



**REGISTERED MAIL**

Your file    *Votre référence*

Mrs. Helen Smolack  
Treasurer  
Zionist Organization of Canada Charitable Fund  
788 Marlee Avenue  
Toronto, Ontario  
M6B 3K1

Our file    *Notre référence*

November 28, 1995

Dear Mrs. Smolack:

**Re: Charity Tax Audit**

This letter is further to our audit of the books and records of account of the Zionist Organization of Canada Charitable Fund (the "Fund") related to the operations of the Fund for its 1993 fiscal year, and subsequent correspondence with you regarding contributions solicited in the Fund's name to assist the Settlement Movement in Israel.

The audit results and our subsequent verification of certain matters strongly suggest that the Fund is in contravention of certain provisions of the *Income Tax Act* (the "Act"). In order for a registered charity to retain its registration, it is required to comply with the provisions of the Act applicable to registered charities. In a case where these requirements are not met, the Minister of National Revenue may revoke a charity's registration in the manner described in section 168 of the Act.

The Fund is registered as a charitable organization as defined by subsection 149.1(1) of the Act. As such, it must devote all of its resources to charitable activities. Except to the limited extent that subsection 149.1(6) of the Act permits gifts to "qualified donees", these must be charitable activities carried on by the organization itself. (The term "qualified donees" is defined by subsection 149.1(1) of the Act to mean registered charities and other organizations similarly able to receipt donations for Canadian tax purposes.) This limitation on gifts to other organizations is reinforced by the disbursement quota rules, which also specify that a charity's annual expenditure requirement is to be met by expenditures on charitable activities carried on by it, or as gifts to "qualified donees". These requirements were clearly outlined to the Fund at the time it was originally registered in 1969, and again in 1983 when its registration was reinstated after revocation for failure to file annual information returns. Copies of these letters are enclosed for your reference.

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**Canada**

For the reasons set out below, we believe that it is open to us to conclude that the Zionist Organization of Canada Charitable Fund has ceased to meet the definition of a charitable organization under the Act in that it has devoted resources to activities that are not charitable activities carried on by it and has devoted resources to purposes and activities that are not charitable as that term is interpreted for Canadian tax purposes.

In general, a purpose or activity will not be charitable if it contravenes public policy. This principle is long established and has been fully adopted in Canadian law. I note, in fact, that it is recognized in the Letters Patent under which the Fund was incorporated, which expressly direct that "...no part of the income and/or capital of the Fund may be applied except to objects that are considered as charitable under the laws of Canada".

You have confirmed that the Fund has issued tax receipts for donations collected for the Settlement Movement in Israel. These amounts were transferred to the Toronto Zionist Council, which in turn transferred them to The Yesha Council of Jewish Communities in Judea, Samaria & Gaza, an umbrella organization uniting Israeli settlements in the Occupied Territories. It is our preliminary view that these transactions have given cause for revocation of the Fund's registration as a charity either on the basis that the Fund:

- a) has made a gift to The Toronto Zionist Council, or through it to The Yesha Council, neither of which is a qualified donee for purposes of the *Income Tax Act*; or
- b) has used its registration number to issue tax receipts for amounts that were not gifts to the Fund itself.

In either case, it would appear that the Fund has acted to provide financial support to Israeli settlements in the Occupied Territories, in conflict with Canada's officially declared policy with respect to resolution of the Arab-Israeli dispute in the Middle East. We would consider this to be grounds, in and of itself, for revocation of the Fund's registration.

The Government of Canada's long-standing and widely-known position is that it does not recognize permanent Israeli control over the territories occupied in 1967 (the Golan Heights, the West Bank, East Jerusalem and the Gaza Strip), and

opposes all unilateral actions intended to predetermine the outcome of negotiations concerning these territories. This includes the establishment of Israeli settlements in the territories and Israel's unilateral moves to annex East Jerusalem and the Golan Heights, which Canada regards as being contrary to international law and unhelpful to the peace process. This policy is grounded in Canada's support for the United Nations Security Council Resolutions 242, 338 and 478 and in the belief that the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949 (the "Fourth Geneva Convention") is applicable to the Occupied Territories and imposes certain obligations on Israel, as the occupying power. (Copies of these resolutions, as well as samples of other official statements referring to Canada's position on these matters, are enclosed for your ready reference.)

Resolutions 242 and 338 call for Israeli withdrawal from territories occupied in 1967 in exchange for secure and recognized boundaries. Resolution 478 censures the annexation of East Jerusalem by Israel, reaffirms the application of the Fourth Geneva Convention to Jerusalem, and determines that any measures taken by Israel and altering the character of Jerusalem are null and void.

Article 49 of the Fourth Geneva Convention (which both Canada and Israel have ratified) provides that the "Occupying Power shall not deport or transfer part of its own civilian population into the territory it occupies". Canada has also ratified the 1977 Protocols to the Geneva Conventions. Article 85 of Protocol I makes of "the transfer by the occupying Power of parts of its own civilian population into the territory it occupies" a grave breach of that Protocol.

Consistent with these instruments, it is this Department's view that the provision of financial support for social services within Israeli settlements in the Occupied Territories by Canadian charities would contribute to the continued viability of those settlements, and therefore would be contrary and offensive to Canada's public policy on this issue.

As is evident from the enclosed materials, Canada's position on settlements in the Occupied Territories has been made public on many occasions. For example, the Right Honourable Joe Clark's March 10, 1988 speech, which was made at the annual meeting of the Canada-Israel Committee, clearly states Canada's position that Israel's policy of settlements in the Occupied Territories was contrary to international law. The backgrounder entitled "Canadian Positions on Key Issues" is routinely distributed by Foreign Affairs to anyone seeking information on Canada's positions on the Arab-Israeli conflict.

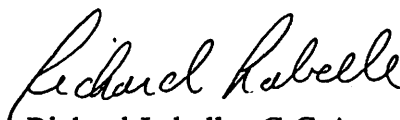
Even if the Fund's directing officers were not aware of the position taken by successive Canadian governments over the years on the settlement issue, we would suggest that the stipulation set by the Fund's own governing documents that its income and capital be applied only to objects that are considered charitable under the laws of Canada placed a very clear obligation upon them to take appropriate steps to ascertain whether, in fact, their desire to provide financial support to the settlement movement in Israel would be in conflict with Canadian public policy.

Finally, we suggest that the Fund has also given cause for revocation of its registration by reason of its having made gifts to non-qualified donees other than those directed to the Yesha Council. Specifically, on the basis of the information obtained during our audit, we would regard amounts transferred to the Toronto Zionist Council, and through it to organizations in Israel such as Keren Klita, to be gifts made to non-qualified donees. It seems evident from the books and records examined during our audit that the Zionist Organization of Canada Charitable Fund does not itself carry on any charitable programs or activities. Moreover, there is no evidence that the Fund, in its own legal capacity, maintains a "controlling mind" over the use of donations received by it and transferred to the Toronto Zionist Council, either for the Council's own use or for subsequent distribution to other organizations. Certainly, in the case of the funds sent to Keren Klita, that organization's letter dated January 4, 1995 acknowledging monies transferred to it by the Toronto Zionist Council makes it quite clear that the activities discussed are entirely those of the Israeli organization, and that it regards the monies sent to it as a gift made for its own use. Similarly, it would appear that the Fund does not itself operate the various camps for which it receives and receipts donations, and that these organizations are operated independently of any decision-making authority or on-going legal responsibility on the part of the Fund. From the evidence gathered to date, we see the role of the Fund chiefly as being to act as a receipting agent on behalf of the Toronto Zionist Council in order to provide tax-assisted donations to organizations, including the Council, not able themselves to provide donors with receipts for income tax purposes.

If you do not agree with the facts outlined above, or wish to present other reasons why the Fund's registration should not be revoked, you are invited to submit your representations within 60 days from the date of this letter. Subsequent to that date, the Director of the Charities Division will make a decision on whether to issue a notice of intention to revoke the registration of the Fund in the manner described in subsection 168(1) of the Act.

If you appoint a third party to represent you in this matter, please notify us in writing. Should you have any questions on these matters, you can contact me at by telephone at [REDACTED] or Donna Walsh at [REDACTED]

Yours sincerely,



Richard Labelle, C.G.A.  
Assistant Director - Audit  
Charities Division

Attachments



Your file / Votre référence

Our file / Notre référence

**REGISTERED MAIL**

Mrs. Helen Smolack  
Treasurer  
Zionist Organization of Canada Charitable Fund  
788 Marlee Avenue  
Toronto, Ontario  
M6B 3K1

**MAR - 4 1996**

Dear Mrs. Smolack:

**Re: Zionist Organization of Canada Charitable Fund**

This letter is further to our telephone conversation with Mr. Arthur Drache on February 27, 1996, confirmed in writing by telecopier message, in which he indicated that you will not be making any further submissions in response to our letter of November 28, 1995 in which you were invited to submit representations to us as to why the Minister of National Revenue should not revoke the registration of the Zionist Organization of Canada Charitable Fund (the "Organization") in accordance with subsection 168(1) of the *Income Tax Act* (the "Act").

Therefore, I wish to advise that pursuant to the authority granted to the Minister in subsection 168(1) of the Act and delegated to me in subsection 900(8) of the Regulations to the Act, I propose to revoke the registration of the Zionist Organization of Canada Charitable Fund. By virtue of subsection 168(2) of the Act, the revocation will be effective on the date of publication in the Canada Gazette of the following notice:

Notice is hereby given, pursuant to paragraphs 168(1)(b) and 168(1)(d) of the Income Tax Act, that I propose to revoke the registration of the organization listed below and that the revocation of registration is effective on the date of publication of this notice.

0360438-56 Zionist Organization of Canada  
Charitable Fund

Toronto, Ontario

Should you wish to appeal this notice of intention to revoke the charity registration in accordance with subsections 172(3) and 180(1) of the Act, you are advised to file a Notice of Appeal with the Federal Court of Appeal within 30 days from the mailing of this letter. The address of the Federal Court of Appeal is:

Supreme Court Building  
Wellington Street  
Ottawa, Ontario  
K1A 0H9

As of the date of revocation of the registration of the organization, which is the date upon which the above-noted notice is published in the Canada Gazette, the organization will no longer be exempt from Part I Tax as a registered charity and will no longer be permitted to issue official donation receipts.

Additionally, the organization may be subject to tax exigible pursuant to Part V, section 188 of the Act. For your reference, I have attached a copy of the relevant provisions of the Income Tax Act concerning revocation of registration and the tax applicable to revoked charities as well as appeals against revocation.

I wish to advise you that pursuant to subsection 150(1) of the Act a return of income for each taxation year in the case of a corporation (other than a corporation that was a registered charity throughout the year) shall without notice or demand therefor, be filed with the Minister in prescribed form containing prescribed information. Also we draw your attention to paragraph 149(1)(l) of the Act which states the definition of a non-profit organization and subsection 149(12) which states the filing requirements of a non-profit organization.

Yours truly,



R.A. Davis, CGA  
Director  
Charities Division

Attachments