ability to show that they direct and control the use of their resources** through active, ongoing, sustained relationships [emphasis added].

The representations offer commitments, and demonstrate a potential capacity to exercise direction and control. For example, they state that the Organization continues to employ a manager and has a committee to assist in overseeing its purported activities. However, they do not provide the necessary details or documentary evidence to enable us establish that the Organization would, in actual fact, adequately direct and control the use of its resource for its own activities, in furtherance of charitable purposes, as required by common law.<sup>9</sup>

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<sup>9</sup> See Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at para 30 and 40, [2002] FCJ no 315; Lepletot v MNR, 2006 FCA 128 at para 5, [2006] 3 CTC 252; and Canadian Magen David Adom for Israel v MNR, 2002 FCA 323 at para 66, [2002] FCJ no 1260.

The Organization provided a copy of the JVA signed June 1, 2018. However, no specific project schedules (Schedule 1) were annexed to the JVA—only a blank template was provided. Schedule 1 forms an essential part of the written agreement, the absence of which fails to evidence key details of the activities purportedly undertaken, such as:

- a clear, complete, and detailed description of the activities to be carried out by JNF, and an explanation of how the activities further the Organization's purposes;
- the location(s) where the activity will be carried on;
- time frames and deadlines; and
- detailed budget with respect to amounts, expenditure items, timing, and method and conditions governing the transfer of funds.

Our review of the Organization's "Projects" webpages,<sup>10</sup> and its magazine<sup>11</sup> show the Organization continues to not differentiate its activities from those of JNF.

As well, JNF continues to present the Organization, not as the controller of programs carried out by JNF on behalf of the Organization, but as a supporter of JNF's programs. On the JNF webpage "Projects and Partners Worldwide,"<sup>12</sup> under the drop down menu "KKL-JNF Offices Listed in Alphabetical Order" we found JNF Canada with the following description:

JNF Canada supports KKL-JNF projects in Israel in numerous fields – people and the environment, forest and park development, and the advancement of Israel's water economy. Among the main projects supported by friends of JNF in Canada are the landscaping project for the Israeli Society for Autistic Children (ALUT) center in Kfar Halrusim, Beersheba; the construction of the Sderot Reservoir; the R&D stations in the Negev regions of Yotvata, Besor and Yair; the Adopt an Acacia project in the Arava; and the rehabilitation of the Carmel.

For the above reasons, the Organization's representations have not alleviated our concerns regarding the Organization's ability to maintain adequate ongoing direction and control over the use of its resources, and its purported activities.

## **b) Conduct of non-charitable activities**

### **AFL 2 summary**

Our concerns focused on two issues:

#### **1) Conducting projects in Israeli settlements.**

In AFL 2 we stated our position that establishing and maintaining physical and social infrastructure elements and providing assistance to Israeli settlements serves to encourage

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<sup>10</sup> <https://jnf.ca/projects>, <https://jnf.ca/community-development/>, <https://jnf.ca/toronto-our-work/areas-of-impact/water-preservation/>, <https://jnf.ca/forestry-and-environment/>, and <https://jnf.ca/toronto-our-work/areas-of-impact/education/>, accessed April 26, 2019.

<sup>11</sup> <https://jnf.ca/wp-content/uploads/2018/09/roots-fall-18-Final-2-1.pdf>, accessed April 26, 2019.

<sup>12</sup> <http://www.kkl-jnf.org/about-kkj-jnf-offices-worldwide/>, accessed April 26, 2019.

and enhance the permanency of the infrastructure and settlements, and appears to be contrary to Canada's public policy and international law on this issue. The stated Canadian public policy we relied upon was the Global Affairs Canada policy, "Canadian Policy on Key Issues in the Israeli-Palestinian Conflict."<sup>13</sup>

We then identified a number of projects supported by the Organization that were being carried out during the audit period in Israeli settlements.

2) Support for the armed forces of another country.

Some activities may not be charitable when carried on in a different country. For example, increasing the effectiveness and efficiency of Canada's armed forces is charitable, but supporting the armed forces of another country is not.

We then identified projects where the Organization's resources were used to conduct activities in support of the Israel Defense Forces (IDF).

### **Organization's representations**

The following comments are drawn from the Organization's representations dated October 5, 2018.

1) Conducting projects in Israeli settlements

The Organization questions our assertion "that it is contrary to Canadian public policy for a Canadian charity to carry on charitable activities in the Territories."

The [Organization] recognizes that there is a debatable question in this regard. The [Organization] proposes that it work with CRA to determine an acceptable approach to both parties on this question.

In the [Organization's] view, the pronouncement [the public policy posted on the Global Affairs website referred to above] falls short of a "definite and somehow officially declared and implemented policy" prohibiting Canadian charities from operating in the Territories.

Other Canadian charities interested in this question should have an opportunity to be involved in discussions that are aimed at deciding whether certain activities in greater Israel are contrary to public policy.

2) Support for the armed forces of another country.

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<sup>13</sup> [http://www.international.gc.ca/nome-annio/peace\\_process-processus\\_paix/canadian\\_policy-politique\\_canadienne.aspx?lang=eng](http://www.international.gc.ca/nome-annio/peace_process-processus_paix/canadian_policy-politique_canadienne.aspx?lang=eng).

The Organization states that, “The [Organization] stopped performing activities on IDF military bases in 2016.”

### **CRA’s position**

The nature of the Organization’s activities undertaken during the audit period in Israeli settlements was not a factor in our decision to propose revocation of the Organization’s charitable status.

With respect to our second concern, we acknowledge the Organization’s assertion that it ended activities on IDF military bases in 2016. However, the assertion is the only evidence we have of that change. In an attempt to determine if the Organization had ended its purported activities that support the IDF, we looked to the Organization’s website under Projects<sup>14</sup> and, under the headings Education,<sup>15</sup> Tourism and Recreation,<sup>16</sup> and Forestry and Environment.<sup>17</sup> The “Support a Project” link in each led to descriptions of projects, purported to be those of the Organization. Under the heading “Security,” we followed the “Support a Project” link, and found “Protected: Security”<sup>18</sup> which required the reader type in a password to view the content. We did not have a password.

The descriptions of the projects considered above show the continued lack of a clear delineation between the purported activities of the Organization and the projects of JNF. The JNF webpage offers “a selected list of facilities in IDF camps provided in recent years by KKL-JNF and its Friends at home and abroad for the benefit of IDF soldiers.”<sup>19</sup> As explained above, the Organization is identified as one of JNF’s partners. The information we have been able to review does not alleviate our concern that the Organization’s purported activities include supporting the armed forces of another country.

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

### **3) Failure to maintain adequate books and records**

#### **AFL 2 summary**

We explained our position that the Organization did not maintain adequate books and records to prove that its charitable status should not be revoked, in accordance with 230(2) of the Act. Our concerns included:

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<sup>14</sup> <https://jnf.ca/projects/>, accessed April 26, 2019.

<sup>15</sup> <https://jnf.ca/toronto-our-work/areas-of-impact/education/> accessed April 26, 2019. With its use of the phrase “KKL-JNF” and reference to JNF projects, this page also supports our position that the Organization’s purported activities are those of JNF.

<sup>16</sup> <https://jnf.ca/tourism-and-recreation/>, accessed April 26, 2019. Wording on this page, such as “JNF has created thousands of parks, forests and recreation areas” page also supports our position that the Organization’s purported activities are those of JNF.

<sup>17</sup> <https://jnf.ca/forestry-and-environment/>, accessed April 26, 2019.

<sup>18</sup> <https://jnf.ca/toronto-our-work/areas-of-impact/security/>, accessed April 26, 2019.

<sup>19</sup> <http://www.kkl-jnf.org/people-and-environment/community-development/soldier-family-meeting-points/>, accessed April 26, 2019.

- We were unable to verify the projects, and other details relating to whether the Organization’s resources were devoted to its own charitable activities because some relevant materials were in Hebrew and not “in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under this Act.”<sup>20</sup>
- The Organization failed to produce source documentation that would allow us to verify resources disbursed by the Organization through its intermediary.
- The agency agreement and supporting documentation did not establish that the Organization’s activities were effectively authorized, controlled and monitored by the Organization.
- Supporting documentation was not provided that would allow us to verify that expenses for travel, hotel, meals, gas, telephone, mileage, miscellaneous and entertainment related to the conduct of charitable activities.

### **Organization’s representations**

The following comments are drawn from the Organization’s representations dated October 5, 2018.

The Organization “concedes that there is room to improve its record-keeping practices.”

The Organization also stated:

Given the nature of its work in Israel and the fact that many organizations in Israel operate in Hebrew, some of the [Organization’s] records will likely always be in Hebrew. As more particularly described in its proposed compliance agreement, the [Organization] will commit to better record-keeping practices.

This is followed by the proposed compliance agreement that:

is not intended to be exhaustive and the [Organization] will consider other elements or changes thereto that may be proposed by the CRA.

The proposed agreement offers commitments that the Organization will:

- 1) Carry on indigent labour activities that have a direct connection with an exclusively charitable project.
- 2) Obtain prior approval from the CRA for substantial capital projects.

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<sup>20</sup> Income Tax Act paragraph 230(2).

- 3) Not commence any new projects in the “Territories,” until the Organization and the CRA have agreed upon guidelines.
- 4) Not perform or support project on IDF military bases, and that currently there are no such projects.
- 5) Enter into agreements with intermediaries and be diligent in exercising direction and control of intermediaries.
- 6) Employ a manager in Israel.
- 7) Reconstitute and update the terms of reference of a volunteer committee that will oversee the activities of agents and joint venture partners, and assist the manager in Israel.
- 8) Have its Executive Director visit Israel three to five times a year to liaise with the manager in Israel, the volunteer committee, and joint venture projects and agents.
- 9) Change its name and fundraising material to avoid confusion with JNF.
- 10) Adopt better record-keeping processes to comply with its obligations under the Act.

### **CRA’s position**

We acknowledge the efforts of the Organization to inform its volunteers, staff and intermediaries of their responsibilities as leaders of a Canadian registered charity, and its commitments to change its activities to comply with Canadian legislation and court decisions.

The representations offer commitments, but they do not offer documents that show the Organization maintains adequate books and records to prove that its charitable status should not be revoked. As well, our most recent review of the Organization’s webpages, as explained above, has not allowed us to verify that the Organization’s funded projects are its own activities, and not the activities of another entity, or that the activities are charitable under existing Canadian legislation and judicial precedents.

The Organization’s representations have not alleviated our concerns with the Organization’s books and records. Under paragraph 168(1)(e) of the Act, the registration of a charity may be revoked if it fails to comply with or contravenes subsection 230(2) of the Act dealing with books and records. It is our position that the present case consists of material non-compliance. For this reason, our position remains that there are grounds for revocation of the charitable status of the Organization under paragraph 168(1)(e) of the Act.

### **Conclusion**

Consequently, for the reasons explained above and in our two previous AFLs, with the exception to activities undertaken during the audit period in Israeli settlements, it is the CRA’s position that the Organization has failed to meet the requirements for registration as a charitable organization

as outlined in subsections 168(1), 149.1(1) and 149.1(2) of the Act. As such, the Organization should have its registration as a charity revoked pursuant to subsection 168(1) of the Act.

## Qualified Donees

### 149.1 (1) Definitions

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

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

(a) constituted and operated exclusively for charitable purposes,

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

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

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

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

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

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

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

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

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

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

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

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

(a) registered by the Minister and that is

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

(ii) a municipality in Canada,

a municipal or public body performing a function of government in Canada that has applied for registration,

(iv) a university outside Canada, the student body of which ordinarily includes students from Canada, that has applied for registration, or

(v) a foreign charity that has applied to the Minister for registration under subsection (26),

(b) a registered charity,

(c) a registered Canadian amateur athletic association, or

(d) Her Majesty in right of Canada or a province, the United Nations or an agency of the United Nations

#### **149.1 (2) Revocation of registration of charitable organization**

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

(a) carries on a business that is not a related business of that charity;

(b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the organization's disbursement quota for that year; or

(c) makes a disbursement by way of a gift, other than a gift made

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

(ii) to a donee that is a qualified donee at the time of the gift.

### **149.1 (3) Revocation of registration of public foundation**

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

(a) carries on a business that is not a related business of that charity;

(b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year:

(b.1) makes a disbursement by way of a gift, other than a gift made

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

(ii) to a donee that is a qualified donee at the time of the gift;

(c) since June 1, 1950, acquired control of any corporation;

(d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities; or

(e) at any time within the 24 month period preceding the day on which notice is given to the foundation by the Minister pursuant to subsection 168(1) and at a time when the foundation was a private foundation, took any action or failed to expend amounts such that the Minister was entitled, pursuant to subsection 149.1(4), to revoke its registration as a private foundation.

### **149.1 (4) Revocation of registration of private foundation**

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

(a) carries on any business;

(b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year:

(b.1) makes a disbursement by way of a gift, other than a gift made

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

(ii) to a donee that is a qualified donee at the time of the gift;

(c) has, in respect of a class of shares of the capital stock of a corporation, a divestment obligation percentage at the end of any taxation year;

(d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities.

#### **149.1 (4.1) Revocation of registration of registered charity**

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

(a) of a registered charity, if it has entered into a transaction (including a gift to another registered charity) and it may reasonably be considered that a purpose of the transaction was to avoid or unduly delay the expenditure of amounts on charitable activities;

(b) of a registered charity, if it may reasonably be considered that a purpose of entering into a transaction (including the acceptance of a gift) with another registered charity to which paragraph (a) applies was to assist the other registered charity in avoiding or unduly delaying the expenditure of amounts on charitable activities;

(c) of a registered charity, if a false statement, within the meaning assigned by subsection 163.2(1), was made in circumstances amounting to culpable conduct, within the meaning assigned by that subsection, in the furnishing of information for the purpose of obtaining registration of the charity;

(d) of a registered charity, if it has in a taxation year received a gift of property (other than a designated gift) from another registered charity with which it does not deal at arm's length and it has expended, before the end of the next taxation year, in addition to its disbursement quota for each of those taxation years, an amount that is less than the fair market value of the property, on charitable activities carried on by it or by way of gifts made to qualified donees with which it deals at arm's length;

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

(f) of a registered charity, if it accepts a gift from a foreign state, as defined in section 2 of the *State Immunity Act*, that is set out on the list referred to in subsection 6.1(2) of that Act.

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

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

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

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

(b) ceases to comply with the requirements of this Act for its registration;

(c) in the case of a registered charity or registered Canadian amateur athletic association, fails to file an information return as and when required under this Act or a regulation;

(d) issues a receipt for a gift otherwise than in accordance with this Act and the regulations or that contains false information;

(e) fails to comply with or contravenes any of sections 230 to 231.5; or

(f) in the case of a registered Canadian amateur athletic association, accepts a gift the granting of which was expressly or implicitly conditional on the association making a gift to another person, club, society or association.

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

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

(a) if the charity or association has applied to the Minister in writing for the revocation of its registration, the Minister shall, forthwith after the mailing of the notice, publish a copy of the notice in the *Canada Gazette*, and

(b) in any other case, the Minister may, after the expiration of 30 days from the day of mailing of the notice, or after the expiration of such extended period from the day of mailing of the notice as the Federal Court of Appeal or a judge of that Court, on application made at any time before the determination of any appeal pursuant to subsection 172(3) from the giving of the notice, may fix or allow, publish a copy of the notice in the *Canada Gazette*,

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

## **168 (4) Objection to proposal or designation**

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

(a) in the case of a person that is or was registered as a registered charity or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(2) to (4.1), (6.3), (22) and (23);

(b) in the case of a person that is or was registered as a registered Canadian amateur athletic association or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.2) and (22); or

(c) in the case of a person described in any of subparagraphs (a)(i) to (v) of the definition “*qualified donee*” in subsection 149.1(1), that is or was registered by the Minister as a qualified donee or is an applicant for such registration, it objects to a notice under any of subsections (1) and 149.1(4.3) and (22).

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

Where the Minister

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

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

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

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

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

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

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

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

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

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

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

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

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

the person described in paragraph (a), (a.1) or (a.2), the applicant in a case described in paragraph (b), (e) or (g), a trustee under the plan or an employer of employees who are

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

### **180 (1) Appeals to Federal Court of Appeal**

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

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

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

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

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

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

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

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

### **Tax and Penalties in Respect of Qualified Donees**

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

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

(a) the taxation year of the charity that would otherwise have included that day is deemed to end at the end of that day;

(b) a new taxation year of the charity is deemed to begin immediately after that day; and

(c) for the purpose of determining the charity's fiscal period after that day, the charity is deemed not to have established a fiscal period before that day.

### **188 (1.1) Revocation tax**

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

$$A - B$$

where

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

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

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

- (a) a debt of the charity that is outstanding at the end of that taxation year,
- (b) an expenditure made by the charity during the winding-up period on charitable activities carried on by it, or
- (c) an amount in respect of a property transferred by the charity during the winding-up period and not later than the latter of one year from the end of the taxation year and the day, if any, referred to in paragraph (1.2)(c), to a person that was at the time of the transfer an eligible donee in respect of the charity, equal to the amount, if any, by which the fair market value of the property, when transferred, exceeds the consideration given by the person for the transfer.

### **188 (1.2) Winding-up period**

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

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

### **188 (1.3) Eligible donee**

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

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

## **188 (2) Shared liability – revocation tax**

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

### **188 (2.1) Non-application of revocation tax**

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

(a) within the one-year period that begins immediately after the taxation year of the charity otherwise deemed by subsection (1) to have ended, the Minister has registered the charity as a charitable organization, private foundation or public foundation; and

(b) the charity has, before the time that the Minister has so registered the charity,

(i) paid all amounts, each of which is an amount for which the charity is liable under this Act (other than subsection (1.1)) or the Excise Tax Act in respect of taxes, penalties and interest, and

(ii) filed all information returns required by or under this Act to be filed on or before that time.

### **188 (3) Transfer of property tax**

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

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

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

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

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

**188 (5) Definitions –** In this section,

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

$$A - B$$

where

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

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

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

$$A - B$$

where

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

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

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

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

(a) file with the Minister a return for the year in prescribed form and containing prescribed information, without notice or demand therefor;

(b) estimate in the return the amount of tax payable by the taxpayer under this Part for the year: and

(c) pay to the Receiver General the amount of tax payable by the taxpayer under this Part for the year.

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

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

(a) file with the Minister

(i) a return for the taxation year, in prescribed form and containing prescribed information, and

(ii) both an information return and a public information return for the taxation year, each in the form prescribed for the purpose of subsection 149.1(14); and

(b) estimate in the return referred to in subparagraph (a)(i) the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year; and

(c) pay to the Receiver General the amount of tax payable by the taxpayer under subsection 188(1.1) for the taxation year.

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

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

(a) the amount, if any, by which

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

exceeds

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

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

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

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

(a) the consideration given by the other person for the transfer, and

(b) the part of the amount in respect of the transfer that has resulted in a reduction of an amount otherwise payable under subsection 188(1.1).

### **189 (7) Minister may assess**

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