

REGISTERED MAIL

MAY 28 2014

The Bosco Society for Disturbed Adolescents
128-145 King Edward Street
Coquitlam BC V3K 6M2

BN: 892336967RR0001
File #: 0421230

Attention: Ms. Kaal

**Subject: Notice of Suspension of Receipting Privileges
 The Bosco Society for Disturbed Adolescents**

Dear Ms. Kaal:

I am writing further to our letter dated January 2, 2013 (copy enclosed), in which you were invited to submit representations as to why we should not revoke the registration of The Bosco Society for Disturbed Adolescents (the Organization) in accordance with subsection 168(1) of the *Income Tax Act* or assess a penalty and suspend the receipting privileges and qualified donee status of the Organization in accordance with sections 188.1 and/or 188.2 of the Act.

We have now reviewed and considered the Organization's written response of January 31, 2013. Notwithstanding your reply, our concerns with respect to the Organization's non-compliance with the requirements of subsection 230(2) of the Act have not been alleviated. In fact, the Organization did not specifically address all of the issues raised in our letter of January 2, 2013, relating to its failure to maintain adequate books and records.

However, as the Organization has indicated that it is prepared to take the necessary corrective actions to address our concerns, we are prepared to enter into a compliance agreement and not pursue a Notice of intention to revoke the registration of the Organization. Nevertheless, given the seriousness of the issues involved, we are of the view that the Organization's receipting privileges should be suspended for a period of one year, based on the inadequacy of the Organization's books and records in accordance with paragraph 188.2(2)(a) of the Act, which states that the Minister may give notice to a qualified donee that the authority of the latter to issue an official receipt referred to in Part XXXV of the *Income Tax Regulations* is suspended for one year from the day that is seven days after the day on which the notice is mailed if the qualified donee contravenes any of sections 230 to 231.5 of the Act. This was discussed with Director Ria Kaal on March 14, 2013 and August 1, 2013. Following the expiration of the suspension, the Canada Revenue Agency will review the changes implemented by the Organization to ensure that the required corrective actions have been taken.

Consequently, I wish to advise you that, pursuant to paragraph 188.2(2)(a) of the Act, I propose to suspend the Organization's receipting privileges. The Organization's tax receipting privileges and qualified donee status as defined by the Act are hereby suspended for one year beginning on June 4, 2014.

Consequences of Suspension:

In accordance with subsection 188.2(3) of the Act, for the duration of the Organization's suspension, the Organization:

- may not issue official donation receipts for gifts it received;
- must, before accepting a gift, inform the donor that it has received a Notice of Suspension and cannot issue an official donation receipt; and
- must, before receiving gifts from other registered charities, inform them that it is no longer a qualified donee as defined in the Act.

Please note that the Organization has **seven (7) days**, after the day this letter was mailed, to issue donation receipts for gifts it received prior to the suspension.

Failure to cease receipting will result in us reconsidering our decision not to proceed with the issuance of a Notice of Intention to Revoke the registration of the Organization in the manner described in subsection 168(1) of the Act.

Appeal Process:

Should you wish to appeal this Notice of Suspension of Receipting Privileges 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 mailing of this letter. 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

In accordance with subsection 188.2(4) of the Act, an application to the Tax Court of Canada may be filed for a postponement of the portion of the suspension period that has not elapsed. The application can only be filed once the notice of objection to a suspension under subsection 188.2(2) has been filed by the Organization.

Public Notice:

By virtue of paragraph 241(3.2)(g) of the Act, the following information relating to the Organization's suspension of receiving privileges and qualified donee status will be posted on the Charities Directorate website:

Suspension:

Name of Organization:	The Bosco Society for Disturbed Adolescents
Registration Number:	892336967RR0001
Effective date of Suspension:	June 4, 2014
Reason for Suspension:	Failure to Maintain Adequate Books and Records
Act Reference:	188.2(2)(a)
End date of Suspension:	June 3, 2015
Postponement date, if applicable:	N/A

I trust the foregoing fully explains our position.

Yours sincerely,



Cathy Hawara
Director General
Charities Directorate

Attachments:

- CRA letter dated January 2, 2013
- Organization's response dated January 31, 2013

c.c.: Massoud Joomratty, Director
5838 Dickens Place
Burnaby BC V5H 1W5



Canada Revenue
Agency

Agence du revenu
du Canada

REGISTERED MAIL

Bosco Society for Disturbed Adolescents
128-145 King Edward Street
Coquitlam BC V3K 6M2

BN: 89233 6967RR0001
File #: 0421230

Attention: Ms. Ria Kaal

January 2, 2013

Subject: Bosco Society for Disturbed Adolescents

Dear Ms. Kaal:

This letter is further to the audit of the books and records of Bosco Society for Disturbed Adolescents (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period October 1, 2008 to September 30, 2010.

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

AREAS OF NON-COMPLIANCE:		
	Issue	Reference
1.	Failure to carry out its own charitable activities in accordance with the requirements of the Act / Lack of direction and control over the use of the Organization's resources and over the conduct of its activities. Gifting to a non-qualified donee	149.1(1), 149.1(2), 168(1)(b)
2.	Providing an undue benefit	149.1(1), 149.1(2), 168(1)(b)
3.	Issuing Receipts not in accordance with the Act and/or its Regulations	149.1(2), 168(1)(d), Regulations 3500, 3501(1)
4.	Failure to maintain adequate books and records	149.1(2), 168(1)(e) 230(2)

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 of the Organization to carry out its own charitable activities in accordance with the requirements of the Act / Lack of direction and control over the use of its resources and over the conduct of its activities.** The Act permits that the resources of a Canadian registered charity may only properly be applied in the following two ways:

- The first way is by disbursements made on charitable activities undertaken by the charity itself, that is to say on its own charitable activities (those which are administered directly under the charity's control and supervision and for which it is able to render itself fully accountable for the funds expended).
- The second way in which a charity may properly apply its resources is by making disbursements to "qualified donees".

The *Income Tax Act* does not allow a registered charity to carry out its purposes by handing over its money or other resources to another organization (that is not a qualified donee).

We refer to the comment of the Federal Court of Appeal in *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*¹:

“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 charity 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...”

As re-iterated by the Federal Court of Appeal in *Bayit Lepletot v. Minister of National Revenue*², it is not enough for an organization to fund an agent that carries on certain activities. The Act requires that the agent actually conduct those activities on the charity's behalf. Where the agent has full authority to expend the principal's funds without any appropriate ongoing regulation/approval by the principal, there is no assurance that the agent is, at all times, acting on behalf of the principal. In such a case, it is not clear that the principal is exercising ongoing and substantive direction and control. Activities carried out in this manner are not in compliance with the requirements of the Act.

In order to give meaning and effect to the Act, a charity must continue to meet all of its obligations whether the activities are undertaken directly, through agency agreements or through any other arrangements. By whichever manner a charity chooses to meet its obligations, it must provide documentation or other tangible support to substantiate that it meets the requirements of the Act with respect to the direction and control of its resources.

¹ *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*, 2002 FCA 72 (FCA) at paragraphs 40 and 30 respectively

² *Bayit Lepletot v. Minister of National Revenue*, 2006 FCA 128

Audit findings:

The Organization was registered as a charitable organization in 1973 with the following objects:

- (a) To provide a home for adolescents who are emotionally disturbed and require psychological counselling;
- (b) To provide a treatment environment for adolescents under psychiatric care;
- (c) To provide a therapeutic setting for adolescents who exhibit delinquency or anti-social behaviour;
- (d) To provide a rehabilitation centre for adolescents with drug addiction or dependency problems;
- (e) To promote preventative education, workshops and mental health programs for parents and teenagers;
- (f) To raise funds to assist in financing adolescent treatment centres and rehabilitation homes;
- (g) To do all such ancillary things and exercise all such necessary powers as may be requisite for the purpose of advancing its objects.

Although, the Organization was registered with the above objects, the audit revealed that the Organization is not carrying out activities that directly further its formal objects. Note that a registered charity must be established exclusively for charitable purposes and must undertake charitable activities that further these purposes.

According to the Organization's directors Ria Kaal and Lucien Larre, the only activity the Organization is involved with is facilitating the treatment of individuals in need. During the 2009 and 2010 fiscal periods, the Organization transferred \$115,000 and \$57,674.54 to Professional Psychological Assessment Ltd. (PPAL) doing business as The Bosco Center. As per The Bosco Center's website www.listenwell.com, the center provides integrated services for children, adolescents and adults with learning disabilities, reading problems, attention deficit disorders, sensory integration disorders, fetal alcohol exposure, brain wave deficits, auditory processing disorders and brain damage. All of the services/programs provided at The Bosco Center are fee based. The shareholders of PPAL are Ria Kaal and Lucien Larre, both of whom are on the Board of Directors of the Organization. Additionally, Ria Kaal is the General Manager of The Bosco Center and Lucien Larre the Clinical Director.

Upon reviewing the books and records of the Organization it became quite evident that the Organization simply transferred funds to PPAL without any direction and control. During the years 2009 and 2010 respectively, the Organization was invoiced \$46,050 and \$42,372.50 from PPAL for services, when in fact the Organization transferred \$115,000 and \$57,674.54 to PPAL, an excess of \$68,950 and \$15,302.04 of the amounts invoiced. No agreement was found to be in place between the Organization and PPAL. Furthermore, the Organization was unable to provide information on how an individual would access assistance, the criteria used to grant assistance and a listing of the individuals that received assistance. This is an indicator that the activities PPAL is undertaking with the Organization's funds are not the Organization's own activities but rather, those of PPAL.

Based on the above findings it is our view that the Organization does not appear to exercise the required degree of direction and control over the use of its funds, and/or over the activities to be conducted with those funds, to establish that it is carrying out its own charitable activities in accordance with the provisions of the Act. Rather, it is merely funding the activities of PPAL, who is not a qualified donee.

By funding organizations that are not qualified donees, the Organization appears to be in contravention of the s. 149.1(1) of the Act.

2. Undue Benefit

At common law, and by statute, a registered charity cannot be established to confer a private benefit on non-charitable beneficiaries or non-qualified donees. Private benefits that occur during the normal operations of a charity - when a charity pursues activities that further its charitable purpose, such as salaries, fees for services and office expenses, are acceptable provided they:

- arise directly through the pursuit of the charity's purposes or are incidental and ancillary to the achievement of those purposes;
- are unavoidable and necessary to the achievement of the charity's purposes; and
- are reasonable or not disproportionate compared to the public benefit achieved in all circumstances.

If the activities that a registered charity conducts confer a private benefit that does not meet these criteria, it will be considered to be undue. A charity that delivers an undue private benefit is not using all of its resources for charitable purposes, and may be liable to a penalty under the Act, or have its registered status revoked.

Audit findings:

The audit revealed that the Organization conferred the following undue benefits on its directors Ria Kaal and Lucien Larre:

- The Organization paid the rent of PPAL (a non-qualified donee) in 2009 (\$40,235.81) and 2010 (\$52,958.51).
- The Organization paid the wages of _____ ; a PPAL employee and contractor in 2009 and 2010.
- The Organization paid numerous expenses on behalf of PPAL such as commercial and personal liability insurance, counselling services, printing fees, computer repairs, cleaning services, maintenance and repairs and waste removal.
- The Organization loaned PPAL funds. This is a non interest bearing loan with no formal repayment terms. Documentation supporting the original loan amount and conditions of the loan were not made available by the Organization. As per the 2010 financial statements \$61,982 was still outstanding.
- In 2009, the Organization hosted a _____ Anniversary celebration party for Lucien Larre costing \$7,854.04.
- In 2009, the Organization gifted Lucien Larre a Panasonic suede massage lounger costing \$2,686.88.
- In 2009, Ria Kaal invoiced the Organization \$6,000 for management fees, however received \$8,000 (chq # 15 for \$2,000, chq #34 for \$3,000, and chq #61 for \$3,000).

- In 2008, the Organization purchased a 2008 Buick Enclave for \$70,839.19. The vehicle is exclusively used by Ria Kaal. The extent of business vs. personal use is unknown as this was not documented by the Organization.

Therefore, based on the above findings it is our view that the Organization appears to have conferred undue benefits on its directors Ria Kaal and Lucien Larre and on PPAL, as it failed to demonstrate how the above expenditures were incurred to further one of its charitable purposes.

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

The Act provides various requirements with respect to the issuing of official donation receipts by registered charities. These requirements are contained in Regulation 3501 of the Act.

The audit found that the donation receipts issued by the Organization did not comply with the requirements as follows:

- The donation receipts did not contain a statement indicating that the receipt is an official receipt for income tax purposes.
- The donation receipts did not contain the name and address of the Organization as recorded with the Minister.
- The donation receipts did not contain the place or locality where the receipt was issued.
- The donation receipts did not contain the day on which or the year during which the donation was received.
- The donation receipts did not contain the name and address of the donor including, in the case of an individual, his first name and initial.
- The donation receipts did not contain the name and Internet website of Canada Revenue Agency.
- The audit also found that the Organization did not keep exact duplicates of the donation receipts issued. Copies provided did not contain the signature of the individual authorized by the Organization to acknowledge donations.
- Official donation receipts were issued to other registered charities.
- The Organization issued official donation receipt #6800 on March 15, 2010 for \$15,000 to [redacted] for a donation of paintings. The Organization was unable to demonstrate how it determined the fair market value of this donation and furthermore what was done with the paintings.

Therefore, based on the above findings it appears that the Organization has issued receipts that were not in accordance with the Act and/or its Regulations.

4. Failure to Maintain Adequate Books and Records:

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

“every person required by this section to keep books of account 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 date of the last taxation year to which the records and books relate.”

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

- 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 thereto³; and
- the failure to maintain proper books, records and records of account in accordance with the requirements of the Act is itself sufficient reason to revoke a charity's registration⁴.

In the course of the audit the following deficiencies were found with the Organization's books and records:

- The Organization did not maintain exact duplicates of the official donation receipts issued.
- The Organization was unable to provide documentation supporting the capital assets reported on its 2009 and 2010 T3010 Charity Information Returns.
- The Organization was unable to provide any documentation regarding the other assets reported on the 2009 and 2010 T3010 Charity Information Returns, other than what was disclosed in the notes accompanying the financial statements (note 2: Loan to a related company). As per director Ria Kaal this amount relates to a loan that the Organization made to PPAL.
- The Organization was unable to provide documentation to support that it directed and controlled the use of its resources it transferred to PPAL.
- The Board minutes of the Organization failed to demonstrate board oversight.

Therefore, based on the above findings it is our position that the Organization failed to maintain adequate books and records as required under subsection 230(2) of the Act. Note that a charity that fails to maintain adequate books and records may be liable to a penalty under the Act, or have its registered status revoked.

³ The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen, 2002 FCA 72 (FCA)

⁴ Supra, footnote 3; The Lord's Evangelical Church of Deliverance and Prayer of Toronto v. Canada, (2004) FCA 397

⁵ College Rabbinique of Montreal Oir Hachaim D'Tash v. Canada (Minister of Customs and Revenue Agency, (2004) FCA 101; ITA section 168(1)

The Charity'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 Intent to Revoke 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 Intent 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 the undersigned at the numbers indicated below.

Sincerely,



Manjit Sutherland
Audit Division
Vancouver Island Tax Services Office
Telephone: 250-363-0174
Facsimile: 250-363-3862
Address: Vancouver Island Tax Services Office
c/o 9755 King George Boulevard
Surrey BC V3T 5E1

cc: Mr. Massoud Jomratty, Director