REGISTERED MAIL

Healing and Assistance not Dependence Canada
c/o Drache LLP
222 Somerset Street west, 2nd Floor
Ottawa ON K2P 2G3

BN: 847441342RR0001

Attention: Mr. Adam Aptowitzer

File #:3027863

June 8, 2009

Subject: Revocation of Registration
Healing and Assistance not Dependence Canada

Dear Mr. Aptowitzer:

The purpose of this letter is to inform you that a notice revoking the registration of Healing and Assistance not Dependence Canada (the Organization) was published in the *Canada Gazette* on June 6, 2009. Effective on that date, the Organization ceased to be a registered charity.

Consequences of Revocation:

a) The Organization is no longer exempt from Part I Tax as a registered charity and **is no longer permitted to issue official donation receipts.** This means that gifts made to the Organization are no longer allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the *Income Tax Act* (the Act), respectively.

b) By virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the Notice of Intention to Revoke. This revocation tax is calculated on prescribed formT-2046 "*Tax Return Where Registration of a Charity is Revoked*" (the Return). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the Notice of Intention to Revoke. A copy of the Return is enclosed. The related Guide RC-4424, "*Completing the Tax Return Where Registration of a Charity is Revoked*", is available on our website at www.cra-arc.gc.ca/E/pub/tg/rc4424.

Section 188(2) of the Act stipulates that a person (other than a qualified donee) who receives an amount from the Organization is jointly and severally liable with the Organization for the tax payable under section 188 of the Act by the Organization.

c) The Organization no longer qualifies as a charity for purposes of subsection 123(1) of the *Excise Tax Act* (ETA). As a result, the Organization may be subject to obligations and entitlements under the ETA that apply to organizations other than charities. If you have any questions about your GST/HST obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

In accordance with *Income Tax Regulation* 5800, the Organization is required to retain its books and records, including duplicate official donation receipts, for a minimum of two years after the Organization's effective date of revocation.

Finally, we wish to advise that subsection 150(1) of the Act requires that every corporation (other than a corporation that was a registered charity throughout the year) file a *Return of Income* with the Minister of National Revenue (the Minister) in prescribed form, containing prescribed information, for each taxation year. The *Return of Income* must be filed without notice or demand.

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

Yours sincerely,

Danie Huppé-Cranford
Director
Compliance Division
Charities Directorate
Telephone: 613-957-8682
Toll free: 1-800-267-2384

Enclosures

- Copy of the Return (form T-2046)
- Canada Gazette publication

Cc: Mr. Sebastien Desmarais and Mr. Charles Rotenberg
c/o Drache LLP, 222 Somerset Street West, 2nd Floor, Ottawa ON K2P 2G3

Mr. Tom Gussman
2412-400 Stewart St., Ottawa ON K1N 6L2

Canada Revenue Agency
Agence du revenu du Canada

REGISTERED MAIL

Healing and Assistance not Dependence Canada
c/o Drache LLP
222 Somerset St. W., 2nd Floor,
Ottawa ON K2P 2G3

APR AVR 2 8 2009

BN: 84744 1342 RR0001
File #: 3027863

Attention: Mr. Adam Aptowitzer

Subject: Notice of Intention to Revoke
Healing and Assistance not Dependence Canada

Dear Mr. Aptowitzer:

I am writing further to our letter dated November 17, 2008 (copy enclosed), in which you were invited to submit representations as to why the Minister of National Revenue (the Minister) should not revoke the registration of Healing and Assistance not Dependence Canada (the Charity) in accordance with subsection 168(1) of the *Income Tax Act* (the Act).

We have reviewed and considered the written response dated January 19, 2009. However, notwithstanding your reply, our concerns with respect to the Charity's non-compliance with the requirements of the Act for registration as a charity have not been alleviated. Our position is fully described in Appendix "A" attached.

Conclusion:

Our audit has concluded that from September 1, 2006, to August 31, 2008, Healing and Assistance not Dependence Canada (the Charity) received nearly $2.8 million in cash through its participation in the Canadian International Aid Program, a registered tax shelter. Of this amount, $1.9 million was transferred to a registered charity and other entities participating in the tax shelter arrangement. Of the 30% or $900,000 retained by the Charity, it reported $543,000 was incurred for administrative costs and $282,000 was devoted to its own charitable programs.

In addition, our audit also revealed that the Charity completely restructured its operations after several years of dormancy, by making wholesale changes to its name, governing purposes, and board of directors in 2007. In our view, this restructuring was intended to facilitate the Charity's entrance into the tax shelter arrangement, allowing the

program to flow seamlessly after the revocation of the Charity's predecessor, without necessitating material changes to the literature describing the participating charities.

Based on our audit results, it is our position that the Charity's role in the tax shelter arrangement was to circulate funds in a guise to add legitimacy to the transactions; that the amounts paid to the other participating charity were paid as compensation for its role in receiving and receipting the tax shelter property and are not gifts made to a qualified donee; and the Charity has restructured itself to accommodate the tax shelter arrangement.

Accordingly, it is our view that the Charity has operated for the non-charitable purpose of promoting and participating in a tax shelter arrangement and cannot be considered to be a charitable organization, all the resources of which are devoted to charitable activities.

It is our position that the Charity has operated for the non-charitable purpose of promoting a tax shelter arrangement and for the private benefit of the tax shelter promoters. The Charity has failed to maintain sufficient books and records to support its activities resulting in inaccurate Registered Charity Information Returns filed. It is the Canada Revenue Agency's position that for each of these reasons alone, and for the Charity's other breaches of the *Income Tax Act* mentioned in our November 17, 2008 letter, there are serious contraventions of the *Income Tax Act* and warrant the immediate revocation of the Charity's registered status.

Consequently, for each of the reasons mentioned in our letter dated November 17, 2008, I wish to advise you that, pursuant to the authority granted to the Minister in subsections 149.1(2) and 168(1) of the Act, which has been delegated to me, I propose to revoke the registration of the Charity. 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), and 168(1)(e) of the* Income Tax Act, *that I propose to revoke the registration of the organization listed below under subsection 149.1(2), of the* Income Tax Act *and that the revocation of registration is effective on the date of publication of this notice.*

Business Number	**Name**
84744 1342RR 0001	Healing and Assistance not Dependence Canada Ottawa ON

Should you wish to appeal this Notice of Intention to Revoke the Charity's registration in accordance with subsection 168(4) of the Act, a written Notice of Objection, which includes the reasons for objection and all relevant facts, must be filed within **90 days** from the day this letter was mailed. The Notice of Objection should be sent to:

Tax and Charities Appeals Directorate
Appeals Branch
Canada Revenue Agency
25 Nicholas Street
Ottawa, ON K1A 0L5

A copy of the revocation notice, described above, will be published in the *Canada Gazette* after the expiration of 30 days from the date this letter was mailed. The Charity's registration will be revoked on the date of publication, unless the Canada Revenue Agency receives an order, **within the next 30 days**, from the Federal Court of Appeal issued under paragraph 168(2)(b) of the Act extending that period.

Please note that the Charity must obtain a stay to suspend the revocation process, notwithstanding the fact that it may have filed a Notice of Objection.

Consequences of Revocation:

As of the effective date of revocation:

a) the Charity 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 Charity would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the Act, respectively;

b) by virtue of section 188 of the Act, the Charity will be required to pay a tax within one year from the date of the Notice of Intention to Revoke. This revocation tax is calculated on prescribed form T-2046 "*Tax Return Where Registration of a Charity is Revoked*" (the "Return"). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the Notice of Intention to Revoke. A copy of the relevant provisions of the Act concerning revocation of registration, the tax applicable to revoked charities, and appeals against revocation, can be found in Appendix "B", attached. Form T-2046, and the related Guide RC-4424, "*Completing the Tax Return Where Registration of a Charity is Revoked*", are available on our website at www.cra-arc.gc.ca/charities;

c) the Charity will no longer qualify as a charity for purposes of subsection 123(1) of the *Excise Tax Act* (the ETA). As a result, the Charity may be subject to obligations and entitlements under the ETA that apply to organizations other than charities. If you have any questions about your GST/HST obligations and entitlements, please call GST/HST Rulings at 1-888-830-7747 (Quebec) or 1-800-959-8287 (rest of Canada).

Finally, I wish to advise that subsection 150(1) of the ITA 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 prescribed form, containing prescribed information, for each taxation year. The *Return of Income* must be filed without notice or demand thereof.

Yours sincerely,

Terry de March
Director General
Charities Directorate

Attachments:

- CRA letter dated November 17, 2008;
- Your letter dated January 19, 2009;
- Appendix "A", Comments on Representations; and
- Appendix "B", Relevant provisions of the Act

cc: Mr. Sebastien Desmarais and Mr. Charles Rotenberg
c/o Drache LLP
222 Somerset St. W., 2nd Floor,
Ottawa ON K2P 2G3

Mr. Tom Gussman
2412 – 400 Stewart St.
Ottawa ON K1N 6L2

CANADA REVENUE AGENCY
AGENCE DU REVENU DU CANADA

REGISTERED MAIL

Healing and Assistance not Dependence Canada
c/o Drache LLP
222 Somerset St. W., 2nd Floor,
Ottawa, Ontario K2P 2G3

BN: 84744 1342 RR0001
File #: 3027863

Attention: Mr. Adam Aptowitzer

November 17, 2008

Dear Mr. Aptowitzer:

RE: Healing and Assistance not Dependence Canada (formerly Canadian Friends of the Samarian Social Fund)
For the fiscal period September 1, 2006 to May 31, 2008

This letter is further to an audit of Healing and Assistance not Dependence Canada (the "Charity") for the audit period of September 1, 2006 to May 31, 2008.

The Canada Revenue Agency has identified specific areas of non-compliance with the provisions of the *Income Tax Act* (the "ITA") or its *Regulations* in the following areas:

AREAS OF NON-COMPLIANCE:		
	Issue	**Reference**
1.	Failure to Devote Resources to Charitable Activities	149.1(2), 168(1)(b)
2.	Failure to Maintain Adequate Books and Records	149.1(2), 168(1)(e), 230 (2)
3.	Failure to File an Accurate Information Return	149.1(2), 168(1)(c)

The purpose of this letter is to describe the areas of non-compliance identified by the CRA during the course of our audit as they relate to the legislative provisions applicable to registered charities and to provide the Charity with the opportunity to address our concerns. In order for a registered charity to retain its registration, it is required to comply with the provisions of the ITA and Common Law applicable to registered charities. If these provisions are not complied with, the Minister of National Revenue (the "Minister") may revoke the Charity's registration in the manner prescribed in section 168 of the ITA.

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

1. Failure to Devote Resources to Charitable Activities:

The Charity is registered as a charitable organization. In order to satisfy the definition of a "charitable organization" pursuant to subsection 149.1(1) of the ITA, "charitable organization" means an organization..."All the resources of which are devoted to charitable activities".

To qualify for registration as a charity under the ITA, an organization must be established for charitable purposes that oblige it to devote all its resources to its own charitable activities. This is a two-part test. First, the purposes it pursues must be wholly charitable and second, the activities that a charity undertakes on a day-to-day basis must support its charitable purposes in a manner consistent with charitable law. Charitable purposes are not defined in the ITA and it is therefore necessary to refer, in this respect, to the principles of the common law governing charity. An organization that has one or more non-charitable purposes or devotes resources to activities undertaken in support of non-charitable purposes cannot be registered as a charity.

It is our view, based on our review, is that the Charity does not operate for wholly charitable purposes and the activities it undertakes on a day-to-day basis do not support its charitable purposes in a manner consistent with charitable law. In fact, the evidence on the file, as outlined below, demonstrates a preponderance of effort and resources devoted to non-charitable activities. The Charity has devoted a substantial portion of its efforts and resources to participating in a registered tax shelter donation arrangement with a small portion of its net fundraising profits devoted to the charitable sector.

A. Tax Shelter Involvement:

As above, registered charities are required to pursue activities in furtherance of the purposes for which they are established. There is some concern that the Charity is operating outside of its corporate mandate.

The Charity submitted its application for registration on October 1, 2004 under the legal name Canadian Friends of the Samarian Social Fund and was registered effective September 16, 2005 to conduct the following activities:

- operating an after school program to provide educational and recreational activities to children in Israel;
- to provide scholarships to students;
- to operate a food bank in Israel; and
- to provide religious counselling to persons in Israel.

The Notification of Registration letter, dated November 23, 2005, also explicitly stated "Registration has been granted on the understanding that the Fund [the Charity] will

not undertake any activity(ies) beyond those described in the application for charitable registration, unless it has received prior approval do to so from our office."

The Charity appears to have remained largely dormant until it revised its objects on July 18, 2007 to "encourage and assist and serve alcoholics, chemically dependant persons and their families, friends and associates primarily, but not exclusively, within the Jewish community; distribute funds ...to qualified donees", changed its name to Healing and Assistance not Dependence Canada and relocated its head office from Toronto to Ottawa, Ontario. The revisions were submitted to the Charities Directorate on November 14, 2007. The Charity also came under new control when all the former Directors of the Charity resigned and a new Board of Directors was elected.

Within six weeks of changing its objects, Board, name and location, for the fiscal period ending August 31, 2007, the Charity was immediately able to raise over $500,000 in fundraising revenue. Based on bank statement analysis, the Charity has raised over $1.7 million between September 1, 2007 and April 30, 3008. All fundraising revenues were received from participant donors in the Canadian International Aid Program, a registered tax shelter, promoted by Canadian Organization for International Philanthropy ("COIP"). The Charity continues to participate in the Canadian International Aid Program.

Based on the promotional materials, the donation program purportedly operates as follows:

- A participant donor purchases AIDS medicine units from COIP at $11.50/unit on 100% credit;
- The donor then must repay COIP either the amount of medicine units purchased or their cash value within 36 months with a 6.02%[1] interest rate;
- The donor must also pre-pay the interest on their loan to COIP; and
- The donor "gifts" the AIDS medicine units to The Orion Foundation ("Orion"), a registered Canadian charity, and receives a charitable receipt from Orion for the cash value of the medicine units.

As part of the donation program and at the time of the purchase of medicine units from COIP,

- There is an optional step that involves making a 2% cash donation to the Charity;
- Upon making this "donation" the donor qualifies to purchase additional medicine units from Panaggregate Financial Corp. ("PFC");
- If the donor decides to take advantage of this option, PFC sells to the donor medicine units with a fair market value equal to the COIP loan;
- The units are purchased 100% on credit;
- The terms of this new loan with PFC are: interest rate of 4% and an amortization period of 84 months.

[1] Interest rate fluctuates throughout the year depending on when the donor contributes to the program. Per 2008 Donation Schedule, amount ranges from 6.48% in June to 8.05% in December. Interest rate of 6.02% advertised in promotional material example.

- The donor does not receive an official charitable donation receipt for the amount of this second payment as he/she is deemed to have received an advantage associated with the "gift" - a reduction in the interest rate applicable and extended amortization period on the promissory note payable.
- PFC transfers the medicine units to COIP on the instructions of the donor and the units are used to satisfy the donor's loan with COIP; ;
- Any unearned prepaid interest held by COIP is then transferred to PFC to be applied against this new loan; and.
- The new loan with PFC is repayable in medicine units not dollars.

As an example, a participating donor would purchase 674 medicine units valued at $7,750 on credit, contribute $1,400 in prepaid interest on the debt to COIP and "gifts" the medicine units to Orion. If the donor chooses to make a donation to the second participating charity, the donor contributes an additional 2% of the value of the medicine units or $155 for a total cash outlay of $1,555. The 2% or $155 is "gifted" to the Charity and COIP retains 2 months of the prepaid interest, or $78, and transfers the remaining prepaid interest, $1,322, to PFC. The amount transferred to PFC will allegedly pay the donor's interest owing on their new debt with PFC for approximately 5 years. PFC allegedly pays off the donor's loan with COIP using the medicine units it sold to the donor and the donor is left with a loan with PFC payable in 7 years in medicine units.

It is our opinion, viewed as a whole, the primary purpose of this arrangement is to allow donors participating in this arrangement to profit from making a "donation" through the claiming of a donation credit. Based on the above, donors are actually out of pocket no more than 20% of the total receipted value. The promotional material indicates that donors will receive an immediate "cash on cash" return of approximately 116% in tax credit. Although we make no comment on this arrangement in particular, it has been the experience of the CRA in auditing similar arrangements in the majority of cases, the fair market value ("FMV") of the property involved, as established by tax shelter promoters, is usually over-inflated, and the loans are generally artificial transactions and, in most cases, are rarely repaid. As you are aware, the CRA has issued numerous public warnings with respect to these arrangements and the participation of charities in such arrangements, particularly given that these have resulted in the reassessment of tens of thousands of taxpayers.

The CRA has serious concerns with the representations being made with respect to the donation arrangement, particularly with respect to the nature of the transactions and the eligibility of the participants to receive tax receipts. As this relates to the Charity, we note that the Charity's primary motivation for involvement in this program would be to receive funds, given that the program itself has little to no relationship to its stated objects and activities, original or revised. The Charity indicates their "involvement with the program is irrelevant to the charity's objectives. The charity does not consider itself involved with the program...The charity was not required to change or amend any of its objectives at the time by the tax shelter." We disagree. Until the Charity's participation in the tax shelter program, the Charity was inactive and had not received any tax-receipted donations or other types of revenue to undertake the activities for which it was originally registered for or for its revised

activities. The Charity states COIP approached the Charity to participate in the Canadian International Aid Program because it was interested in the addiction field despite that the Canadian International Aid Program promotes combating AIDS in Africa and fighting taxes; activities which differ from the Charity's revised objects of providing counselling to addicts within the Jewish community. In our view, the Charity has agreed to be paid for its role in furthering this tax shelter arrangement by revising its objectives and by receiving funds and distributing these as instructed.

The Charity began participating in this program in July 2007 by agreeing to accept donor "gifts" equivalent to 2% of the donor's original cash donation, i.e. by being the second charity in this program. Of this 2% "gift" received, the Charity pays 35% to PFC for promotional services, 35% to Orion as a "donation" and 5% to Ms. Naomi Goldman for bookkeeping services. The remaining 25% is available for use by the Charity in its own activities. The Charity has stated it does not have agreements between itself and PFC, Orion or Ms. Goldman however our audit reveals the Charity consistently pays the amounts due to each party upon receipt of the 2% "gifts" received from participant donors.

In 2007, the Charity received $503,610 through "gifts" received from donors participating in the tax shelter and paid approximately $176,000 apiece to PFC and to Orion, approximately $25,000 to Ms. Goldman and retained approximately $126,000 for its own activities. A review of the Charity's financial records reveal that of the amount retained by the Charity for its own activities, it gifted $23,250[2] to qualified donees and spent $6,613[3] on charitable activities. Using the amounts filed by the Charity, it reports it has devoted only 25%[4] of its total income to charitable activities.

Based on our review of the program, it is our position that any payments made to the Charity would not be gifts, especially given that is has been demonstrated that a majority of these amounts (i.e., 70%) would be forwarded to other entities and participants in the arrangement.[5] The Charity, when participating, is able to utilize the remaining 30% for its own programs. In our view it appears that the primary purpose of the participation of the Charity in this arrangement is to give the appearance that the granting of the second loan, described above, does not relate to the transaction(s) with Orion. This is done, in our view, in an attempt to ensure that any consideration/advantage received with respect to the second loan is not attributable to the initial "gift" (i.e., that these are separate and distinct transactions).[6]

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[2] The Charity reports gifting a total of $120,630, including $97,380 to The Orion Foundation, to qualified donees on the T3010 originally filed and reports gifting a total of $223,423 to qualified donees on the adjusted T3010 filed. The Charity did not submit an adjusted Qualified Donee Worksheet to identify the revised qualified donees and/or amounts.

[3] The Charity reports expending $27,560 on its own charitable on the Adjusted T3010 filed.

[4] This figure changes to 49% using the figures provided on the Charity's Registered Charity Adjustment Request form. Given the restrictions identified in footnote 2 and assuming the Charity consistently "gifted" 35% of "gifts" received or $176,000 to The Orion Foundation, the Charity would have only voluntarily spent 15% or $74,720 on its own charitable activities.

[5] It is recognized that these amounts are not tax-receipted, however these are nonetheless represented as being gifts to the Charity in the promotional materials in the COIP program.

Despite the Charity stating it does not have an agreement with PFC or Orion, in our view this statement is simply not credible. The Charity consistently pays 35% of what it receives from participating donors to PFC for "promotional services" and to Orion as "gifts" to a qualified donee. It is our view that the payments made to PFC and Orion are compensation for their roles in the arrangement - re-financing the initial loan on behalf of participants and receipting the non-cash gifts of AIDS medicine units respectively. In the donation structure outlined above, Orion does not receive cash gifts from the participating donors and the "gift" from the Charity would be its cash compensation earned for its participation in the tax shelter.

In this regard, we find the Charity's participation in this arrangement to be problematic, as, in our view, the organization appears to be facilitating an arrangement designed to avoid the application of the provisions of the *Income Tax Act* and may be designed to create improper tax results. In our view, the Charity is primarily operating primarily for the purpose of promoting a tax shelter program as the Charity has not shown or otherwise indicated it is conducting any other activities aside from the small portion of gifts made to qualified donees. The Charity is an integral part of the arrangement being paid to circulate funds, as directed, in an artificial manner in an attempt to facilitate and lend legitimacy to the overall arrangement.

Also in support of this view and of particular concern is the fact that, shortly after the CRA's review of another participating, but unregistered, organization commenced, the website and promotional material of the program was changed to reflect the charitable registration number and revised name of the Charity. As noted above, the Charity submitted revised Letters Patent – revisions that altered the objects and the name of the Charity to be the same as and similar to the other participating organization, Healing and Assistance Not Dependence (HAND). Other coincidences include the fact the board of directors of the Charity was changed entirely to include a common director between HAND and the Charity; place of the head of the corporation was changed from Toronto to Ottawa, Ontario; each is represented by Mr. Adam Aptowitzer of Drache LLP; and each is apparently operated out of the Drache LLP offices. While the business number was changed on the COIP website, the description of the Charity was not altered thereby leading donors to believe that in fact this organization is "...a leading Canadian organization..." and one that has been operating for the past eight years. The Charity's records also include documentation stating that COIP forwarded donations totaling $196,461 to HAND in error and HAND forwarded $19,696.01 in cash and $176,764.99 in a promissory note to the Charity. The promissory note was later forgiven by the Charity as the amounts expended by HAND would have been amounts similarly expended by the Charity; evidence supporting our view the Charity was a continuation of HAND's participation in the tax shelter program. We believe the intent of the Charity's involvement was to enable the tax shelter program to continue to operate, by taking advantage of the Charity's registered status, with relatively minor changes being made to the promotional materials. In our view, this also demonstrates that the Charity is primarily operating for the purpose of promoting a tax shelter and has structured its objects and operations in such a manner as to facilitate this promotion.

Given the manner in which the Charity appears to have structured and conducted its activities to accommodate the tax shelter, and the proportional levels of involvement in the arrangement, it is our view that a collateral purpose, if not primary purpose of the organization is, in fact, to support and promote a tax shelter arrangement. Operating for the purpose of promoting tax shelters is not a charitable purpose at law. It is further our view, therefore, that by pursuing this non-charitable purpose, and devoting the majority of its funds to compensate parties related to the tax shelter arrangement, the Charity has failed to demonstrate that it meets the test for continued registration under 149.1(1) as a charitable organization "all the resources of which are devoted to charitable activities".

B. Charitable Objects and Activities:

To qualify for registration as a charity under the ITA, an organization must be established for charitable purposes that oblige it to devote all its resources to its own charitable activities. This is a two-part test. First, the purposes it pursues must be wholly charitable and second, the activities that a charity undertakes on a day-to-day basis must support its charitable purposes in a manner consistent with charitable law.

As outlined above, the Charity changed is objects on July 18, 2007 to "encourage and assist and serve alcoholics, chemically dependant persons and their families, friends and associates primarily, but not exclusively, within the Jewish community; distribute funds ...to qualified donees". It appears the Charity has changed its objects to include both charitable and non-charitable purposes and has done so without the written authorization of the Charities Directorate despite being advised written authorization was required in its Notification of Registration letter. Written authorization is necessary to ensure a charity will function within the limitations imposed by the ITA and in compliance with applicable common law requirements. Per our review, the Charity's second object, to gift to qualified donees, is considered charitable however the Charity's first object is too broad to properly confine the Charity to exclusively charitable activities.

Broad and vague purposes, which fail to define and confine the scope of activities in accordance with the requirements of the ITA, are not charitable in law[7]. Rather, purposes must be precisely stated, and framed in language that is not overly *broad*, meaning they fail to confine the applicant to charitable activities, and/or *vague*, which is to say it is difficult to determine the exact meaning. To this end, each purpose should be clearly written so that the reader may easily determine the meaning, and must clearly confine the applicant to activities that are charitable. An organization that is free to pursue any activity it wishes, or is constituted for a purpose that has been stated in extremely vague language, is not a charity at law.

The first object stated in clause 1 of the Charity's Supplementary Letters Patent, issued July 18, 2007, under the *Canada Corporations Act*, is broad and vague. While the treatment and prevention of substance abuse are recognized charitable purposes under the fourth head of charity[8], not all forms of encouraging, assisting and serving substance

[7] See, for example, *Travel Just v. Canada Revenue Agency*, 2006 FCA 343

[8] Purposes beneficial to the community in a way the law regards as charitable

abusers fall within those parameters. By failing to adequately define and restrict the scope of activities, this purpose allows the Charity to engage in a wide range of activities that are beyond the parameters of charity law.

The *Income Tax Act* stipulates that a registered charity be established for *exclusively* charitable purposes, and focus on charitable activities that further these purposes. This requirement was described as follows by the Supreme Court of Canada in *Vancouver Society of Immigrant & Visible Minority Women v. Minister of National Revenue:*

> "It is not sufficient that the society should be instituted "mainly" or "primarily" or "chiefly" for the purposes of science, literature or the fine arts. It must be instituted "exclusively" for those purposes. The only qualification – which, indeed, is not really a qualification at all – is that other purposes which are merely incidental to the purposes of science and literature or the fine arts, that is, *merely a means to the fulfillment of those purposes*, do not deprive a society of the exemption. Once however, the other purposes cease to be merely incidental but become collateral; that is, cease to be a means to an end, but become an end in themselves; that is, become additional purposes of the society; then, whether they be main or subsidiary, whether they exist jointly with or separately from the purposes of science, literature or the fine arts, the society cannot claim the exemption." [Emphasis added by Ritchie J. in *Guaranty Trust.*][9]

The Charity has indicated it is conducting activities in furtherance of its first object yet the information provided by the Charity reveals the Charity is merely acting as foundation transferring funds to others to conduct counselling activities. The Charity states it "exists to provide addiction counselling to people who need it and to distribute funds to other qualified donees" and goes on to further state "the charity has actually provided significant counselling to many people in need since changing its objects in July 2007." The Charity indicates it provides resources and scholarships, educates youth about addiction, offers specialized outreach and education programs and provides funding assistance to persons to receive specialized treatment and to attend treatment centres. Despite these representations, the audit provides no evidence that Charity actually performs these activities itself but rather it exists to fund qualified donees that may or may not perform these activities.

As noted above, the Charity's largest gift is to The Orion Foundation, an organization who does not operate to relief the conditions associated with addiction but rather is an organization formed to assist children in distress and to establish and operate an orphanage. In 2007, the Charity "gifted" $97,380 to Orion and in 2008 "gifted" at least $595,000 to Orion based on the total fundraising income received up to April 30, 2008. As above, CRA is of the opinion that the Charity's primary purpose for making gifts to Orion was merely a mandatory and orchestrated step in the overall donation arrangement with

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[9] *Vancouver Society*, supra footnote 1, at page 110 (paragraph 156), where Mr. Justice Iacobucci, speaking for the majority, cited with approval the comments of Denning L.J. in *British Launderers' Research Association v. Borough of Hendon Rating Authority*, [1949] 1 K.B. 462 (C.A.) at pp. 467-68, as applied by the Supreme Court of Canada in *Guaranty Trust Co. of Canada v. Minister of National Revenue*, [1967] S.C.R. 133

the intention creating the illusion that the Charity is carrying on charitable activities and to artificially allow the Charity to meet its disbursement quota and/or create disbursement quota excesses. We do not consider the amounts transferred to Orion as gifts to a qualified donee nor are the amounts considered charitable expenses for the purposes of the disbursement quota.

Further, raising funds is not a charitable purpose in and of itself. Fundraising is acceptable when it is undertaken in order to finance an organization's own charitable programs, or in order to gift funds to qualified donees. Fundraising must, however, be clearly ancillary and incidental to the organization's charitable purposes. When a fundraising activity becomes a primary emphasis of the organization, there is an undue devotion of the charity's resources to non-charitable activities and/or purposes.

It is our view that the emphasis placed by the Charity on its fundraising activities (i.e. its tax shelter involvement) is significant and that the Charity failed to exhibit its due care in contracting with COIP. The Charity claims it merely retained a fundraiser, COIP, to solicit donations on its behalf yet the Charity indicates it has no knowledge of what the donation program depends. The Charity has not demonstrated the due diligence it undertook to satisfy itself the fundraising methods used were compliant with the ITA and operating in the best interests and under the control of the Charity. It is not sufficient for the Charity to relinquish any of its control over the activities performed by the fundraising merely because the fundraiser is a third party.

The significance of the Charity's emphasis on its fundraising activities is demonstrated though the information obtained at the time of the audit. From July 2007 to August 31, 2007, the Charity received $503,610 as a result of its undocumented fundraising arrangement with COIP and incurred expenses of approximately $377,700 directly related to earning this income. On the T3010 filed, the Charity reports incurring over $395,000[10] or 79% of total income on fundraising expenses.

In conclusion, it is our opinion that the Charity is not devoting resources to its own charitable activities, nor is it simply devoting its resources by way of actually gifts to qualified donees. The vast majority of the Charity's expenditures are used to compensate the related parties to the arrangement. It is our view that the Charity has failed to demonstrate that it meets the test for continued registration under 149.1(1) as a charitable organization "all the resources of which are devoted to charitable activities carried on by the organization itself." In our view proportionally little of the resources received by the organization are so devoted and, as such, the organization fails to meet this test.

2. Failure to Maintain or Provide Adequate Books and Records

The *Income Tax Act* requires taxpayers to keep books and records and at all reasonable times, make their records, books of account and other supporting documents available for inspection by a person authorized by the Minister, and must provide every facility necessary to inspect them. Pursuant to subsection 230(2) of the ITA every

[10] Total fundraising fees reduced to over $193,000 or 38% of total income per adjusted T3010 provided.

registered charity must keep must keep records and books of account an address in Canada as recorded with the Ministers. These books and records must contain the following:

- Information in such form as will enable the Minister to determine whether there are grounds for revocation of its registration under the *Income Tax Act*;
- A duplicate of each receipt containing prescribed information for a donation received by the charity; and
- 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 the *Income Tax Act.*

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

- it is the responsibility of the registered charity to prove that its charitable status should not be revoked[11];
- 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[12]; and
- the failure to maintain proper books, records and records of account in accordance with the requirements of the ITA is itself sufficient reason to revoke an organization's charitable status[13].

The audit of the Charity found that the Charity failed to maintain adequate and records. In the course of the audit, the following deficiencies were noted:

- A reconciliation of the financial statements filed to the T3010 originally filed and to the adjusted T3010 filed identified the financial statements do not reconcile to either T3010. A summary of the amounts as filed are summarized in Appendix "A".
- The T3010 returns filed failed to include information on the Charity's assets and liabilities. As such, we are unable to reconcile the financial information contained within the T3010 originally filed and adjusted T3010.
- The agreements between the Charity and Transition and Homeward Bound/Ambuhl Mandelbaum, the agents, failed to list the programs the agents were to undertake on behalf of the Charity.

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[11] *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen,* 2002 FCA 72 (FCA); *International Charity Association Network vs. Her Majesty the Queen, 2008 TCC 3*

[12] Supra, footnote 3; *The Lord's Evangelical Church of Deliverance and Prayer of Toronto v. Canada,* (2004) FCA 397

[13] (*College Rabbinique de Montreal Oir Hachaim D'Tash v. Canada (Minister of the Customs and Revenue Agency,* (2004) FCA 101; ITA section 168(1)

It is our position the Charity is therefore in violation of section 230 of the ITA. Under the *Income Tax Act*, failure to comply with keeping proper books and records may result in the suspension of a registered charity's tax receipting privileges or may result in revocation. We do not believe suspension of the Charity's tax receipting privileges is an appropriate alternative, given the serious nature of the matter of non-compliance.

3. Failure to File an Accurate Information Return:

Pursuant to subsection 149.1(14) of the ITA, every registered charity must, within six months from the end of the charity's fiscal year end, file a Registered Charity Information Return (T3010A) with the applicable schedules.

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

The audit has shown that the Charity has improperly completed T3010A return for fiscal period ending August 31, 2007 as certain information was not reported or information was misrepresented. Specifically:

- The expense amounts recorded on the financial statements do not reconcile to the expense amounts recorded on the T3010A originally filed or to the expense amounts recorded on the Registered Charity Adjustment Request. A summary of the amounts recorded on each statement is attached in Appendix "A".
- Total expenditures reported at line 4950 of the T3010 originally filed and the adjusted T3010 filed do not reconcile to the sum of expenditures reported at lines 5000 to 5040 of the T3010.
- The Charity failed to file an adjusted Qualified Donee Worksheet. As such, amounts reported at line 5050 of the adjusted T3010 do not reconcile to the amounts reported on the Qualified Donee Worksheet filed.
- The T3010 originally filed and the adjusted T3010 filed fail to record the Charity's assets and liabilities. Accordingly, the amounts reported for total income and total expenditures on the originally filed T3010 and adjusted T3010 filed do not reconcile to the amounts recorded on the Charity's financial statements.

<u>The Charity's Options</u>:

a) No Response

You may choose not to respond. In that case, the Director General of the Charities Directorate may proceed with the issuance of a Notice of Intention to Revoke the registration of the Charity in the manner described in subsection 168(1) of the ITA.

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 Charity, the Director General of the Charities Directorate will decide on the appropriate course of action, which may include:

- no compliance action necessary;
- the issuance of an educational letter;
- resolving these issues through the implementation of a Compliance Agreement; or
- the issuance of a Notice of Intention to Revoke the registration of the Charity in the manner described in subsection 168(1) of the ITA.

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 require further information, clarification, or assistance, I may be reached at (613) 957-2212 or by facsimile at (613) 946-7646.

Yours sincerely,

Holly Brant
Senior Audit Advisor
Charities Directorate
320 Queen Street, 7th Floor
Ottawa ON K1A 0L5

Appendix "A"

HEALING AND ASSISTANCE NOT DEPENDENCE CANADA

COMMENTS ON REPRESENTATIONS OF JANUARY 19, 2009

The audit conducted by the Canada Revenue Agency (CRA) identified that Healing and Assistance not Dependence Canada (the Charity) is not devoting its resources entirely to charitable activities and is not pursuing exclusively charitable purposes. It is our conclusion that the Charity's governing purposes have been exploited for the purpose of participating in and promoting an abusive tax shelter arrangement. The vast majority of the funds received by the Charity are directed in a manner that benefits a tax shelter arrangement, with a proportionally insignificant amount being expended in a charitable manner. As such, it is our position that the Charity is operating primarily for the non-charitable purpose of furthering the Canadian International Aid Program, a registered tax shelter promoted by Canadian Organization for International Philanthropy (COIP) and, therefore, does not operate for exclusively charitable purposes as required at law[1].

Tax Shelter Gifting Arrangement:

We have reviewed your submission of January 19, 2009, and remain of the position that the Charity has willingly lent its name to the Canadian International Aid Program tax shelter in exchange for monetary compensation, and has participated in a program designed to abuse the charitable gift incentive provisions of the *Income Tax Act* (the Act).

As explained in our previous letter, dated November 17, 2008, after several years of dormancy, the Charity changed its name, governing purposes, and Board of Directors in 2007, to fill a void left by a departing participant with a nearly identical name and purposes, and shared Board members. The Charity's response has failed to alleviate our concerns that its restructuring was intended to facilitate its entrance into the tax shelter arrangement, which allowed the program to flow seamlessly after the departure of the Charity's predecessor, without necessitating material changes to the literature describing the participating charities.[2]

Nor has the Charity succeeded in countering our position that it participated in the tax shelter in order to circulate funds in a guise to add legitimacy to the transactions. As explained in our previous letter, the audit findings have shown that the Charity's role in the arrangement was to receive donations from contributing donors and transfer the majority of the donations to two other participants (35% a piece, totaling 70% of donations received): The Orion Foundation (Orion), and PanAggregate Financial Corporation (PanAggregate), as payments for their participation in the arrangement. The Charity also paid an additional 5% of funds received to a book keeper, leaving a scant 25% of funds raised available for charitable expenditures.

You have defended the Charity's participation in the scheme by contending that there is no law against receiving funds from a tax shelter. That is correct; there is no explicit legal prohibition

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[1] The requirement that charities be established and operated for exclusively charitable purposes is described in *Vancouver Society of Immigrant & Visible Minority Women v. Minister of National Revenue,* [1999] 1 S.C.R. 10, at p. 110 (paragraphs 152, 154, 156)

[2] Promotional literature was revised to include the Charity's amended name and business number. The description of activities remained the same.

against a charity participating in a tax shelter arrangement. However, at law, where an activity is so predominant it becomes an end in and of itself, it may constitute a collateral purpose for which an organization operates[3]. If a charity operates for a collateral purpose, it too must be charitable, or the charity will cease to operate for exclusively charitable purposes, and accordingly, will not meet the requirements for registration as a charity. Given that the overwhelming majority of funds received by the Charity are flowed through to other tax shelter participants, and given that the Charity has restructured itself to accommodate this tax shelter arrangement, it is our position the Charity's participation in the tax shelter is not a means to achieve an ultimate charitable purpose, but is an end in and of itself. Operating for the purpose of participating in and furthering a tax shelter is not charitable at law.

The Charity contents that, because the tax shelter could function with other participants and did not require the participation of this charity in particular, it cannot be true that it exists for the purpose of furthering the tax shelter. The Charity states "by [our] understanding of your description of the tax shelter the second stage of the shelter could occur without any 'second' charity there at all." While this may be true, the fact remains that our audit reveals the second stage of the tax shelter does involve the Charity. The Charity's representations that the participant donors could "simply give his or her funds to the 'first' charity...or not give a donation at all" does not provide substance for our findings that the Charity was specifically named in the application package; that each participant chose to make this pre-determined 2% "donation" to it; and that the Charity then chose to distribute 70% of the "donations" received to other entities also participating in the tax shelter.

Your submission also inquires as to why the objects of the Charity are important to the existence of the tax shelter arrangement. *Per* our prior letter, the objects of the Charity were changed to be similar to those of the predecessor organization participating in this tax shelter. Rather than operating with the charitable objects for which the Charity was registered, it chose to amend its objects to facilitate the seamless continuation of the second charity in the tax shelter. As noted in our prior letter, the description of the second charity in the donation arrangement was not altered; only the name and charitable registration number were changed in the promotional materials. We do not agree with the Charity's submission that its role in the tax shelter was minimal given the number of amendments, including a complete change in objects, undertaken by it to facilitate the seamless transfer of operations from the predecessor organization to itself. It is for these reasons we conclude the Charity is operating for the purpose of advancing the Canadian International Aid Program tax shelter.

Failure to Devote Resources to Charitable Activities:

The Charity's letter acknowledges that its only motivation for participating in the tax shelter was to receive funds and its "involvement in the tax shelter was to raise funds to advance its purposes". Neither the audit findings, nor the Charity's submissions to the CRA support this claim. Our concerns in this regard are addressed below.

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[3] *Vancouver Society v. MNR,* supra, footnote 1, at p. 110 (paragraph 156), where Mr. Justice Iacobucci, speaking for the majority, cited with approval the comments of Denning L.J. in *British Launderers' Research Association v. Borough of Hendon Rating Authority,* [1949] 1 K.B. 462 (C.A.) at pp. 467-68, as applied by the Supreme Court of Canada in *Guaranty Trust Co. of Canada v. Minister of National Revenue,* [1967] S.C.R. 133

Firstly, we do not accept the representation that the Charity's role in the tax shelter arrangement was simply a minor one, where it merely participated in a fundraising program without any consideration as to how the funds would be raised, or the Charity's role in the entire tax shelter donation arrangement.

The representations state that "charities are entitled to organize their fundraising as they see fit", and that there is no legal basis for revocation of charitable registration as a result of failure to exercise due diligence in relation to fundraising practices. You are correct in your assertion that failure to exercise due diligence, in and of itself, is not grounds for revocation of a charity's registration under the Act. However, where failure to exercise due diligence in relation to fundraising practices results in incurring excessive fundraising fees, a charity could cease to comply with the legal requirement that all its resources be devoted to charitable activities, which is grounds for revocation of registration under paragraph 168(1)(b) of the Act.

There are statutory and common law requirements that registered charities must have exclusively charitable purposes and devote all of their resources to activities in furtherance thereof[4]. Additionally, common law directives require charities and their directors to be accountable to the public for all monies publicly raised, and to utilize such monies to further the purposes of the charitable institution. We refer, in this regard, to the case of *Ontario (Public Guardian and Trustee) v. The AIDS Society for Children (Ontario)*[5], in which the court also ruled that a charity and its board of directors may breach their fiduciary duties simply by virtue of entering into an improvident fundraising arrangement, regardless of whether a loss occurs. With respect to the matter of excessive fundraising costs, Justice Haley stated:

> "A reasonable person would expect there to be a cost for the work involved in fund-raising but also that such cost would be in reasonable proportion to the funds expected to be raised. Costs amounting to 70% cannot be accepted as reasonable." (paragraph 55)

A similar decision was reached in *Ontario Public Guardian and Trustee v. National Society for Abused Women and Children*[6], in which the court reaffirmed that there is a fiduciary obligation of directors of charities to be accountable for all fundraising costs. In that case, Justice Loukidelis stated (at paragraphs 25-26) that allocating 75-80% of donations received to fundraising costs "is bound to shock the conscience of any citizen", and the application of only a fraction of the remaining funds to charitable purposes is "clearly unconscionable."

We note that while fundraising is not a charitable purpose or activity at law, it is the CRA's administrative policy position that a charity may devote a modest amount of resources to fundraising without breaching the common law or statutory rules pertaining to charities[7].

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[4] See, for example, *Vancouver Society v. MNR*, supra, footnote 1, at paragraph 159, in which Mr. Justice Iaccobucci states "on the basis of the Canadian jurisprudence, the requirements for registration under s. 248(1)[of the Income Tax Act] 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 unless the organization falls within the specific exemptions of s. 149.1(6.1) or (6.2)."

[5] [2001] O.J. No. 2170

[6] [2002] O.J. No. 607

[7] See the CRA's *Consultation on proposed policy on fundraising by Registered Charities*, at http://www.cra-arc.gc.ca/tx/chrts/cnslttns/fndrsng-eng.html. Note: while this policy is not yet finalized, we believe it accurately articulates the CRA's position on this matter

However, fundraising activities must be ancillary and incidental to the achievement of the charitable purpose(s) for which a charity is established and operated. When making a determination as to whether fundraising activities are acceptable, the CRA considers not only the amount of money and time attributed to fundraising, but also the manner in which the fundraising activities are structured, and whether such activities are, in fact, ancillary and incidental to the achievement of an ultimate charitable purpose.

We are unable to conclude that the Charity's fundraising was merely incidental to any ultimate charitable purpose. This is based upon the preponderance of the Charity's resources attributed to fundraising fees, with a comparably insignificant amount of funds devoted to charitable expenditures, as well as the fact that the Charity has neither been established, nor operated, for the pursuit of charitable purposes.

The overwhelming financial activity of the Charity was through its role in receiving and transferring donations on behalf of the tax shelter program, with a proportionally negligible amount being expended in a charitable manner. Between September 1, 2006, and August 31, 2008 the Charity reports receiving nearly $2.8 million dollars, exclusively from tax shelter donors. Of the $503,610 received from tax shelter donors in 2007, the Charity transferred over $375,000 to Orion and PanAggregate and spent $29,863 on charitable activities and gifts to qualified donees other than Orion. In 2008, of the $2.295 million received, the Charity reports it transferred over $1.6 million to Orion and PanAggregate and spent $252,000 on gifts to qualified donees other than Orion. *Per* our previous letter, we consider the amounts paid to the other participating charity to be compensation for its role in the donation arrangement – the receiving and receipting of the medicine units – and not gifts made to a qualified donee. The remaining funds retained by the Charity were devoted to administrative expenditures in both years. The minimal amount of funds allocated to charitable expenditures is substantially below that which is acceptable in order to maintain registration under the Act.

You have asserted that the nature of the Charity's minimal charitable expenditures and limited charitable activity warrant changing its designation from that of a charitable organization to a charitable foundation instead of revoking its registration. Whether these expenditures are more aptly categorized as those of a charitable organization or a charitable foundation is irrelevant. The level of charitable expenditures is inconsequential relative to the Charity's other non-charitable expenditures therefore it does not meet the legislative requirements for continued registration as either type of charity.

Instead, the fact that the excessive fundraising fees incurred by the Charity (representing 79% of its total income as described in our previous letter) have resulted in a corresponding failure to devote all the Charity's resources to charitable activities is basis for revocation of its registration[8].

Furthermore, the audit revealed that the Charity did not, in fact, deliver any of the charitable addiction counseling, treatment, or education programs for which it was ostensibly raising funds. Notwithstanding your letter of January 19, 2009, it is our position that the Charity has not been established and operated to carry out charitable activities in furtherance of exclusively charitable purposes.

[8] In accordance with paragraph 168(1)(b) of the Act

To clarify, the CRA does not dispute that the prevention and treatment of drug addiction is a judicially recognized charitable purpose[9]. Instead, our concern, as articulated in our previous letter, is that the Charity's purpose to "encourage and assist and serve alcoholics, chemically dependant persons and their families, friends and associates primarily, but not exclusively, within the Jewish community" is worded in a manner that is so broad and vague that it fails to sufficiently define the programs to be conducted in furtherance thereof, and to confine the Charity strictly to the pursuit of charitable activities, in accordance with the statutory and legislative requirements pertaining to charities.

Purposes that are overly broad in nature are not charitable at law, *regardless of whether or not non-charitable activities are, in fact, pursued.* To this end, we refer to the comments of Madame Justice Sharlow in *Earth Fund v. MNR*[10]:

> "It does not matter that the appellant claims to have no present intention of doing any of these things. The problem is that its objects are so broad that it could do them, and therefore it is impossible to conclude that the appellant is constituted for exclusively charitable purposes."

In our view, the above referenced purpose is broad enough to allow the Charity to carry on activities that exceed the bounds of charity. For example, in the absence of defining parameters, the Charity is free to achieve this purpose through funding other organizations that carry out such activities. Both the scheme of the Act and the common law preclude a charity from turning over funds to another other organization, unless: (a) such organization is a qualified donee, as defined in the Act; or (b) the charity can establish that it maintains the necessary degree of direction and control over the activities carried out and the application of funds by the recipient organization[11].

We note that your submission references previous approval of this purpose by the CRA as grounds for continued acceptance. You state the Charity's charitable purposes are based on the already approved objects of the predecessor organization, which is wrong in fact. The predecessor organization was not registered with the same objects as submitted by the Charity; the objects of the predecessor organization, prior to revocation, were similar to those submitted by the Charity. It is the difference in the wording of the objects that change the object from being charitable to non-charitable. The objects as submitted by the Charity remain broad and vague as discussed above.

With respect to the activities carried out in furtherance of the Charity's broad and vague objects, rather than providing its own counseling and addiction services, the Charity claims that it assisted those in need of such services through funding treatment centres (Transition in Pittsburg USA and Homeward Bound in Switzerland), which operate such programs. However, the agency agreements between the Charity and those organizations did not contain program descriptions which describe and confine the programs to be carried out, or instructions as to how the programs are to be delivered on the Charity's behalf. The fact that

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[9] H. Picarda, *The Law and Practice Relating to Charities* (London: Butterworths, 1999), at 121

[10] 2002 FCA 498 (paragraphs 24 and 25)

[11] See, for example, *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen* [2002] FCA 72

the Charity considered it "redundant" to list the programs to be undertaken by each organization on the Charity's behalf because the "organizations only undertake one activity and that is drug addiction counseling" does not relieve the Charity from specifying the activities the organizations will be undertaking on the Charity's behalf. As such, we cannot conclude that the Charity has exercised and maintained the requisite degree of ongoing direction and control over the programs of the organizations it funded. As a result, it is our view that the Charity has operated as a conduit by funding the programs of organizations which are not qualified donees without adequate regulation thereof, which is a contravention to the common law and statutory requirements pertaining to charities[12]. We note that the Charity has since been primarily gifting to a qualified donee offering drug and alcohol counseling. However, as stated above, the limited amount charitable disbursements made by the Charity are insufficient relative to the excessive amounts devoted to the tax shelter program.

For each of these reasons, it is our position the Charity has failed to devote its resources to charitable activities carried out in furtherance of exclusively charitable purposes. Under paragraph 168(1)(b) of the Act, the Minister may, by registered mail, give notice to the organization that the Minister proposes to revoke its registration because it ceases to comply with the requirements of the Act related to its registration as such. For these reasons, it is our position the Charity has breached subsection 149.1(1) of the Act and there are grounds for revocation of its registered status under paragraph 168(1)(b).

Books and Records & Registered Charity Information Return

The audit revealed the Charity did not maintain adequate books and records per paragraphs 230(2)(a) and (c) of the Act.

Your submission raises the question as to how the Charity could have failed to keep proper books and records when the books and records relating to the arrangement simply do not exist. Failure to document the arrangement in writing is not proof that the arrangement does not exist, instead it supports our position that the Charity simply failed to keep proper books and records in relation to its operations.

Per our previous letter, we cited specific instances whereby the Charity's records and information return filed fail to accurately report the income and expenditures of its operations. Our findings are based upon the simple reconciliation errors found between the Registered Charity Information Return (T3010A), Registered Charity Information Return Adjustment Request (T1240), the financial statements and other schedules filed with the T3010A. Our reconciliation errors were summarized in Appendix "A" of our previous letter. Whereas your representations state that "the financial statements are prepared with a different set of definitions than those used by the CRA", this does not provide sufficient rationale or evidence for the discrepancies identified. The Charity filed its T3010A, financial statements and T1240 at differing times throughout 2008, and at no time did it file or provide supplemental records to clarify or provide proof for the amounts being reported. Additionally, the representations state "the charity has no assets or liabilities" yet reports earning net income of $7,880 in 2007. In is our position, without any other evidence to the foregoing, that the Charity should be reporting assets (i.e. cash, investments) of at least $7,880 in 2007.

[12] *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*, supra, footnote 11

To offer some clarification, the section outlining the errors found on the T3010A as filed did not indicate CRA was seeking to "deregister the charity" based on these findings. This section of the letter serves to bring awareness to the errors identified and to provide the Charity an opportunity to clarify and/or provide additional representations to resolve the errors identified.

Accordingly, the Minister may, by registered mail, give notice to the Charity that the Minister proposes to revoke its registration because it fails to comply with or contravenes section 230 of the Act dealing with books and records under paragraph 168(1)(e) of the Act. It is our position the Charity has contravened section 230 of the Act for failing to maintain complete records to verify the information contained within its Registered Charity Information Returns and financial statements. For this reason, there are grounds for revocation of the charitable status of Healing and Assistance Not Dependence Canada.

Appropriateness of Revocation:

As noted in your submission, subsection 149.1(23) of the Act allows for annulment rather than revocation, of a charity's registration where it is deemed to have been registered in error. Annulment of registration is a discretionary procedure[13] involving less severe consequences than revocation. It is not our position the Charity was registered in error nor does the fact that it amended its objects to include those considered non-charitable, provide CRA the recourse to annul the Charity's registration. Given that the Charity has failed to meet the fundamental legal requirements for continued registration, has breached numerous requirements of the Act and restructured its organization in a manner to facilitate the tax shelter, it is the CRA's position that the seriousness of these non-compliances warrants the revocation of the Charity's registered status.

[13] *Hostelling International Canada – Ontario East Region v. Minister of National Revenue*, 2008 FCA 396, at paragraph 13