

UNDER LAYERED SUSPICION

A REVIEW OF CRA AUDITS OF
MUSLIM-LED CHARITIES

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CONTENTS

Acknowledgements	ii
Executive Summary	4
Introduction	9
Overview of the Report	10
The Methodology and Limits of the Study	11
Canada's Whole-of-Government Approach: Audits in the Shadow of Anti-Terrorism and Anti-Radicalization Policies	14
Canada's Anti-Terrorism Financing Policy and the Risk Assessment of Muslim Charities	14
Canada's Anti-Radicalization Policy	21
Compliance with Income Tax Act Requirements	22
Case Study—The Ottawa Islamic Centre and Assalam Mosque	27
Public Benefit, Conservatism, and Anti-Radicalization	30
Public Benefit, Counter-Radicalization, and the Somali Threat?	35
Case Study—The Islamic Shi'a Assembly of Canada	40
From "Advancing Religion" to Promoting "Collateral Political Purpose"	42
Othering ISAC as an Agent of Iran: The "Collateral Political Purposes" Effect	47
Case Study—International Relief Fund for the Afflicted and Needy-Canada (IRFAN-Canada)	58
Canada and Global Affairs I: Between the War on Terror and Canada's Humanitarian Obligations	61
IRFAN-Canada's First Audit	65
Canada and Global Affairs II: Humanitarian Aid to a HAMAS-run Palestinian Authority	69
IRFAN-Canada's Second Audit	74
Conclusion	87
Recommendations	88

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Institutionally, the Institute of Islamic Studies (IIS) at the University of Toronto and the National Council of Canadian Muslims (NCCM) created the environment

for us to do our work, pursue this line of inquiry, and produce this report. The IIS hosts the Study of Islam and Muslims in Canada (SIMiC), a research lab comprising faculty members and community partners committed to developing new knowledge about Islam and Muslims in Canada. The collaborations through SIMiC aim to make Muslims and their contributions to Canada legible in our national institutions. SIMiC's work comes at a time when Muslims and Islam have been global subjects of legislative agendas, immigration bans, counter-radicalization programs, and vexatious cultural politics. More generally, SIMiC supports important policy debates as Canadians increasingly contend with the legacies of racism and bigotry that made residential schools, the Chinese Head Tax, and the exclusionary law and politics around Africville stultifying realities on the bodies of racialized members of our collective polity. NCCM is a national advocacy organization committed to protecting and advancing the civil liberties of Muslims in Canada. NCCM has long received complaints from Muslim-led faith-based charities about aggressive CRA auditing practices against charities serving Canada's Muslim communities. This report leverages the academic excellence to which the IIS is committed with the public engagement that informs NCCM's public advocacy.



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EXECUTIVE SUMMARY

Muslim-led charities have for years expressed concerns about the selection, frequency, and reasoning behind audits of their organizations.

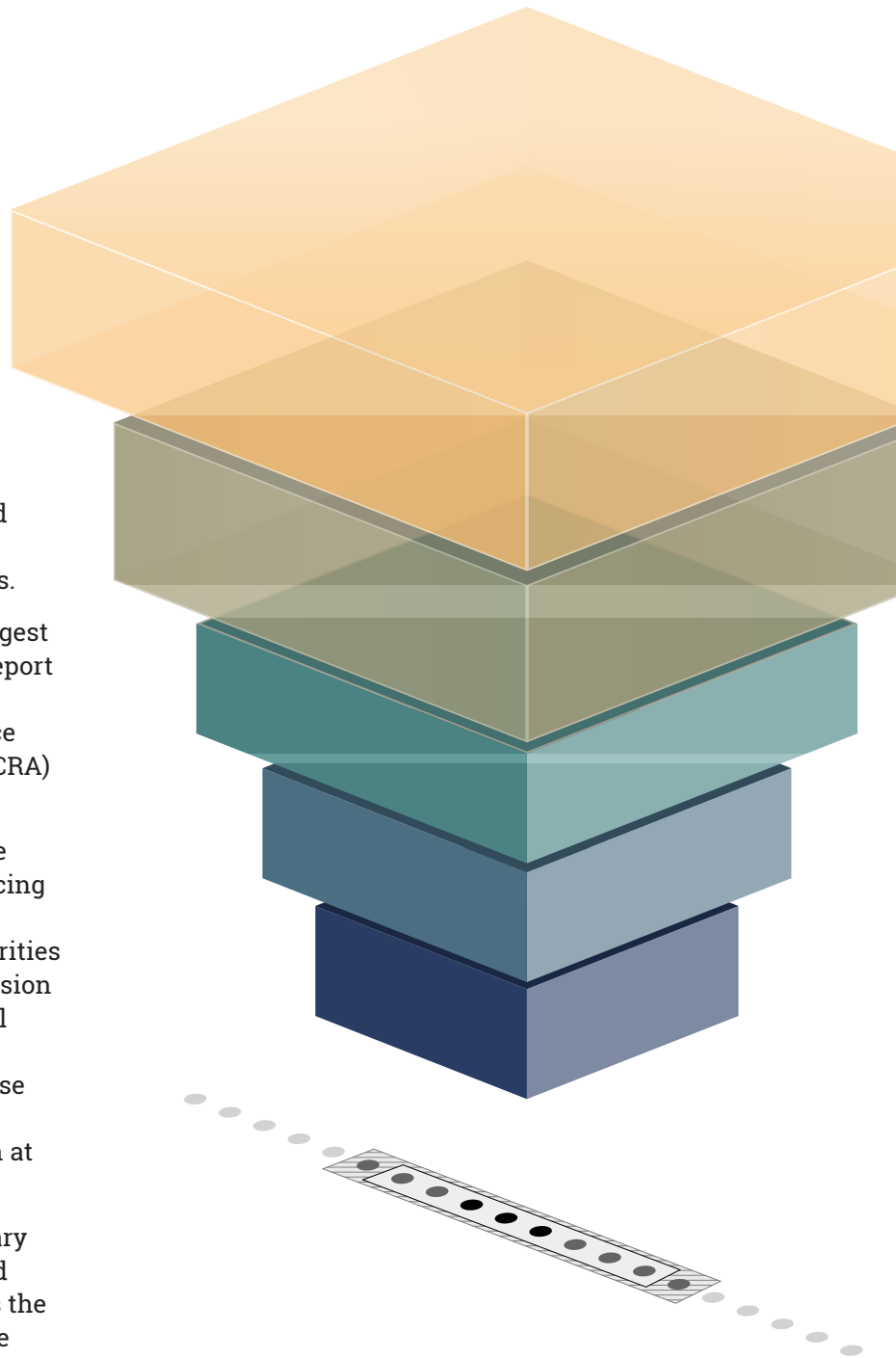
The findings from *Under Layered Suspicion* suggest that there is a basis for these concerns. The report identifies whole-of-government policies and patterns of audit practices that together evince potential biases in Canada Revenue Agency (CRA) audits of Muslim-led charities

Under Layered Suspicion draws attention to the Government of Canada's anti-terrorism financing and anti-radicalization policies. When these policies are operationalized by the CRA's Charities Directorate and the Review and Analysis Division (RAD), they create the conditions for potential structural bias against Muslim-led charities. The study shows that in the crosshairs of these policies, Muslim-led charities are uniquely vulnerable to penalties or even deregistration at the hands of the CRA.

This vulnerability takes shape through ordinary auditing techniques that occur in complicated global times. *Under Layered Suspicion* analyzes the evidence and interpretive frameworks of three audits in light of the political context within which they took place.


This report questions whether Muslim-led charities can be treated fairly in the course of audits that occur under the shadow of Canada's anti-terrorism financing and anti-radicalization regimes.


The recommendations emphasize the need for the Government of Canada to formally investigate patterns of bias within the machinery of its agencies and bureaucracies, and create mechanisms of accountability.



"Risk Based Assessment"

The Government of Canada's "risk based assessment" model associates:

 **100%** of all terrorist financing risk with racial minority communities

 **80%** of all terrorist financing risk with identifiably Muslim organizations

FINDINGS:

Under Layered Suspicion uncovers suspicious patterns of potential structural biases and prejudicial policies that influence the selection of Muslim-led charities for audit, the practices within those audits, and their findings.



Structural Bias: Othering Muslims

A bias that casts Muslims, and their lifestyles and activities, as inherently foreign or outsider. It renders tenuous the very notion of a 'domestic Canadian Muslim'.

How this structural bias can affect audits: This bias enables suspicions that Canadian Muslim-led charities serve foreign interests.



Structural Bias: Formatting Religion

A bias that makes it hard to label as "religious" any activity that is not formatted along Christian ideals and practice.

How this structural bias can affect audits: This bias has the potential to create suspicion about the ways Muslim-led charities advance their religion for purposes of charities law in Canada. This bias can impose an added onus on non-Christian minority religious groups that organize themselves through charitable organizations.



Policy: Anti-Terrorism Financing

A whole-of-government policy that deploys a Risk Based Assessment (RBA) model, which as currently designed by Canada, can be used to suspect Muslim-led charities as especially vulnerable to terrorist financing.

How this policy can affect audits: This policy can unduly inform which organizations the CRA audits under the guise of national security and anti-terrorism financing, and how information obtained during the audit process is interpreted and construed. Shadowing audit processes without being express, this policy has the potential to erode Canadian citizens' expectations of objective and reasonable conduct by government agencies and bureaucrats, especially in relation to Muslim-led charities.



Policy: Counter-Radicalization

A whole-of-government policy that looks for, anticipates, and prevents radicalization and extremist violence before it happens.

How this policy can affect audits: This policy can bias audits based on little more than stereotypes about race, religion and proclivities to violence.



Mechanism: Tax Audits

Tax audits are tools used by the government to ensure that a charity is complying with the Income Tax Act.

How this mechanism gets used: The tax audit can be used to accomplish by way of ordinary compliance processes what might not be possible through more formal anti-terrorism, or counter-radicalization measures. Tax audits offer possible administrative cover for structural biases in the anti-terrorism financing and anti-radicalization policies, which in turn can shape the gathering, analysis, and interpretation of evidence in audits of Muslim-led charities.

CASE STUDIES:

The questions that emerge from the review of the audit record of three Muslim-led charities are summarized below, and expanded upon in detail within the report.

While these case studies are not statistically representative of all Muslim-led charities, they provide insight into how Muslim-led charities can get caught in the web of potential biases and policies that the CRA enacts.

Case Study: Ottawa Islamic Centre and Assalam Mosque

Suspensions within the audit:

The Ottawa Islamic Centre lost its charitable status for non-compliance with the Income Tax Act, but was at all times suspected of violating the 'public benefit' because of the mere possibility that its invited speakers' presumed, not substantiated, speeches may have promoted radicalization.

Questions that emerge from reviewing the audit:

- **What kind of speech is or isn't of public benefit in a democracy like Canada?**
- **Who can espouse conservative ideas freely, and whose conservative values attract the label of radicalization?**

Case Study: The Islamic Shi'a Assembly of Canada

Suspensions within the audit:

The Islamic Shi'a Assembly of Canada (ISAC) was suspected of having ties to Iran and financing terrorism.

Questions that emerge from reviewing the audit:

- **How do we understand and regulate religions that do not fit the Common Law framing of "advancing religion", which draws upon a Christian understanding of religion?**
- **To what extent do changing multilateral diplomatic relations influence the timing, targeting, and interpretive lens of domestic audits?**

Case Study: International Relief Fund for the Afflicted and Needy-Canada (IRFAN-Canada)

Suspensions in the audit:

IRFAN-Canada was suspected of having links to Hamas in Palestine.

Questions that emerge from reviewing the audit:

- **To what extent do domestic political debates about complex global affairs influence the timing, targeting, and interpretive lens of domestic audits?**
- **How does the CRA ensure the evidence it uses counters dominant and reductive frames that link Muslims, Arabs, and Islam to terrorism?**

RECOMMENDATIONS:

The findings from *Under Layered Suspicion* offer the following recommendations:

To the Canada Revenue Agency

- 1. Suspend the Review and Analysis Division (RAD) pending review of Canada's Risk-Based Assessment model and its National Strategy to combat extremism and radicalization.**
The CRA should suspend the Review and Analysis Division (RAD) until the Government of Canada revises its Risk-Based Assessment (RBA) model for combatting anti-terrorism financing in compliance with Financial Action Task Force (FATF) requirements, and Public Safety provides necessary explanatory guidance on its strategy against violent extremism and radicalization regarding what counts as an extreme idea justifying administrative disruption tactics.
- 2. Suspend discretionary use of revocation power in audits of Muslim-led charities where anti-terrorism financing or counter-radicalization policies inform the audit.** For as long as the anti-terrorism financing RBA and the counter-radicalization policies remain structured as they currently are, the Charities Directorate should suspend its discretionary use of its deregistration power when auditing Muslim-led charities in the shadow of the two whole-of-government regimes.
- 3. Enhance transparency between the Charities Directorate and charities audited under suspicion of terrorism financing and/or radicalization.** From an examination of testimony before the Senate, the report shows that organizations subject to audit may not be informed that the audit operates in the shadow of anti-terrorism financing and/or counter-radicalization policies. For as long as the Charities Directorate and RAD audit charities using standard audit practices while informed by these policies, it should adopt enhanced transparency measures between the Charities Directorate and the audited organization so that the organization has sufficient and meaningful notice of the nature of the audit and its potential scope of inquiry.

To Finance Canada

A review and revision of Canada's Risk-Based Assessment of terrorism financing in Canada. Convene a robust review, comprised of a diverse array of stakeholders, to review and revise Canada's anti-terrorism financing regime to better control against possible disproportionate effect on a subset of Canadian citizens and charitable organizations. The review and revision should also comply with the most recent guidance from the FATF.

To Public Safety

Provide greater guidance to government officers on how the policy is to be applied in a non-discriminatory fashion. Public Safety's National Strategy to combat radicalization centres "extreme ideas" as a key feature of analysis in radicalization. "Extreme ideas" is an ambiguous concept that ultimately grants agents, who enjoy discretionary authority under relevant legislation and regulations, the power to determine what constitutes an "extreme idea" and who might hold such an idea. While the current policy attempts to be neutral in how it identifies the conditions of radicalization, its approach is operationalized alongside an anti-terrorism financing regime that raises the suspicion of disparate impact on Muslim-led organizations. The two sets of policies operate in parallel, with anti-terrorism measures cast as prosecutorial, and counter-radicalization as preventative or pre-crime measures. As both tactics operate in tandem across the whole of government, policies and procedures against radicalization have the capacity to disparately affect certain communities over and against all others.

INTRODUCTION

Muslims in Canada have long endured and resisted Islamophobia, xenophobia and racism that they experience at individual, social, and systemic levels. These experiences have spanned from racial profiling by national security agencies to public referendums on city permit applications for Muslims hoping to develop a cemetery to bury their dead.¹ Driven by contested, and often hateful, images of Muslims, these phenomena shape both the present experiences of many Muslims in Canada, and the possibilities for these communities to belong and thrive in Canada. They also hedge the possibilities for Canadian democracy to live up to its ideals of equality and freedom. With the aim of contributing to a productive conversation on tackling potential systemic inequalities, this report explores one area of potential bias against Muslims in Canada: the regulatory oversight of Muslim-led charities.

We take an interest in the charities sector because we recognize the contribution that robust social capital, through volunteerism and civil society organizations, can make to the health and vibrancy of our democracy.² We also recognize that for many years, especially since the tragic events of September 11, 2001, in the context of the War on Terror, charities have been subject to increased regulatory measures out of concerns that they could be vulnerable to terrorist financing or radicalization. This increased regulatory framework for the charitable sector has brought audits into the realm of Canada's anti-terrorism financing and anti-radicalization regimes, which raises questions about whether audit practices are now more vulnerable to similar systemic pitfalls that plague Canada's national security apparatus when it comes to racial profiling and bias.

The authors remain aware that audits are standard practice in the ordinary course of business. While lawyers representing audited charities had a sense that something untoward was happening, the idea that Canada's Charities Directorate might suffer from a systemic bias against Muslim-led organizations seemed more a story of the United States or the United Kingdom, rather than one reflecting multicultural Canada.³ But perhaps what especially motivated us to undertake this study was the civic function charities can and do play in robust democracies. Charities are not-for-profit businesses: the lost public benefit arising from their revoked charitable status is significant, especially for racialized communities that reside on the margins of Canadian society. Each time one of these charities is audited, or has its charitable status suspended or revoked, the mostly racialized and often under-served communities that benefit from the organization suffer potential losses stemming from the curtailed services such organizations can no longer provide.

This report examines the tax audits of three Muslim-led charities that had their charitable status revoked by the Canada Revenue Agency (CRA). From the case studies we narrate in this report, it was evident that in the shadow of the War on Terror, charitable tax audits offer an important space in which to examine the

interpretive framework that national security paradigms import into otherwise ordinary audit practices and procedures. By examining charity audits in light of Canada's wide-ranging national security apparatus, this study explores how the Canadian state represents Muslims and Islam to itself, to its Muslim citizens, and to the general public. In the words of legal scholar Aziz Huq, the study is an "epistemological archaeology,"⁴ whereby we explore and unpack how Canadian bureaucrats think about, write about, and represent Muslims.

OVERVIEW OF THE REPORT

We undertook this project after attending meetings where we listened to community leaders discuss their experiences with audits of their organizations. We heard concerns regarding, for example, auditors' questions about what was taught in mosque sermons, and the curious coincidence between the onset of an audit and political events abroad. There have been various efforts to address this issue.⁵ To our knowledge, there is no report that scrutinizes the operation of audits in light of Canada's anti-terrorism financing and anti-radicalization policies.

The three charities examined in this report together represent a cross section of organizations that have served the varied interests of Canada's Muslim communities:

1. **The Ottawa Islamic Centre and Assalam Mosque** is a mosque that fulfills a geographically localized community's various ritual needs, such as regular communal prayers, special prayers for particular festivals, and religious educational programming for its constituents. In addition, the Ottawa Islamic Centre serves a predominantly Black Somali Muslim community in Ottawa.
2. **Islamic Shi'a Assembly of Canada (ISAC)** supports Canada's diverse Shi'a Muslim community, in part by organizing educational programming and preserving the Shi'a tradition in a manner that speaks across Canada's various Shi'a Muslim communities, as opposed to being confined to a particular group in a particular region. Both the Ottawa Islamic Centre and ISAC were organized as charities that advance religion, though in different ways and in relation to different scales of community engagement.
3. **International Relief Fund for the Afflicted and Needy – Canada (IRFAN-Canada)** was a charity that, while Muslim-led, did not advance religion as the other two did. IRFAN-Canada was a humanitarian organization that focused its efforts abroad and was devoted to the charitable purpose of combating humanitarian crises in contexts of war and violence.

The three organizations operated on different scales, with distinct geographic zones of operation, separate constituencies, and varied charitable purposes. As different as the three organizations are, however, all three were subject to audits in which the Charities Directorate invoked considerations stemming from the War on Terror, namely anti-terrorism financing and counter-radicalization policies at the national and global levels.

We locate the particularities of each of these three case studies in the larger context of Canada's whole-of-government policies on anti-terrorism financing and anti-radicalization. Whole-of-government is a phrase that will arise repeatedly in the report, given the nexus we identify between the:

- a. CRA's regulatory oversight of registered charities in Canada through the Charities Directorate and the Review and Analysis Division (RAD),

- b. Finance Canada's carriage of Canada's anti-terrorism finance policies, and
- c. Public Safety's oversight of anti-radicalization policies.

In Canada's Air India Inquiry, terrorism financing was identified as a central concern because eradicating it was considered no easy matter: "The TF [terrorism financing] phenomenon is complex. TF can take on innumerable forms and can span many borders."⁶ Combatting it was considered a multi-agency effort, involving Public Safety (under which the RCMP and CSIS fall), Finance Canada, and FINTRAC for purposes of monitoring the financial sector and developing workable intelligence on financial transactions. In this model, each Ministry or agency plays a part in eradicating financing in support of terrorist activities here and abroad. *Whole-of-government* therefore refers to a public service strategy of coordination among the distinct ministries, agencies, and directorates of the government. As public policy scholars, Tom Christensen and Per Lægheid explain, *whole-of-government* "denotes the aspiration to achieve horizontal and vertical coordination in order to eliminate situations in which different policies undermine each other, so as to make better use of scarce resources, to create synergies by bringing together different stakeholders in a particular policy area, and to offer citizens seamless rather than fragmented access to services."⁷ They note, however, that the threat of terrorism since the September 11, 2001 attacks has increased the incentive for government agencies to better coordinate their efforts. "The new threat of terrorism has underlined the importance of governments avoiding contradictory outcomes and ensuring that information is shared between agencies."⁸

Through its three case studies of audits that led to Muslim-led Canadian charities losing their charitable status, this report will

- Explore the political context in which the audits took place;
- Identify correlations between audit practices and *whole-of-government* policies on anti-terrorism financing and anti-radicalization; and
- Examine the interpretive premises that informed how the Charities Directorate marshalled evidence, interpreted records, and identified concerns.

As will be shown in this report, the audits of ISAC and IRFAN-Canada were done in the shadow of Canada's anti-terrorism financing regime. We will locate Canada's anti-terrorism financing policy in relation to global standards promulgated by the Financial Action Task Force (FATF), a multilateral organization originally created in 1989 to combat money laundering under the auspices of the global War on Drugs and that turned its attention to anti-terrorism financing after the events of September 11, 2001. Through the Ottawa Islamic Centre case study, we will examine how the shadow of Public Safety's policies to counter radicalization may hover over and perhaps even structure an otherwise technical audit. As such, we will also examine Public Safety's national strategy to combat radicalization and how its broad themes were applied in the course of the audit.

THE METHODOLOGY AND LIMITS OF THE STUDY

At the outset of this project, we sought the participation of various Muslim-led charities. In the course of our discussions with community leaders and organization boards, it became clear to us that there was considerable reticence about the CRA and its audits of organizations serving Muslim communities in Canada. Several organizations that had challenging experiences with audits in

the past feared that coming forward might occasion reprisals from the Charities Directorate. Over the course of our engagements, three organizations that had their charitable status revoked consented to have their audit files reviewed. Through agents of the organization or their lawyer, we received access to their audit files. We also submitted a series of requests to the CRA under the Access to Information and Privacy Directorate (ATIP). At the time of writing, none of the audit files requested pursuant to the ATIP query have been received, further precluding our analysis of Charities Directorate documents that may have been prepared prior to and in the course of the audit.⁹

The small number of organizations willing to participate, and the lack of substantive material from the CRA via the ATIP process necessarily limit the scope and scale of our conclusions. Despite the limited archive of primary source materials, we nonetheless found suspicious bureaucratic, governmental practices in the audits. When we situated these practices within the whole-of-government policies on anti-terrorism financing and counter-radicalization, our concerns grew. For that reason, this report offers an initial inquiry in the hopes that it will generate further conversation, discussion, and research in this area. To be clear, this report does not suggest that the bureaucrats working in the Charities Directorate hold an animus against Muslims or Islam. Rather, through a close reading of the limited sources at our disposal, we identify troubling patterns in audit practices across the case studies, where Muslim-led charities fall in the crosshairs of whole-of-government policies on anti-terrorism financing and anti-radicalization.

This report critically analyses the audits and interrogates the operative assumptions that seemed to inform them. In doing so, the report makes a series of recommendations, including further study and examination across a broader cross section of charitable organizations in Canada, to explore, confirm, or otherwise explain what we identify as suspect practices in each of the three case studies. We hope that this report will support further inquiry and advocacy related to the voluntary sector in Canada, which falls under the regulatory rubrics we outline below. As such, the focus herein on Muslim-led charities should not suggest that this study is significant only to Canada's Muslim-led charities sector. For the academic and policy sector, this report locates the study of Canada's domestic charities regulation regime in a global conversation in which inequality, discrimination, and the demise of democratic structures leave the not-for-profit sector (and those who benefit from it) especially vulnerable around the world. For Canadians, it heeds the call of voluntary sector advocates to investigate the due process, accountability, and fairness afforded to the not-for-profit sector, given the chilling effect certain auditing practices have already had domestically on environmental charities, and globally on those seeking to improve the condition of marginalized groups.¹⁰

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7. Tom Christensen and Per Lægheid, "The Whole-of-Government Approach to Public Sector Reform," *Public Administration Review* 67, no. 6 (2007): 1059–66, 1060. See also Douglas A. Brook, "Budgeting for National Security: A Whole of Government Perspective," *Journal of Public Budgeting, Accounting and Financial Management* 24, no. 1 (2012): 32–57.
8. Christensen and Lægheid, "The Whole-of-Government Approach," 1060.
9. For information on public benefit and radicalization, see especially the first case study on the Ottawa Islamic Centre and the response to our ATIP request.
10. Elizabeth Renzetti, "Silence of the Charities," *The Globe and Mail*, April 20, 2015, A11; Shawn McCarthy, "Group's Charitable Status Being Audited; Conservative Critics Contend Tides Canada Has Been Funneling Foreign Money to Groups Opposed to Oil-Sands Development," *The Globe and Mail*, May 8, 2012, A7; Bill Curry and Shawn McCarthy, "Flaherty to Tackle Abuse of Charity Rules; Environmentalists Fear Conservative Government Will Go after Its Critics," *The Globe and Mail*, February 8, 2014, A3. For recent case law on the "political activity" doctrine discussed in the above citations, see *Canada without Poverty v. Attorney General of Canada*, 2018 ONSC 4147. See more generally Erica Caple James, "Governing Gifts: Law, Risk, and the 'War on Terror,'" *UCLA Journal of Islamic and Near Eastern Law* 10 (2010–2011): 65–84; American Civil Liberties Union, *Blocking Faith, Freezing Charity: Chilling Muslim Charitable giving in the "War on Terrorism Financing*, ACLU, June 9, 2009, <https://www.aclu.org/report/blocking-faith-freezing-charity-chilling-muslim-charitable-giving-war-terrorism-financing>; Richard L. Moyers, "A Shocking Silence on Muslim Charities," *The Chronicle of Philanthropy*, October 17, 2002, <https://www.philanthropy.com/article/a-shocking-silence-on-muslim-charities>.

CANADA'S WHOLE-OF-GOVERNMENT APPROACH

AUDITS IN THE SHADOW OF ANTI-TERRORISM AND ANTI-RADICALIZATION POLICIES

The three case studies in this report reveal audit practices by the Charities Directorate that reflect curious selections of evidence and interpretations of research material. Taking the three case studies together, the Charities Directorate invoked either support for terrorism or the promotion of radicalization, while at all times anchoring its decisions to revoke charitable status in each organization's non-compliance with Income Tax Act requirements. It has been well documented in the scholarly literature that government practices on anti-terrorism and anti-radicalization operate in an environment in which Muslims and Islam are both highly politicized (globally and domestically) and securitized in terms of national security and anti-terrorism policy.¹ When each case is examined in isolation, it is hard to identify patterns of analysis. But when we juxtapose the cases and locate them within whole-of-government policies on anti-terrorism financing and anti-radicalization, we can better understand why certain evidence was marshalled and how the interpretation of research materials seemed result-oriented. This section will outline Canada's whole-of-government policies on anti-terrorism financing and anti-radicalization, while locating them alongside Charities Directorate audit strategies.

CANADA'S ANTI-TERRORISM FINANCING POLICY AND THE RISK ASSESSMENT OF MUSLIM CHARITIES

Canada's anti-terrorism financing regime is a whole-of-government strategy, and involves "13 federal departments and agencies... eight of which receive dedicated funding totalling approximately \$70 million annually."² Among those agencies receiving funding is the Canada Revenue Agency, within which the Charities Directorate sits.³ Indeed, Finance Canada reported in 2015 that the "CRA also plays an important role... in detecting charities at risk and ensuring that they are not being abused to finance terrorism."⁴ In other words, Canada's anti-terrorism financing regime has necessary implications on how the CRA and its directorates identify and conduct audits of charities suspected of participating in terrorism financing. To understand how Canada's compliance with the Financial

Action Task Force (FATF) requirements may have contributed to the suspicious audit practices observed in the case studies, this section provides a short overview of FATF's history and Canada's involvement in it.

FATF and Its Anti-Terrorism Financing Recommendations

In 1989, the G7 countries met in Paris to develop a global strategy against money laundering with the aim of combatting organized crime and drug trafficking. As the *New York Times* reported in 1989, an "estimated \$300 billion in drug money is laundered each year" across banks in Hong Kong, Europe, and the United States.⁵ At that meeting, the Financial Action Task Force (FATF) was born. FATF issued forty anti-money laundering recommendations to states. However, after the September 11, 2001 terrorist attacks in the US and the subsequent UN Security Council Resolution 1373 on suppressing terrorist financing, FATF added a set of special recommendations on anti-terrorism financing as part of its institutional mandate.⁶ The emphasis on anti-terrorism financing was in part based on the exaggerated and generally debunked belief in Osama Bin Laden's reputation as ample financier of al-Qaeda and its affiliates.⁷ Special Recommendation 8 (SR8), as it was then designated, specifically identified "non-profit organizations (NPOs)" as especially vulnerable to terrorist financing. The most recent version of that recommendation now states in relevant part:

Countries should review the adequacy of laws and regulations that relate to non-profit organisations which the country has identified as being vulnerable to terrorist financing abuse. Countries should apply focused and proportionate measures, in line with the risk-based approach, to such non-profit organisations to protect them from terrorist financing abuse.⁸

FATF defines non-profit organizations as organizations that engage in "raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of 'good works'."⁹ It recognizes that non-profit organizations play a "vital role in the world economy and in many national economies and social systems."¹⁰ But it also cautions that charities may be vulnerable to terrorist financing: "The ongoing international campaign against terrorist financing has identified cases in which terrorists and terrorist organizations exploit some NPOs in the sector to raise and move funds, provide logistical support, encourage terrorist recruitment or otherwise support terrorist organisations and operations."¹¹ The FATF is careful not to paint all charities as necessarily suspect, recognizing that there is a typology of NPOs, wherein some subsets are more vulnerable to abuse than others:

Some NPOs may be vulnerable to terrorist financing abuse by terrorists for a variety of reasons. NPOs enjoy the public trust, have access to considerable sources of funds, and are often cash-intensive. Furthermore, some NPOs have

a global presence that provides a framework for national and international operations and financial transactions, often within or near those areas that are most exposed to terrorist activity. In some cases, terrorist organisations have taken advantage of these and other characteristics to infiltrate some NPOs and misuse funds and operations to cover for, or support, terrorist activity.¹²

At the heart of FATF's anti-terrorism financing guidance is its **"risk-based approach" (RBA)**. FATF advises countries to evaluate each financial sector's "capacity" and "experience" in implementing anti-terrorism financing control mechanisms. Moreover, FATF recognizes that not all charities pose a risk for terrorist financing: "Since not all NPOs are inherently high risk (and some may represent little or no risk at all), countries should identify which subset of organizations fall within the FATF definition of NPO."¹³

Canada, FATF, and Anti-Terrorist Financing

The Government of Canada, a founding member of FATF, ensures that its financial surveillance regime maximally complies with FATF recommendations. FATF regularly organizes reviews of state anti-money laundering and anti-terrorism financing regimes, called Mutual Evaluations. In these Mutual Evaluations, the state being assessed first submits a self-assessment of its surveillance regime, after which FATF convenes an international team of experts to provide peer review. In anticipation of its 2016 Mutual Evaluation, Canada's Department of Finance issued in 2015 its *Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada*.¹⁴

In its self-assessment, Canada outlined its RBA, which begins with a list of the "groups and actors that are of greatest concern to Canada."¹⁵ Canada asserted that "there are networks operating in Canada that are suspected of raising, collecting, and transmitting funds abroad to various terrorist groups."¹⁶ It explained its threat assessment for terrorism financing as follows:

The TF [terrorism financing] threat in Canada was assessed for 10 terrorist groups as well as for foreign fighters, defined as those who travel abroad to support and fight alongside terrorist groups. The TF threat of these groups was assessed against six rating criteria: the extent of the actors' knowledge, skills and expertise to conduct terrorist financing; the extent of the actors' network, resources and overall capability to perform TF operations; the scope and global reach of their TF operations; the estimated value of their fundraising activities annually in Canada; the extent of the diversification of their methods to collect, aggregate, transfer and use funds; and the extent to which the funds may be used against Canadian domestic and international interests.¹⁷

It should be noted that the scope of the review of terrorist financing risk was framed by reference to Canada's list of terrorist entities, the majority of which are Muslim-identified and are based "in foreign countries, mainly in Africa, Asia and the Middle East."¹⁸ While it does not share or otherwise disclose its research, Finance Canada unhesitatingly states:

Based on open source and other available reporting on the potential for Canadians to send money or goods abroad to fund terrorism, the following countries were assessed to be the most likely locations where such funds

or goods would be received: Afghanistan, Egypt, India, Lebanon, Pakistan, Palestinian Territories, Somalia, Sri Lanka, Syria, Turkey, United Arab Emirates and Yemen.¹⁹

Relying on both publicly available and classified information on “terrorist groups with a Canadian nexus,” Canada identifies its terrorist financing threat in connection to ten groups and foreign fighters. They are as follows:

Hamas	Al-Qaeda in the Arabian Peninsula
Hizballah	Al-Qaeda Core
Islamic State of Iraq and Syria	Al-Qaeda in the Islamic Maghreb
Jabhat al-Nusra	Al-Shabaab
Khalistani Extremist Groups	Remnants of the Liberation Tigers of Tamil Eelam

Of the ten groups named,²⁰ eight are identifiably Muslim in character and the other two are Sikh and Tamil. In other words, **according to the GoC, 100% of all terrorist financing risk in Canada is posed by groups identified with racialized minorities in Canada, and 80% of all terrorist financing risk in Canada is posed by Muslim-identified groups.**

It is difficult to discount the claim that this policy can have a disproportionate effect on Muslims in Canada. Moreover, the policy reflects a particular view of terrorist financing threat that associates it with a foreign spectre. For instance, the 2015 self-assessment addresses Canada’s commitment to multiculturalism but also recognizes it as a source of threat and insecurity:

Canada is a multiethnic and multicultural country. This results in a very rich and diversified Canadian society. However, this can also become a vulnerability in certain circumstances or situations that criminals can exploit. Certain diaspora have been and are still, in some instances, exploited for criminal and terrorism support purposes. Many individuals have immigrated to Canada because of conflicts and poor living situations in their native countries and are therefore concerned about the safety and well-being of family members left behind. Consequently, they often send money and goods back to help when they can and do that through various means and for different reasons or causes.²¹

This particular approach to terrorism financing threat assessment is perhaps no longer tenable in the wake of increasing concern about domestic terrorism sponsored and facilitated by White supremacy extremists.²² The Government of Canada’s recent listing of the Proud Boys²³ as a terrorist group is an example of how the above view of terrorism financing as associated with foreign entities is overdetermined.

One might argue that the disproportionate effect on Canadian Muslims is not deliberate: it correlates with the fact that these eight groups are widely recognized around the world as terrorist organizations. Even if we accept that the above groups pose a serious threat,²⁴ that does not justify the potentially disproportionate effect it will have on one group of Canadians. Rather, one would expect that such a policy would operate amidst a set of checks and balances to ensure the equality and liberty interest of Canadians who might fall under the shadow the policy casts. Indeed, the FATF interpretive note reminds us of the following:

Measures to protect NPOs from potential terrorist financing abuse should be targeted and in line with the risk-based approach. It is also important for such measures to be implemented in a manner which respects countries' obligations under the Charter of the United Nations and international human rights law.²⁵

Moreover, Finance Canada designed its RBA in large part by reference to the foreign groups that posed a threat, rather than on the basis of the vulnerability of domestic sectors and subsectors, which FATF guidelines suggest is a significant consideration in the case of the non-profit sector (and its subsectors).²⁶ Lastly, while the self-assessment gestures to research and analysis done to substantiate this threat, there is no transparency in how that research was done, what evidence was marshalled, and how it was interpreted.

Accountability and Transparency in the Audit Process

In the 2015 *Assessment*, the government identified the domestic sectors most vulnerable to these designated groups, rating the sectors for "very high," "high," "medium," or "low" vulnerability.²⁷ Canada designated "Registered Charities" as bearing a high vulnerability to terror financing, "given their importance and widespread use within Canada."²⁸

The Charities Directorate is empowered to exclude an organization from registration as a charity, under the Charities Registration (Security Information) Act, 2001 (CRSIA). However, as reported at the Air India Inquiry, this authority is rarely invoked.²⁹ In her testimony before the Standing Senate Committee on National Security and Defense on April 11, 2016, Director General of the Charities Directorate Cathy Hawara explained why such powers are not used:

We have not yet used the powers we have under this act, mainly because we have used other tools to process open files that were still in our inventory. We prefer that approach, in particular, because it is more transparent; it allows us to process the information we use to determine whether an organization should be registered or not in a much more transparent way.³⁰

What Hawara meant by transparency is not entirely clear. In that same hearing, Alastair Bland of the Review and Analysis Division (RAD) also testified about the effect of the anti-terrorism financing regime on ordinary audit practices. Before turning to his testimony, a few words about RAD are necessary.

The **Review and Analysis Division (RAD)** is a "standalone unit with specialized personnel who would work with other intelligence agencies" to fulfill Canada's anti-terrorism financing commitments.³¹ Informed by secret intelligence and operating under Canada's RBA, the Charities Directorate and RAD utilize "regular rules and procedures" under the Income Tax Act to perform an audit.³² RAD allows the Charities Directorate to rely on various sources of information to audit an organization that presents a risk of terrorist financing. But the audit itself is performed using standard audit techniques.

Bland explained in general terms how the process works:

While terrorism concerns guide the division's work, it is important to note that we do not investigate terrorism as a criminal activity. Our role is administrative in nature, and the decision to refuse to register an organization or revoke a

registered charity's status is based on an organization's failure to meet the requirements under the Income Tax Act. Where there are concerns regarding the risk of terrorist abuse, there are likely also issues with an organization's ability to meet the requirements of the Income Tax Act. *As a result, in our interactions with organizations, we do not always indicate to them that we have concerns related to terrorism.*

The complexity of our files requires that we adopt a nuanced approach. For instance, in the course of an audit, we may come across information that suggests that a registered charity is providing funds to a foreign organization that has been identified as having links to a terrorist entity. Our concern would be that the funds raised by the Canadian organization in Canada are at risk of being diverted by the foreign organization to support their terrorist activity.

Our focus would therefore be on the Income Tax Act requirement that organizations must carry out their own charitable activity. Funding non-qualified donees—that is, providing funds to an unqualified recipient—constitutes a breach of the Income Tax Act and could form the basis for revoking an organization's registered status.³³

Bland makes evident that an organization might be audited because of information received by RAD in the course of its cooperation across various agencies in the federal government. But in the course of the audit, the Charities Directorate and its auditors will not necessarily communicate that suspicion to the organization. Indeed, this was exactly the experience of both ISAC and IRFAN-Canada, as will be shown in their respective case studies below. When the audits first began, there was no appreciation of why the Charities Directorate was performing its audit. In the case of IRFAN-Canada, the lawyer for the organization confronted the Charities Directorate and only then did the organization receive an honest answer about why it was being audited.

This background on Canada's RBA for anti-terrorism financing, the Charities Directorate's understanding of transparency, and the Directorate's practices of non-disclosure do little to clarify for Muslim-led charities under audit whether and to what extent to trust an auditor's representations about why the organization is being audited, and whether undisclosed reasons colour the nature of the audit, the selection of evidence, and the resolution of ambiguities in the audit record. This is especially concerning given that even in ordinary audit processes, volunteer-run charities often run afoul of statutory and regulatory requirements.³⁴ Nearly all charitable organizations, whether Muslim-led or not, will "find it difficult to achieve and maintain the legal expertise and resources" that substantial regulation demands, thereby rendering nearly any charitable organization noncompliant upon close enough scrutiny.³⁵ While standard audit regulations can be onerous for any charitable organization, Canada's RBA has the potential to adversely and disproportionately affect Muslim-led charities given the way it is structured.

When FATF initially issued its recommendation on the non-profit sector in 2001, the European sector responded critically, for several reasons.³⁶ First, the FATF awkwardly models anti-terrorist financing on anti-money laundering policies, though terrorist financing and money laundering take shape along different scales and through distinct channels, institutional and otherwise.³⁷ Second, the recommendation collapses organized crime and charitable organizations, to the

obvious consternation of the voluntary sector.³⁸ Third, FATF's risk-based approach is not supported by empirical data.³⁹ Existing European data shows that the "incidence and prevalence of non-profit financial abuse" for terror financing is limited at best.⁴⁰ Fourth, Special Recommendation 8 raised serious obstacles to a vibrant civil society and to fulfilling humanitarian need at the local and global levels. The European non-profit sector argued that any regulatory regime "had to be approached with caution" in order to ensure a robust civil society, engaged democratic polity, and support for underserved communities.⁴¹ Indeed, in politically polarized environments, far-reaching regulation could serve as a pretext to "undermine the work of non-profit organisations," as has already occurred in the United Kingdom and the United States, with the non-profit sector fundamentally scaling back its humanitarian work to avoid running afoul of overbearing regulatory regimes.⁴²

There is a limited literature on Canada's regulation of charities under FATF guidelines. This study contributes to the existing discussion by illustrating how audits that invoke terrorist financing concerns took shape for two Muslim-led charities. We focus on Muslim-led charities in part because of Canada's RBA, which posits that 80% of all terror financing risk is posed by Muslim or Islam-inspired groups. This RBA suggests that we can expect increased audits of Muslim-led charities for reasons linked to terrorism financing, whether disclosed to the organization or not. We do not know how this RBA has affected various subsets of Canada's voluntary sector. Moreover, it is not clear whether the CRA is able to know this either. In the course of this study, we made an Access to Information and Privacy (ATIP) request from which we learned that the CRA does not "categorize registered charities by 'churches' or 'synagogues' or track the topic associated with an audit."⁴³ The CRA's data ecosystem may not permit this sort of inquiry. That is in large part why this study examines how the audits work by focusing on the assumptions and biases that structure them rather than by assessing data on their sector-wide impact.

Nevertheless, increased scrutiny of Muslim charities would hardly be surprising, for various reasons. First, the CRA has already been suspected of biased targeted auditing of environmental advocacy organizations, on the basis of political activity.⁴⁴ Legal challenges have led to judicial reversals of the CRA's political activity doctrine.⁴⁵ Second, FATF considered Canada's oversight of its charities sector inadequate given Canada's high assessment of the sector's vulnerability in its 2015 Assessment.⁴⁶ Specifically, FATF expressed concern that "few assets have been frozen" based on terrorism finance sanctions.⁴⁷ From this, we can infer two alternative conclusions: (1) Canada's rating of the charity sector as highly vulnerable is wrong; or (2) Canada will begin to undertake more extensive reviews of Muslim-led charities based on its risk-based assessment model. The experience of civil liberties groups in Canada suggests the latter option is already happening. This study was instigated precisely because in recent years, advocacy organizations in Canada have received complaints from Muslim-led charitable organizations about aggressive CRA audits relying on indeterminate compliance standards.⁴⁸

Canada's RBA raises concerns that the Charities Directorate and its officers are structurally induced to select evidence and interpret research materials in a way that operates adversely toward Muslim-led charities.⁴⁹ The case studies of ISAC and IRFAN-Canada, for instance, will identify suspicious evidence selection and research methods. Of course, it is not reasonable to presume that Muslim-led charities are inherently vulnerable to terrorism financing. But because the RBA is structurally biased, it has the potential to transform a bias against Muslims into a respectable basis for public policy determination.⁵⁰ As Nikos Passas testified at the

Air India Inquiry, the tragic events of September 11, 2001 transformed superficial, unsubstantiated suspicion into “baseless conventional wisdom that risks misguiding policy and control efforts.”⁵¹

CANADA’S ANTI-RADICALIZATION POLICY

Radicalization is conceptually related to terrorism in that the former is often considered preliminary to the latter. The prevention of radicalization has substantial family resemblances to government efforts to prosecute terrorism offenses. Government action against terrorism can be broken down into two component parts: pursuit and prevention. Pursuit includes criminal prosecutions on terrorist grounds, and tax audits to identify organizations that have transferred funding to listed terrorist entities. The strategy of pursuit presumes that the terrorist activity (or terrorism financing) has already happened; in such cases, the government’s objective is to seek redress through its various mechanisms (criminal, administrative, and otherwise). Prevention models, on the other hand, make a temporal shift by focusing on “pre-crime” measures. These models are “directed much more towards the projected future and the perceived threats in that future.”⁵² Under the category of prevention, policy makers focus on modifying policing measures, theorizing indicia of possible radicalization, and so on, in order to prevent radicalized violence before it happens.

Importantly, prevention-oriented strategies pose potential problems due to the fact that any prevention strategy must be applied by government officers, who, as human beings, will approach their work with their own subjectivity and possible biases. For instance, prevention strategies might rely on certain profiling methods, which in turn may suffer from racial and religious biases.⁵³ Additionally, prevention models can impose “such stringent discipline upon citizens that the space for free choice is severely infringed upon.”⁵⁴ Scholars examining US and UK prevention models have shown that targeting radicalization has had the effect of rendering Muslims a “suspect community,” in part based on racializing logics⁵⁵ by which the state singles out Muslims as “problematic.”⁵⁶ Moreover, despite RCMP attempts to create “bias-free policing” models in Canada, scholars have shown that in high-level training workshops, the RCMP’s indicia of radicalization continue to centre the Muslim as paradigmatically prone to radicalization, despite the National Strategy’s statements to the contrary.⁵⁷ None of these criticisms address the more profound issue at the heart of counter-radicalization programs: namely, whether and to what extent theories of radicalization have a qualitative or quantitative basis at all. As criminologist Andrew Silke explains, most theories suffer from a lack of evidence. Research is too often based on anecdotes and limited case studies, and is often conducted from a distance.⁵⁸ Moreover, when researchers make concerted efforts to provide a more robust evidentiary basis for their analysis, the conclusions do not always support a coherent model of radicalization for the purposes of policing and surveillance.⁵⁹

Canada’s National Strategy on Countering Radicalization

In 2018, the Government of Canada launched the National Strategy on Countering Radicalization to Violence.⁶⁰ As policy makers explain therein, “radicalization to violence occurs when a person or group takes on *extreme ideas* and begins to think they should use violence to support or advance their ideas or beliefs.”⁶¹ The National Strategy makes every effort to avoid the perception that it principally looks at Muslims as prone to radicalization. Indeed, it expressly states: “The Government of Canada is concerned with all forms of violent extremism, not

associating this phenomenon with any particular religious, political, national, ethnic, or cultural group.”⁶² But the next sentence states: “While Canada has faced a variety of threats stemming from violent extremism in recent decades, the main terrorist threat to Canada continues to be violent extremists inspired by terrorist groups such as Daesh and al-Qaeda.”⁶³

A keystone to Canada’s anti-radicalization strategy is the Canada Centre for Community Engagement and Prevention of Violence. The Canada Centre, established in 2015, operates under the auspices of the Ministry of Public Safety with a budget of \$35 million over five years, and an additional \$10 million per year to establish the centre and support its work.⁶⁴ Its work includes coordinating and collaborating “with a range of actors to respond to local level realities and prevent radicalization to violence. These partnerships include all levels of government.”⁶⁵ Indeed, the Canada Centre adopts “multi-agency programs” as a best practice model for countering radicalization. “Multi-agency programs are being used because many of the sectors represented in the partnership are equipped to help address some of the vulnerabilities that push and pull individuals towards violent extremism.”⁶⁶

Admittedly, the National Strategy does not mention the CRA or the Charities Directorate. However, together with the Charities Directorate, RAD works in a whole-of-government fashion with ministries such as Public Safety. Additionally, it is worth noting that the National Strategy stipulates that radicalization can entail both violent and non-violent behaviours. Non-violent behaviours include, for instance, “funding violent extremist or terrorist groups.”⁶⁷ This anticipates the CRA and its audits of charities precisely to identify and forestall terrorist financing. Again, recall that in 2016, the Director General of the Charities Directorate described their work on anti-terrorism files as both preventative and disruptive:

Our role is about preventing or disrupting, and we do that by looking at the applicants for registration, who wants to become a registered charity, and at the organizations who are already registered, and third and most importantly sharing information with our partners, because we only have a piece of this continuum.⁶⁸

As will be shown in the case of the Ottawa Islamic Centre audit, the National Strategy on Countering Radicalization to Violence influenced the assessment of the charity’s contribution to society to a considerable degree.

COMPLIANCE WITH INCOME TAX ACT REQUIREMENTS

There is no getting around the fact that the Income Tax Act has various record-keeping requirements that are designed to ensure transparency and accountability with respect to a charity’s stated charitable purpose. There is no shortage of reasons for such regulations. If the state is to grant tax-exempt status, it has a fiscal interest in ensuring that any exemptions are duly justified. Moreover, if charities are supposed to benefit the public, a regulatory regime serves the purpose of ensuring that donated funds are used for the described purposes. Without a regulatory regime, donors and beneficiaries would have no one to advocate for them.

But in the context of anti-terrorism financing the state plays a different role in regulating charities. That role is tied to multilateral security arrangements, international banking cooperation, and an emphasis on domestic policing in support of different, but no less significant, beneficiaries. This new role functions

as a bulwark against any and all support for terrorist entities, whether domestic or foreign. But this also means that the regulatory framework must change to anticipate a threat that is more amorphous, uncertain, and definitionally ambiguous. As Mark Sidel has noted, since the attacks of September 11, 2001, regulatory mechanisms in various jurisdictions have expanded to include not only anti-terrorism financing measures but also increased scrutiny of overseas aid projects.⁶⁹ This is in large part because, whereas charities have long been seen as promoting human security, they are now viewed by various state and multilateral organizations (such as FATF) as “a source of insecurity, not as civil society but as encouraging uncivil society, not as strengthening peace and human security but as either willing conduit for, or an ineffective, porous, and ambivalent barrier against insecurity in its most prominent modern forms, terrorism and violence.”⁷⁰ This view of the charities sector—compromised by terrorism, or a conduit to violence—has led states around the world to ramp up regulatory measures, enhance financial surveillance, and replace poverty reduction with support for anti-terrorism.⁷¹

Each case study reveals that the Charities Directorate found violations of record-keeping and other regulatory requirements under the Income Tax Act. In the case of IRFAN-Canada, some of those issues related to the absence of paperwork from its humanitarian efforts abroad. For the Ottawa Islamic Centre, there were inadequate records kept of its rental of facilities, for instance. ISAC’s financial expenditures were not well explained in relation to its charitable purpose. Indeed, each audit revealed irregularity in record-keeping practices, which the auditors used to justify their revocation of charitable status. Taken in isolation, these breaches of statutory regulation might warrant ongoing engagement with the charities, further education and development of record-keeping capacities, and so on. But for these three organizations, these failures were cited as sufficient to warrant the more extreme option of deregistration as a charity.

The concern herein is that whole-of-government policies on anti-terrorism financing and counter-radicalization operate in the shadows of what is represented by the Charities Directorate as an otherwise ordinary audit. As noted earlier, while the Charities Directorate and RAD may suspect that a charity is vulnerable to terrorism financing, the auditors process their audits using the standard Income Tax Act requirements. While the Charities Directorate has not used its special legislative authority to operate based on secret intelligence, its refusal to fully disclose the bases for an audit raises concerns about basic fairness, transparency, and accountability, especially when the anti-terrorism financing regime and the counter-radicalization regime have the capacity to operate in ways that inordinately and disproportionately impact Muslim-led charities.

The concern here is that mere suspicion on limited evidentiary bases in light of structurally biased whole-of-government policies can get operationalized by the more mundane and technical grounds of Income Tax Act non-compliance.⁷² It is hardly surprising that charities such as those featured in the case studies ran afoul of Income Tax Act regulatory requirements. As noted above, scholars in the field of charity law have shown that any charity scrutinized in this way would run afoul of Income Tax Act reporting requirements. But what distinguishes this report’s three case studies is that each of their audits was not far removed from the spectre of counter-radicalization and anti-terrorism financing policies. Where national security practices inform standard, technical auditing practices, it is not clear whether and to what extent the Directorate’s auditor teams are aware of the effect those policies may have on how members of the team identify, analyze, and interpret evidence.

1. See Anver M. Emon, "The 'Islamic' Deployed: The Study of Islam in Four Registers," *Middle East Law and Governance* 11, no. 3 (2019): 347–403.
2. Finance Canada, *Reviewing Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime*, Ministry of Finance, February 7, 2018, <https://www.canada.ca/content/dam/fin/migration/activty/consult/amlatfr-rpcf-eng.pdf>, 9. The paper was prepared in anticipation of Parliament's study and review of Canada's anti-money laundering and anti-terrorist financing regime. For that Parliamentary review, see Standing Committee on Finance, *Confronting Money Laundering and Anti-Terrorist Financing: Moving Canada Forward: Report of the Standing Committee on Finance*, House of Commons of Canada, November 2018, <https://www.ourcommons.ca/Content/Committee/421/FINA/Reports/RP10170742/finarp24/finarp24-e.pdf>.
3. Finance Canada, *Reviewing Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime*, 9 n. 5.
4. Finance Canada, *Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada*, Government of Canada, July 2015, <https://www.canada.ca/content/dam/fin/migration/pub/mltf-rpcf/mtf-rpcf-eng.pdf>, 13.
5. Steven Greenhouse, "New Bid to Curb Money Laundering," *The New York Times*, September 19, 1989, <https://www.nytimes.com/1989/09/19/world/new-bid-to-curb-money-laundering.html>; Mark T. Nance, "The Regime that FATF Built: An Introduction to the Financial Action Task Force," *Crime, Law and Social Change* 69 (2017): 109–29.
6. Oonagh B. Breen, "Through the Looking Glass: European Perspectives on Non-Profit Vulnerability, Legitimacy and Regulation," *Brooklyn Journal of International Law* 36, no. 3 (2011): 947–91; Peter Romaniuk and Tom Keatinge, "Protecting Charities from Terrorists... and Counterterrorists: FATF and the Global Effort to Prevent Terrorist Financing through the Non-Profit Sector," *Crime, Law and Social Change* 69, no. 2 (2018): 265–82; Mark Sidel, *Regulation of the Voluntary Sector: Freedom and Security in an Era of Uncertainty* (London: Routledge, 2010).
7. National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States*, National Commission on Terrorist Attacks upon the United States, July 22, 2004, <https://9-11commission.gov/report>, 55, 62. See also Kent Roach, "The Air India Report and the Regulation of Charities and Terrorism Financing," *The University of Toronto Law Journal* 61, no. 1 (2011): 45–57.
8. FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations*, FATF, updated October 2020, <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/internationalstandardscombatingmoneylaunderingandthefinancingofterrorismproliferation-thefatfrecommendations.html> (emphasis added).
9. FATF, "Interpretive Note to Recommendation 8 (Non-Profit Organizations)," in *International Standards*, 58.
10. FATF, "Interpretive Note to Recommendation 8 (Non-Profit Organizations)," in *International Standards*, 58.
11. FATF, "Interpretive Note to Recommendation 8 (Non-Profit Organizations)," in *International Standards*, 58.
12. FATF, "Interpretive Note to Recommendation 8 (Non-Profit Organizations)," in *International Standards*, 58.
13. FATF, "Interpretive Note to Recommendation 8 (Non-Profit Organizations)," in *International Standards*, 60.
14. Finance Canada, *Assessment of Inherent Risks*.
15. Finance Canada, *Assessment of Inherent Risks*, 8.
16. Finance Canada, *Assessment of Inherent Risks*, 8.
17. Finance Canada, *Assessment of Inherent Risks*, 16.
18. Finance Canada, *Assessment of Inherent Risks*, 27.
19. Finance Canada, *Assessment of Inherent Risks*, 27.
20. The list also includes "foreign fighters/extremist travelers."
21. Finance Canada, *Assessment of Inherent Risks*, 37.
22. Alex Boutilier, "Rise of Right-Wing Extremists Presents New Challenge for Canadian Law Enforcement Agencies," *Toronto Star*, October 7, 2018, <https://www.thestar.com/news/canada/2018/10/07/rise-of-right-wing-extremists-presents-new-challenge-for-canadian-law-enforcement-agencies.html>; The Soufan Center, *White Supremacy Extremism: The Transnational Rise of the Violent White Supremacist Movement*, The Soufan Center, September 2019, <https://thesoufancenter.org/wp-content/uploads/2019/09/Report-by-The-Soufan-Center-White-Supremacy-Extremism-The-Transnational-Rise-of-The-Violent-White-Supremacist-Movement.pdf>, 20–25.
23. Amanda Coletta, "Canada Lists Proud Boys as Terrorist Group Due to Domestic Security Threat," *The Washington Post*, February 4, 2021, A13. That same day, the Government of Canada included on the list another eight groups affiliated with al-Qaeda and the Islamic State, as well as Kashmiri liberation group Hizbul Mujahideen.
24. It is worth noting that considerable scholarship shows national lists of terrorist groups are politically, religiously, and racially charged. Marieke de Goede and Gavin Sullivan, "The Politics of Security Lists," *Environment and Planning D: Society and Space* 34, no. 1 (2016): 67–88; Ivan Sascha Sheehan, "Challenging a Terrorist Tag in the Media: Framing the Politics of Resistance and an Iranian Opposition Group," *Digest of Middle East Studies* 22, no. 2 (2013): 229–61.
25. FATF, "Interpretive Note to Recommendation 8 (Non-Profit Organizations)," in *International Standards*, 58.
26. FATF, *International Standards*, 59.
27. Finance Canada, *Assessment of Inherent Risks*, 32.
28. Finance Canada, *Assessment of Inherent Risks*, 32.
29. Anti-terrorism criminal litigation is costly and lengthy, "with many dead ends and variables." Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, *Terrorist Financing, Air India Flight 182: A Canadian Tragedy*, vol. 5 (Ottawa: Minister of Public Works and Government Services, 2010), 242.
30. Standing Committee on National Security and Defence, "Proceedings of the Standing Senate Committee on National Security and Defence," Senate of Canada, April 11, 2016, <https://sencanada.ca/en/Content/Sen/Committee/421/SECD/03sev-52467-e> (emphasis added).

31. Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, *Terrorist Financing*, 200; Government of Canada, "Charities – Public Safety and Anti-Terrorism," *Government of Canada*, updated April 11, 2017, <https://www.canada.ca/en/revenue-agency/services/about-canada-revenue-agency-cra/protecting-your-privacy/privacy-impact-assessment/charities-public-safety-anti-terrorism-privacy-impact-assessment-summary-review-analysis-division.html>.
32. Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, *Terrorist Financing*, 214.
33. Standing Committee on National Security and Defence, "Proceedings" (emphasis added).
34. Eleanor Burt and John Taylor, "Striking the Regulatory Balance in the Unique Case of the Voluntary Sector," *Public Money & Management* 24, no. 5 (2004): 297–300; Carolyn Cordery, "Regulating Small and Medium Charities: Does it Improve Transparency and Accountability?," *Voluntas: International Journal of Voluntary and Nonprofit Organizations* 24, no. 3 (2013): 831–51; Elizabeth A. Bloodgood and Joannie Tremblay-Boire, "International NGOs and National Regulation in an Age of Terrorism," *Voluntas: International Journal of Voluntary and Nonprofit Organizations* 22, no. 1 (2011): 142–73; Nicole Bolleyer and Anika Gauja, "Combating Terrorism by Constraining Charities? Charity and Counter-Terrorism Legislation before and after 9/11," *Public Administration* 95, no. 3 (2017): 654–69.
35. Burt and Taylor, "Striking the Regulatory Balance," 299.
36. Romaniuk and Keatinge, "Protecting Charities."
37. Martin S. Navias, "Finance Warfare as a Response to International Terrorism," *The Political Quarterly* 73, no. 1 (August 2002): 57–79; Bruce Zagaris, "The Merging of the Anti-Money Laundering and Counter-Terrorism Financial Enforcement Regimes after September 11, 2001," *Berkeley Journal of International Law* 22 (2004): 123–54.
38. Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, *Terrorist Financing*, 14–15; Nikos Passas, "Understanding Terrorism Financing" in Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, *Terrorism Financing, Charities, and Aviation Security*, Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 Research Studies, vol. 2, (Ottawa: Minister of Public Works and Government Services, 2010), 15–118, 82; Moyers, "A Shocking Silence"; Sally Howell, "(Re)bounding Islamic Charitable Giving in the Terror Decade," *UCLA Journal of Islamic and Near Eastern Law* 10 (2010–2011): 35–64.
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CASE STUDY

THE OTTAWA ISLAMIC CENTRE AND ASSALAM MOSQUE

THE OTTAWA ISLAMIC CENTRE AND ASSALAM MOSQUE¹

The Ottawa Islamic Centre applied for charitable status on May 13, 2003, through an application that the CRA initially found insufficient. After an exchange of letters, both parties agreed that a pre-registration audit would “facilitate the collection of information, and allow the CRA to thoroughly assess the Organization’s operations.”² Covering the fiscal period of January 1, 2005, to December 31, 2006, the pre-registration audit raised concerns about the organization’s internal controls and record-keeping. A second pre-registration audit took place six months later, covering the fiscal period of January 1, 2007 to March 31, 2008. While the second pre-registration audit revealed certain concerns, the Charities Directorate was satisfied that the organization could and would remedy the issues. The Ottawa Islamic Centre obtained its charitable registration effective January 1, 2009.³

A few years after registration, the organization was subject to an audit for the period of January 1, 2012, to December 31, 2013. This final audit found that the Ottawa Islamic Centre violated the public benefit test. The Charities Directorate explained the Public Benefit test as follows:

1. The first part of the test generally requires that a tangible or objectively measurable and socially useful benefit be conferred.
2. The second part of the test requires the benefit be directed to the public or a sufficient section of the public. This means a charity cannot have an eligible beneficiary group that is negligible in size, or restrict eligible beneficiaries based on criteria that are not justified by its charitable purpose(s); and provide an unacceptable private benefit as it pursues charitable purposes.⁴

According to the Charities Directorate, the first part of the test is satisfied if the organization’s purpose corresponds with the Common Law categories of advancing religion, advancing education, or relieving the poor. Each of these create a rebuttable presumption that the organization contributes to the public benefit. But that presumption can be defeated under certain circumstances:

where there is evidence to suggest that the activities an organization undertakes to achieve its purposes—and thereby ostensibly deliver the required benefit—may cause detriment or harm, including activities that:

- promote or incite intolerance, hatred or violence;
- pose a significant risk of physical or mental harm to a person;

- unlawfully restrict human rights and freedoms; or
- are contrary to Canadian law.⁵

The Ottawa Islamic Centre was organized for purposes of advancing religion, such as offering spaces for congregational prayer and religious services, and hosting lectures and classes on Islam, among other things. To that end, it was presumed to be for charitable purposes.⁶ However, the audit allegedly uncovered evidence that rebutted the presumption, suggesting that the way the organization advanced religion did not in fact meet the second prong of the public benefit test.

In the application of the Common Law test of public benefit, the Charities Directorate relied on evidence that centred on specific lecturers invited to speak at the Ottawa Islamic Centre, and the presumed content of what they may have said on site. There was no record of what these four individuals actually stated on site. No transcript, video recording, audio recording, or minutes of the speeches were kept; nor did the Charities Directorate attest to the content of the speeches given. The Charities Directorate instead expressed concern over “the potential for the Organization’s guest speakers and lecturers to displace the public benefit.”⁷ The Administrative Fairness Letter’s Appendix A, which captures the Directorate’s approach to research, listed the following four individuals, and associated them with upsetting forms of speech:

Abu Usamah at-Thahabi. Appendix A refers to a BBC documentary, *Undercover Mosque*, which contained footage of Mr. at-Thahabi speaking at a mosque in Birmingham, England. The documentary was the subject of considerable controversy, with West Midlands Police filing a complaint with the British broadcast regulator (Ofcom) that the film was unfair and over-edited, placed statements out of context, and incited racial hatred.⁸ At-Thahabi’s speech included various statements characterized as misogynistic and/or homophobic. Moreover, he repeatedly took aim at the “kuffar” (unbeliever): “No one loves the kuffar, no one loves the kuffar, not a single person here from the Muslims loves the kuffar, whether those kuffars are from the UK or from the US. We love the people of Islam and we hate the people of kufr. We hate the kuffar.”⁹ Perhaps more provocatively, he is reported to have said, “I don’t agree with those individuals [Muslim terrorists], but at the same time they are closer to me than those criminals of the kufr.”¹⁰

Abu Ameenah Bilal Philips. Appendix A explains that Philips was denied entry into various countries (e.g., Australia, the United Kingdom, Kenya, Bangladesh, the US, and Germany), and was deported from the Philippines for allegedly promoting radicalization. Appendix A outlines Mr. Philips’s patriarchal and misogynistic attitudes, as well as his alleged homophobia.¹¹

Abd al-Hakim Quick.¹² Appendix A characterizes Mr. Quick as homophobic and suggests he is intolerant of other religious groups, in particular those he believes colonially occupy Muslim lands.

Said Rageah. Mr. Rageah's association with the al-Maghrib Institute (AMI) was the basis for suspecting him of promoting radicalization because of AMI's third-party audio label, Eman Rush. Among its titles, Eman Rush featured content by Anwar al-Awlaki, an American citizen affiliated with al-Qaeda and killed by a US drone strike. Incidentally, the CRA's references to Eman Rush are to online pages that no longer exist. The Charities Directorate's concern with Rageah's indirect association with AMI's third-party audio label and other conferences was that these platforms afforded "individuals with extremist opinions... an opportunity to address thousands of gatherers in Toronto."¹³

On the basis of this research, the Charities Directorate held that "the Organization may have allowed a number of its guest speakers to espouse views or opinions that are incongruent with the concept of public benefit as it is understood in charity law."¹⁴ The Directorate concluded that the "mere possibility that the views of the speakers... could have been expressed" warranted the audit's "cause for concern" that the Ottawa Islamic Centre no longer fulfilled the public benefit test.¹⁵ To be clear, the Charities Directorate did not say that the organization in fact displaced the public benefit. But at the same time, it is not clear whether "mere possibility" is sufficiently grounded in law or policy as a standard of audit analysis to warrant the Charities Directorate's conclusions about the list of speakers.

Given the absence of transcripts, the Charities Directorate focused on the organization's oversight and regulation of its speaker selection process. As the Charities Directorate explained, the CRA did not review the actual speeches the speakers gave at the Ottawa Islamic Centre because there was no record of such speeches. The Charities Directorate, however, considered the failure to keep such records a violation of s. 230(2)(a) of the Income Tax Act. That section provides that "every qualified donee... shall keep records and books of account... containing (a) information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under this Act."¹⁶ The Charities Directorate construed the organization's failure to preserve the speaker's speeches as a failure to comply with Income Tax Act record-keeping and file management requirements. These were not the only record-keeping irregularities; there were others that the audit identified, and which informed the Charities Directorate's decision to revoke the Ottawa Islamic Centre's charitable status. But the lack of any records of the speeches informed the Charities' Directorate's application of the public benefit test, which in turn buttressed the Directorate's to revoke the organization's charitable status.

PUBLIC BENEFIT, CONSERVATISM, AND ANTI-RADICALIZATION

The emphasis on the lack of records of the speeches raises a number of questions given the broader context that the Charities Directorate invoked in its public benefit analysis. As part of its analysis, the Charities Directorate expressed concern over media reports "regarding the arrest, on terrorism related charges, of several individuals who have worshipped at the Organization."¹⁷ While no media report implicated the Ottawa Islamic Centre in the alleged crimes of

these individuals, the CRA was concerned “that (several) radicalized individuals have attended the Organization’s mosque, creating the possibility that they may have been influenced by other individuals who attend, or have attended, the Organization (Assalam Mosque), either as parishioners or as speakers.”¹⁸

The Charities Directorate took aim at the Ottawa Islamic Centre, in part, for allegedly being a stage for radicalization. Its Administrative Fairness Letter to the Ottawa Islamic Centre, along with Appendix A, provides a window into how the Charities Directorate selects and activates certain kinds of evidence to apply legal standards such as the public benefit test. In its letter, the Directorate identified four speakers with a history of speech “incongruent” with public benefit. In other words, the directorate was relying on evidence of what the speakers said elsewhere in the past, which raises questions about the temporality of evidence that can be marshalled as a matter of practice during an audit. When read with the rest of the letter, it seems that the mere affiliation with these four individuals was sufficiently worrisome to warrant a suspicion that the Ottawa Islamic Centre might be a breeding ground for radicalized Muslims.

The Directorate’s suspicion, however, cannot be divorced from the fact that all four identified speakers were Black Muslim males espousing views that lie on the conservative spectrum of Islamic thought. While it may very well be appropriate for auditors to infer public benefit implications from such speeches, the report raises a concern that this approach is not equally applied across racial and religious groups, and unduly targets some groups over others. Unpacking the Charities Directorate’s concerns, we identify a taxonomy of beliefs that the Directorate seems to correlate with the threat of radicalization. That taxonomy centres on specific themes:

- **Misogyny:** The speakers were identified as making various statements that uphold patriarchy and demean women.
- **Homophobia:** The speakers were identified as making various statements hostile to members of the LGBTQ community.
- **Intolerance:** The speakers’ denigration of unbelievers, and more specifically Jews and Christians, suggest their intolerance of religious difference.¹⁹

There are no shortage of Canadian laws and policies that render such attitudes and beliefs worrisome to public officials. Principles of equality and non-discrimination punctuate much of Canada’s legal and policy tradition, and likely contribute to how many across the political spectrum construe terms like “public benefit.” Our concern is whether these principles are equally enjoyed by all, and equally applied by government officials across our multicultural stakeholder communities. Moreover, while we may certainly take issue with the four speakers and their views, that does not explain why the Ottawa Islamic Centre must bear the onus of those ideas, especially in the absence of any evidence that those speakers expressed those ideas on the organization’s premises.

While we remain agnostic about the religious pedigree of any given belief, the taxonomy of beliefs listed above fall along a spectrum of what might be called “conservative religious beliefs.”²⁰ Conservative beliefs or ideas operate across a spectrum of religious and ideological traditions, groups, and organizations. Importantly, many beliefs that fit the above taxonomy are sponsored, featured, or otherwise given voice in a wide range of charities registered with the CRA. The connection the Charities Directorate drew in the Ottawa Islamic Centre audit between the foreign speeches of four Black men and the possibility of extremist

or radicalized rhetoric raises the question of whether all such conservative, if not extreme, speech is equally cast as “incongruous” with public benefit. We raise this question after having identified speakers from other religious and ideological traditions who espoused beliefs not unlike those attributed to the four speakers at the Ottawa Islamic Centre. The following are a few examples from recent news accounts:

In 2019, pastors from **Christ’s Forgiveness Ministries** and Torch of Christ Ministries were arrested in Toronto while preaching anti-gay ideas during Pride Week.²¹ At the date of writing this report, Christ’s Forgiveness Ministries remains registered as a charity, since its effective date of 2009.²² We located no record of Torch of Christ Ministries having ever registered as a charity.

Canada Christian College’s president Charles McVety is no stranger to controversy over extreme ideas. In 2010, Christian broadcaster Christian Television Service removed McVety’s show, Word TV, after Canada’s broadcast industry watchdog ruled that various statements by McVety violated its broadcast codes.²³ A complaint to Canadian Broadcast Standards Council (CBSC) identified fourteen programs between July 19, 2009, and February 21, 2010, that disparagingly treated topics including homosexuality, Islam and Muslims, Haiti, and more. On homosexuality, McVety characterized Pride Parades as little more than “sex parades” and the LGBTQ community as sexually perverse. The CBSC found that McVety not only made a series of factually incorrect statements on air about the LGBTQ community, but also mischaracterized them in a manner that was at times “excessive, inappropriate, disparaging, and abusive.”²⁴ Michael Coren more recently remarked that McVety has led “many of the most unpleasant campaigns in Canada against LGBTQ equality and modern sex education.... He also has radical opinions about other faiths, once stating that, ‘Islam is not just a religion, it’s a political and cultural system as well and we know that Christians and Jews and Hindus don’t have the same mandate for a hostile takeover.’”²⁵ In 2011, McVety’s Canada Christian College invited and hosted Dutch politician and virulent Islamophobe Geert Wilders. McVety remarked, “Geert Wilders has a warning for Canada, and his warning is about a lack of free speech here and the threat of demographic jihad.”²⁶ In February 2019, Wilders was prevented from entering the United Kingdom because he posed “a genuine, present and significantly serious threat” to public safety in the UK.²⁷ Though he successfully appealed the decision, the British government nonetheless still considered him an ongoing threat.²⁸ At the time of writing, Canada Christian College remains led by McVety, and is registered as a charity with the CRA.²⁹ Moreover, in legislation that received royal assent on December 8, 2020, the Government of Ontario approved redesignating the organization a university under the name Canada University and School of Graduate Theological Studies with the authority to issue degrees in the arts, sciences, and theology.³⁰

When Pastor Jeremy Wong was appointed a United Conservative Party candidate for Alberta’s recent elections, he was criticized for partnering with **Journey Canada**, which is alleged to support practices of conversion therapy for parishioners worried about their sexual habits, including attraction to those

of the same gender.³¹ Journey Canada was implicated in the controversy over **Northern Youth Programs**, which operated some of the last residential schools in Canada, and continues to run programs in Northern Ontario that LGBTQ2 members claim are harmful to youth.³² At the time of writing, the CRA lists multiple charitable registrations for both Journey Canada and Northern Youth Programs.³³

Christine Douglass-Williams was fired in 2017 from the board of the Canadian Race Relations Foundation for her “Islamophobic commentary,” and her association with “purveyors of hateful propaganda.”³⁴ Defending her positions, Douglass-Williams explained: “I make a distinction between those who practice Islam in peace and harmony with others, and those with an agenda to usurp democratic constitutions, demand special privileges over other creeds and who advocate the abuse of women and innocents as a supremacist entitlement.”³⁵ Douglass-Williams also sits on the board of the registered charity **Canadians for the Rule of Law (CFTRL)**. Canadians for the Rule of Law held a major conference in March 2019, which was to be hosted at Beth Tikvah Synagogue in Toronto. But as the conference drew increasing criticism for featuring purveyors of hate and Islamophobia, the synagogue withdrew its participation in the event.³⁶ Supported in part by McVety’s Canada Christian College (see above) the conference featured speakers such as John Carpay, who once compared the rainbow flag of the LGBTQ community with the Nazi swastika, and Douglass-Williams, who spoke on multiple panels.³⁷ While the CFTRL conference still went forward, it did not proceed without incident. As was reported, a Muslim professor from Wilfrid Laurier University, Jasmin Zine, was forcibly removed from the event after asking a question disliked by panelist Douglass-Williams.³⁸ As of January 1, 2017, Canadians for the Rule of Law was registered as a charitable foundation with the CRA. At the time of writing, it remains so registered.³⁹

The above organizations are publicly reported to have supported, engaged, or otherwise given a platform to speakers whose speech could be characterized as falling within the taxonomy identified above. The concern herein is that not all forms of conservative speech seem to attract the label of “radicalization” as did the four speakers who were scheduled to speak at the Ottawa Islamic Centre. The issue is not that all these venues ought to be subject to an audit for violating public benefit, though others may disagree. This analysis simply raises a question about whether there is a disparity in how the CRA understands what is and is not speech incongruous to the public benefit. Who can espouse conservative ideas freely, and whose conservative values attract the label of radicalization?

Who Can Be Conservative?

Canada’s National Strategy on Countering Radicalization identifies “extreme ideas” as a site of concern. Moreover, it subjects to a security analysis extreme ideas that take shape not only through funding mechanisms (like charitable donations), but also through “spreading messages and narratives that incite violence and hatred.”⁴⁰ But the language of the National Strategy raises more questions than it answers. What exactly is an “extreme idea”? What is the difference, for instance, between objectionable and extreme ideas, or between conservative and extreme ideas? Moreover, the identification of “extreme ideas” raises a further question of authority and power: namely, who gets to decide when one set of ideas rises to the

level of “extreme” and therefore constitutes a national security risk that occasions multi-agency preventative measures?

To answer these question requires an analysis of data that lies in the hands of the CRA. In the course of this research, we approached the Access to Information and Privacy (ATIP) Directorate to inquire whether and to what extent the Charities Directorate has recommended revocation of charitable status in Administrative Fairness Letters, on the grounds that a charity (other than a Muslim-led charity) violated the public benefit test by creating the conditions for radicalization. The ATIP Directorate of the CRA responded as follows: “The Charities Directorate does not... categorize registered charities by ‘churches’ or ‘synagogues’, or track the topic associated with an audit (i.e. spreading hate and/or fostering radicalization).”⁴¹

In a subsequent ATIP request more broadly worded asking for a list of organizations deregistered for promoting radicalization, only one organization was listed, namely the Ottawa Islamic Centre. However, this second disclosure added a qualification stating that:

while the audit did not find that the Organization violated the public benefit test “by promoting (allegedly or otherwise) radicalization,” the findings did reveal that the Organization failed to conduct reasonable due diligence over its activities to ensure its resources were not used to promote hate and intolerance. It should be made clear, however, that none of the audit findings directly implicated the Organization, in whole or in part, of being involved in the radicalization of individuals or in promoting radicalization.⁴²

In the Ottawa Islamic Center case, the threat of radicalization featured in the audit, though officially it seemed not to be the deciding factor in the decision to deregister the organization as a charity.

This response calls out for further examination. First, the fact that there is only one organization listed in the ATIP request might suggest our concern noted above is misplaced. However, the response is an answer to our query about revocations. Recall that revocations are only one among many discretionary options the Charities Directorate can utilize. This raises questions about how frequently and across what range of discretionary decisions (e.g. suspensions of receipting privileges) the Directorate invokes the paradigm of radicalization in its analysis. Charities need not be deregistered to nonetheless be subjected to a radicalization analysis in an audit.

Second, the first ATIP response suggests that the CRA does not collect the relevant data that would allow for robust analysis of Directorate practices on non-discrimination grounds. Without such data, we cannot assert more than that the Ottawa Islamic Centre audit raises suspicions of potential bias. Nearly all religious communities have teachings that can be characterized as “incongruous” with public benefit, whether those teachings are patriarchal, misogynistic, homophobic, or intolerant. But not all of those beliefs or ideas are labelled a threat to national security as a vehicle of radicalization. The Charities Directorate’s audit of the Ottawa Islamic Centre raises the troubling question of whether the Charities Directorate uniquely casts Muslims who hold highly conservative ideas as purveyors of radicalization, rendering these ideas or beliefs matters of national security.⁴³

Third, without such data, the Charities cannot deny this suspicion either. However, it could claim, given the second ATIP disclosure, that such suspicion is irrelevant given that neither the audit nor the decision to deregister the Ottawa Islamic Centre relied on any such suspicious bases. As already discussed above, the Directorate's preference for relying on technical violations of the Income Tax Act does not preclude its responsibilities under the whole of government policies of anti-terrorism financing and counter-radicalization. Our concern with the Ottawa Islamic Centre audit is that non-compliance with the Income Tax Act may offer convenient cover to regulate organizations that are otherwise viewed as suspect but where evidence corroborating the suspicion may be limited.

As shown in this case study, Charities Directorate auditors applied undisclosed standards of evaluation regarding radicalization to assert that the Ottawa Islamic Centre sponsored talks that violated an otherwise standard Common Law test of public benefit. While there was no evidence that such speeches had been given at the organization's location, the Directorate examined four speakers and analyzed a range of things they had reportedly said in other jurisdictions in the past. The Directorate found the content of those other speeches concerning, and used its public benefit test to argue that the organization, by hosting these speakers and not keeping suitable records of those speeches, breached the public benefit. While we recognize the value of ensuring a pluralistic, multicultural environment respectful of difference, we also expect that the government will apply its standards of public benefit analysis equally and consistently across religious and racial groups. As mentioned above, there are a large number of organizations that have reportedly sponsored or featured speakers with a reputation for promoting hate against minorities. The accounts we found were all part of the public record and published widely across multiple platforms. These other organizations, it seems, have committed the same or similar offenses that the Ottawa Islamic Centre allegedly committed. However, these organizations remain registered as charities with the Charities Directorate. How the Charities Directorate and its personnel decide whose speech is potentially dangerous and what content poses a threat is unclear from the records thus far available. And it is not clear whether the CRA could answer these questions either.

PUBLIC BENEFIT, COUNTER-RADICALIZATION, AND THE SOMALI THREAT?

The Ottawa Islamic Centre case study suggests how and to what effect the Charities Directorate may apply the Common Law charities category of public benefit in its ordinary audit processes to effectuate the government's counter-radicalization policy. The potential correlation between the Common Law category of public benefit and Canada's anti-radicalization policies raises concerns about whether the shadow of anti-radicalization colours how the Charities Directorate selects and interprets its evidence, and whether such audits have an inordinate effect on often racialized Muslim-led charities.

In the case of the Ottawa Islamic Centre, we appreciate that the organization serves a largely Somali Muslim community in Ottawa, which is racially Black. Somali Muslims constitute the "largest community within the Black community in Ottawa," with a large contingent arriving in Ottawa as refugees fleeing the civil war in Somalia.⁴⁴ However, the governmental focus on Somali Canadians has shifted from humanitarianism to national security in the wake of September 11, 2001. In recent years, Somali Canadians have been subject to a national security narrative in which groups such as al-Shabaab are believed to always and at all times

operate in the shadows. Listing al-Shabaab on its “Terrorist Entity List” in 2010, the Government of Canada describes the group as

the strongest, best organized, financed and armed military group in Somalia, controlling the largest stretch of territory in southern Somalia. Al Shabaab has carried out suicide bombings and attacks using land mines and remote-controlled roadside bombs, as well as targeted assassinations against Ethiopian and Somali security forces, other government officials, journalists and civil society leaders.... The group is believed to be closely linked with Al Qaida and formally pledged allegiance to Usama bin Laden and his terrorist network.⁴⁵

Notably, al-Shabaab is also listed in Canada’s Risk-Based Assessment model as a principal group driving a whole-of-government anti-terrorism financing regime. The national security narrative that shadows Somali Canadians is in large part based on stories of a “small handful of young Somali-Canadians” recruited by al-Shabaab as foreign fighters.⁴⁶ As Rima Berns-McGown describes, Somali Canadians are subjected to a biased belief that they have failed to integrate into Canadian society, which transforms into a presumed “threat to Canadian security in the form of young people who have been lured to the radical extremism of the al-Qaeda-linked al-Shabaab movement in southern Somalia.”⁴⁷ The audit of the Ottawa Islamic Centre by the Charities Directorate cannot be assessed without first appreciating how Canada’s national security and police apparatus hone in on the bodies of Somali Canadians as a matter of both race and religion.

Curiously, the Charities Directorate made no mention of the fact that the four speakers it was concerned with were uniformly Black Muslim males. Mr. Philips is a Jamaican-born Black man raised in Canada. Mr. Quick is of Black, Caribbean, and Mohawk descent, born in the United States, raised in Canada, and listed by ISIS as a target for execution because of his sermons against violence.⁴⁸ Mr. Rageah was born in Somalia, raised in Saudi Arabia, and made his way to Canada where he is the leader of the Sakina Community Centre in Scarborough, Ontario. Abu Usamah at-Thahabi is a Black convert to Islam from the United States, who serves as an imam in the United Kingdom.

The fact that they are all racially Black is not irrelevant to our concerns about anti-radicalization policies, which across various agencies are applied by individuals with an inevitably subjective perspective. Many of the four men espouse what might be considered radical Black critique of racism in North America. Of particular interest is at-Thahabi’s February 24, 2020, lecture about radical Black civil rights figure Malcolm X. In this lecture, at-Thahabi chastises the United States for its racism against Black Americans. He takes issue with the racism that allows different treatments of white lone killers and Muslim lone killers, and criticizes the media for its systemic racism:

Whenever a far-right racist commits a crime against Muslims... it’s always the person is majnūn [mentally ill], it’s always the person is a lone wolf. But when a Muslim commits such a crime, and I don’t condone or endorse that madness of being extreme, we don’t want you young brother to be like that... they will identify him as being Pakistani Muslim doing Islamic terrorism. So your ethnic group gets condemned by the media, your religion comes under attack by the media.⁴⁹

Notably all four speakers hold views that can be characterized as conservative, and arguably patriarchal and homophobic. Such conservative views, as mentioned, are not uncommon among a host of Christian and other organizations that serve a predominantly White constituency and continue to operate in Canada as registered charities. Given the national security narrative on Somali Canadians, it is not hard to imagine how these men's conservative views, expressed using Islamic conceptual vocabulary, might be uniquely cast as extremist ideas leading to radicalization. The worry that this analysis brings to the fore is that while anyone can hold conservative views, only a subset can do so freely without bearing the burden of a national security regime.

1. At the outset of this research in summer 2020, the authors submitted an Access to Information request to the CRA for the Ottawa Islamic Centre's audit file. Included in the request was the necessary consent agreement from the organization itself authorizing the request. While the authors have been in communication with the ATIP officer overseeing the request, the ATIP office has not produced the requested files, as of the time of publication.
2. Administrative Fairness Letter (AFL) of Cameron Cribb, Compliance Officer, Charities Directorate to Mr. Abdulhakim Moalimishak of the Ottawa Islamic Centre, May 3, 2016.
3. AFL of Cribb to Moalimishak, May 3, 2016; Letter of Yi-Mei Ting of Blumberg Segal LLP to Cameron Cribb, Compliance Officer, Charities Directorate, July 27, 2016.
4. AFL of Cribb to Moalimishak, May 3, 2016.
5. AFL of Cribb to Moalimishak, May 3, 2016.
6. AFL of Cribb to Moalimishak, May 3, 2016.
7. AFL of Cribb to Moalimishak, May 3, 2016 (emphasis added).
8. Ofcom, "Dispatches: Undercover Mosque, Channel 4, 15 January 2007, 21:00," *Ofcom Broadcast Bulletin* 97, November 19, 2007, 10, https://www.ofcom.org.uk/_data/assets/pdf_file/0022/46930/issue97.pdf.
9. "Appendix A," in AFL of Cribb to Moalimishak, May 3, 2016.
10. "Appendix A," in AFL of Cribb to Moalimishak, May 3, 2016.
11. "Appendix A," in AFL of Cribb to Moalimishak, May 3, 2016.
12. Appendix A misspells Mr. Quick's name throughout.
13. Appendix A," in AFL of Cribb to Moalimishak, May 3, 2016.
14. AFL of Cribb to Moalimishak, May 3, 2016.
15. AFL of Cribb to Moalimishak, May 3, 2016 (emphasis added).
16. Income Tax Act, R.S.C., 1985, c. 1 (5th Supp.), 230(2).
17. AFL of Cribb to Moalimishak, May 3, 2016.
18. AFL of Cribb to Moalimishak, May 3, 2016.
19. There is of course no shortage of scholarly literature in the field of Islamic studies that takes aim at the attitudes and values expressed by the four speakers identified in Appendix A. Patriarchy and violence against women is a topic much disputed within the academics and streets of the Muslim-majority world and elsewhere where Muslims are minorities. From feminist critiques of patriarchy to outright re-readings of Qur'anic verses aiming to dismantle patriarchy and domestic violence, scholars both within and outside the religious community have engaged in fierce theological and legal debate. Examples of such literature include Amina Wadud, *Qur'an and Women: Rereading the Sacred Text from a Woman's Perspective* (Oxford: Oxford University Press, 1999); Wadud, *Inside the Gender Jihad: Women's Reform in Islam* (Oxford: Oneworld Publications, 2006); Ayesha S. Chaudhry, *Domestic Violence and the Islamic Tradition*, Oxford Islamic Legal Studies Series (Oxford: Oxford University Press, 2013); Chaudhry, "Islamic Legal Studies: A Critical Historiography," in *Oxford Handbook of Islamic Law*, ed. Anver M. Emon and Rumea Ahmed (Oxford: Oxford University Press, 2018), 5–44; Kecia Ali, *Sexual Ethics and Islam: Feminist Reflections on Qur'an, Hadith and Jurisprudence*, rev. ed. (Oxford: Oneworld Publications, 2016). Moreover, debates about tolerance and respect of religious Others remain highly charged among Muslims and within the academy. See, for instance, Anver M. Emon, *Religious Pluralism and Islamic Law: Dhimmīs and Others in the Empire of Law*, Oxford Islamic Legal Studies (Oxford: Oxford University Press, 2014). There is a longstanding debate on the Andalusian narrative of tolerance, pluralism, and harmony: see Maria Rosa Menocal, *The Ornament of the World: How Muslims, Jews, and Christians Created a Culture of Tolerance in Medieval Spain* (New York: Little, Brown, 2002). Equally, the academic discipline of Islamic studies and Muslim communities the world over dispute the ethics of equality and sexuality. In fact, Canada is home to the El-Tawhid Juma Circle, a community and network of Muslims devoted to creating an LGBTQ-positive space for Muslims. El-Tawhid Juma Circle, "Our Story," accessed January 11, 2021, <http://www.jumacircle.com/who-we-are>. Among scholars of Islam, there is an increasing literature that contends with traditional readings of scripture, and possible re-readings that would be more inclusive of LGBTQ Muslims; see Scott Siraj al-Haqq Kugle, *Living Out Islam: Voices of Gay, Lesbian, and Transgender Muslims* (New York: New York University Press, 2013); Kugle, *Homosexuality in Islam: Critical Reflections on Gay, Lesbian, and Transgender Muslims* (Oxford: Oneworld Publications, 2010); Shanon Shah, *The Making of a Gay Muslim: Religion, Sexuality and Identity in Malaysia and Britain* (New York: Palgrave MacMillan, 2017); Sivashangeran Tamilchelvan and Radzuwan Ab Rashid, "Being a Muslim Gay Man: A Systemic Review," *Trames* 21, no. 3 (2017): 273–84.
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41. Valentin Lefter, Manager, ATIP Directorate, CRA, to Anver M. Emon, September 29, 2020.
42. Valentin Lefter, ATIP Directorate, to Anver Emon, Ref. A-2020-123700 (emailed to recipient February 10, 2021).
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CASE STUDY

THE ISLAMIC SHI'A ASSEMBLY OF CANADA

THE ISLAMIC SHI'A ASSEMBLY OF CANADA

(ISAC)

A group of committed Shi'a leaders in the Greater Toronto Area came together in 1993 to form a charitable organization to support and promote the teachings of Shi'a Islam. An early draft constitution listed the name of the entity as the Ahlul-Bait Association, and described its purpose as propagating the "Shia school of thought."¹ Among the organization's early goals was the publication of a magazine for Shi'a Muslims called *The Right Path*. The magazine, along with ancillary research and translated books,² would address various issues related to the Shi'a Ithna-asheri sect of Islam.³ As minutes from March 6, 1994, show, the orientation of the organization changed as its capacities expanded. By 1994, the organization planned to host annual conferences, and expressed increasing interest in studying Shi'a demographics across Canada.⁴

The organization was registered as a charity organized to advance religion in 1994 under the name of the Ahlul Bayt Assembly of North America. The organization later changed its name to the Islamic Ahlul Bayt Assembly of Canada. The name of the organization, as we will see, became significant in the 2011 audit. For that reason, we should explain the term briefly. "Ahlul Bayt" is an English transliteration of the Arabic phrase *اهل البيت*. Literally, the term means "people of the house": since the early history of Islam, it has been used to refer to the family of Prophet Muhammad. In Islamic intellectual history, *ahl al-bayt* plays a general, if not generic, role in signalling the Shi'a sect of Islam and its adherents, given the specific role the Prophet's family play in Shi'a theology.⁵ Ahl al-Bayt, along with its various transliterations into the Latin script, is widely used within theological manuals, and in the names of various Shi'a organizations around the world. In fact, the widespread, generic use of this phrase caused early problems for ISAC when it sought to incorporate under the Canada Corporations Act in 2011.⁶ ISAC had to convince Industry Canada that its name (at that time) would pose no confusion or conflict with other organizations in Canada such as, for instance, a Montreal-based group that called itself the Ahl-il Bait Islamic Organization of Montreal. From Industry Canada's perspective, the names were so similar that they might result in potential confusion. In an April 11, 2011, letter to Industry Canada, Ghulam Sajjan (director of the organization) explained the name of the organization with a brief education in early Islamic theological history. He explained that the Arabic phrase "Ahlul Bayt" is "very common among the Shia Muslims. These two

words are Arabic which mean ‘the household’ and generally are applied to the household of the Prophet Muhammad. The Shia are considered the followers of the Ahlul Bayt.... There are over 200 million Shia Muslims in the world who are followers of the Ahlul Bayt and many of their organizations contain these two words.”⁷ Moreover, Sajan assured Industry Canada that “we have been registered as a charity since 1994 and there has been no confusion with the Montreal based organization to this date.”⁸ Successful in its incorporation with its chosen name, the organization continued with this name through 2012⁹ until, at its November 11, 2012 Annual General Meeting, the members approved changing the organization’s name to the Islamic Shi’a Assembly of Canada (ISAC).¹⁰ That was the name under which the organization continued until the CRA issued its February 2016 Notice of Intention to Revoke the Assembly’s charitable status.

ISAC’s troubles with the Charities Directorate began in 2011 after Stephen Harper’s Conservatives won a majority in Parliament in the May 2011 elections. Contextually this is important given that the Harper Government, at the time of ISAC’s audit, was rattling sabres at Iran during tense global discussions around nuclear non-proliferation and the protection of Israel from regional nuclear powers. From 2011 onward, ISAC was under audit for its activities between 2008 and 2010. The audit, which will be explored below, concluded with a recommendation to revoke the organization’s charitable status. The Directorate’s decision involved a three-part argument. First, the Charities Directorate argued that ISAC’s actions were not designed to “advance religion” but instead served collateral political purposes. Second, the Directorate concluded that those collateral political purposes were in support of foreign interests that ran contrary to domestic Canadian interests. Specifically, the Directorate asserted repeatedly that ISAC was committed to supporting and promoting the revolutionary ideals of Iran’s Islamic Republic through an alleged institutional connection to the Ahlul Bayt World Assembly (ABWA). ABWA is an Iranian organization committed to promoting Shi’a ideals globally. Third, after linking ISAC with Iran and ABWA, the Directorate further held that since ABWA included the Lebanese group Hizbullah among its participants, and since Hizbullah was on Canada’s terrorist entity list, ISAC must therefore pose a risk of terrorist affiliation and terrorism financing. The whole-of-government policy on anti-terrorism financing, coupled with Canada’s increasingly hostile stand on Iran, structured even the most minuscule features of ISAC’s audit. The analysis below will examine the evidence and interpretations the Directorate marshalled to support each of the three arguments that bolstered its decision to revoke ISAC’s charitable status.

FROM “ADVANCING RELIGION” TO PROMOTING “COLLATERAL POLITICAL PURPOSE”

In March 2007, ISAC wanted to change its name and modify its constitution. It submitted the changes to the Charities Directorate for relevant approvals for purposes of preserving its charitable status. The Directorate approved the name change in January 2008, but withheld comment on the revised constitution until July 21, 2008. In the July letter, the Directorate expressed concerns that the amendments did not “advance religion.” As the Directorate explained, to qualify as a charity under the Income Tax Act, organizations must demonstrate, among other things, that they “have been established for, and continue to operate in support of, purposes that are exclusively charitable under common law.”¹¹ Citing various cases, including the seminal 1891 case of *Pemsel*,¹² the Directorate summarized the Common Law categories of charities and elaborated the meaning of “advancing religion”:

The Courts have recognized as charitable those purposes and activities that: 1) relieve poverty, 2) advance education, 3) advance religion, 4) benefit the community as a whole in a way which the law has deemed charitable... The Courts have established that an organization can only be considered to be advancing religion in the charitable sense to the extent that its activities advance religious, charitable purposes and are not directed towards other purposes that are not in themselves charitable under common law.¹³

In the same letter, the Directorate also assured ISAC that its concerns were not tied to the fact that ISAC was Muslim-led or faith-based: “the advancement of religion in the charitable sense embraces the advance of the Islamic faith, and the Directorate has registered, and continues to register, organizations that advance the Islamic faith.”¹⁴

According to the Directorate, the amended constitution “appear[ed] to extend beyond what is generally understood by the courts as the advancement of religion.”¹⁵ The following are the amended provisions in the constitution that the Directorate believed fell outside the category of “advancing religion”:

“to present the correct image of Shi’a throughout Canada and the world;”

“[t]o safeguard and further the religious, moral, social, and educational interests of the followers of the Shi’a Ithna-asheri faith, in particular the younger generation in Canada;”

“[t]o support activities and positions among Shi’a with respect to cultural, economic, and social development in Canada;”

“[t]o collaborate and cooperate as appropriate with other religious organizations;” and

“[t]o assist and coordinate among existing Shi’a centres to expand their activities and to promote their cultural, social, and economical standing.”¹⁶

For comparative purposes, we place the revised provisions side by side with their much earlier versions, which passed Directorate scrutiny in 1994:

Earlier Provisions	Amended Provisions
To promote the teachings of Islam according to Shia Ithna-asheri faith	To present the correct image of Shi’a throughout Canada and the world
To safeguard and further the religious, moral, social, and educational interests of the followers of the Shia Ithna-asheri faith.	To safeguard and further the religious, moral, social, and educational interests of the followers of the Shi’a Ithna-asheri faith, in particular the younger generation in Canada
N/A	To support activities and positions among Shi’a with respect to cultural, economic, and social development in Canada.
To collaborate and co-operate as appropriate with other religious organizations	To collaborate and cooperate as appropriate with other religious organizations
N/A	To assist and coordinate among existing Shi’a centres to expand their activities and to promote their cultural, social, and economical standing with respect to cultural, economic, and social development in Canada.

Comparison shows that only two of the amended objectives are new, while two others reflect changes in wording and an interest in youth.¹⁷ We appreciate that changes in wording can and should prompt close inspection by auditors tasked with overseeing that organizations comply with the fundamental purposes of charities under the Common Law. But as we further examine the nature of the scrutiny and how it took shape, we cannot help but be concerned with the Directorate's apparent narrow understanding of "advancing religion," particularly as applied to religious traditions that have a more recent presence in Canada's public memory. The following are examples of the Directorate's concerns about ISAC and its advancement of religion.

The Charities Directorate and the Limits of "Advancing Religion"

The Charities Directorate denied that promoting brotherhood, mutual aid, and fraternal ties between people and groups advances religion, in the legal sense.¹⁸ In a 2013 letter, the Directorate wrote: "*To create, cultivate and maintain goodwill, amity and understanding between the followers of the faith in particular, and humanity in general*", is not only broad and vague, but the courts have not considered objects that promote brotherhood, mutual aid, and fraternal ties between individuals and/or groups that share a common connection to be analogous to the advancement of religion in the legal sense."¹⁹

The Charities Directorate's understanding and application of the Common Law category of "advancing religion" does not account for how the distinct religious history of Shi'a Islam may have informed ISAC's commitment to this objective as part and parcel of its advancement of religion.²⁰

The sectarian divide between Sunni and Shi'a Islam involves a long history of Sunni persecution of the Shi'a, which we continue to see today.²¹ Current geopolitics in the Persian Gulf region pit many Sunni monarchies against the Shi'a Islamic Republic of Iran (as well as any regime that might be friendly to Iran, e.g., Qatar).²² The sectarian divide, with this long-standing history of Sunni persecution, has created what some have called a "Shiaphobia," making Shi'a Muslims in Canada doubly vulnerable as minorities.²³ First, they are minorities in a majority-white-Christian Canada; as such, Canada's Shi'a Muslim community is no less subject to increased surveillance and policing since September 11, 2001, than Sunni Muslims. Second, they are minorities within Canada's Muslim communities, which are mostly Sunni in religious orientation.²⁴ As Oliver Scharbrodt writes, Shi'a Muslims in the West "need to undertake particular efforts to maintain both an Islamic as well as particular Shia identity in terms of communal activities and practices and public perception and recognition, responding to the rise of Islamophobia more generally and anti-Shia sectarianism more specifically."²⁵

The history of Shi'ism, and the persecution Shi'a Muslims have faced over centuries, inform Shi'a Muslims' understanding of their place in the world. Given their religious history and complex contemporary context, it is hardly surprising that a Shi'a Muslim organization like ISAC would devote itself to the pursuit of brotherhood, friendship, and interfaith relations. In light of the history of Shi'a Islam, the rise of Islamophobia, and the anti-Shi'a sectarianism Shi'a Muslims face, objectives that prioritize the teaching of Shi'a Islam and creating networks with other Shi'a organizations in Canada speak to the need to organize against anti-Shi'a sentiment among segments of the Sunni Muslim population. Moreover, objectives that prioritize brotherhood with those of other faiths in Canada create a programmatic vision against increasing Islamophobia across Canada. Indeed, as recent studies have shown, Canada is home to a surprisingly high degree of anti-Muslim sentiment online.²⁶

Certainly it is plausible that the Charities Directorate auditors found ISAC's language ambiguous. Nevertheless, it is curious that the Charities Directorate would consider the promotion of brotherhood within the faith and across communities outside the scope of "advancing religion." Its own Draft Guidance on "advancing religion," as released through an Access to Information and Privacy request, explains that the "advancement of religion can include ecumenical and inter-faith purposes."²⁷ From the above, it seems that the Charities Directorate neither appreciated nor allowed for how ISAC's objectives embraced important work against historic and contemporary marginalization of the Shi'a Muslim community.

The Charities Directorate and Alleged Non-Religious Activity

The Directorate held that some of ISAC's activities were more social than religious. In that same 2013 letter, the Charities Directorate wrote that ISAC's Eid festivals took place "two and a half weeks after the recognized religious dates for which Eid ul-Fitr celebrations typically occur, that is after the fasting month of Ramadan."²⁸ The Directorate noted that for the years 2008–2010, Eid ul-Fitr occurred on September 30–October 1, September 18–20, and September 9–10, whereas ISAC's events took place on October 19, October 4, and September 19, respectively.²⁹ The Directorate used these time lags to question whether the primary purpose of the event was to "advance religion in a charitable sense." Rather, they suggested, "the occasion appears to have adopted a primarily social rather than religious objective... to hand out awards and recognitions, and not the celebration of a religious obligation."³⁰

This particular claim is suspicious for a few reasons.

First, it presumes that celebrations of religious festivals can and should be held on the date on which the festival falls in the religious calendar. This presumption arguably reflects a Christian bias in the audit. Since Confederation, Canada has constitutionally ensured a special place for both the Protestant and Catholic faiths. It is therefore not surprising that celebrations of Christmas and the observation of Easter can be held on the specific days identified in religious calendars, as such religious holidays also enjoy statutory protections.³¹ There are no statutory holidays that include Islamic religious holidays.

Second, because Islamic holidays follow the lunar calendar, the date is not always consistent with the solar calendar, the latter being nearly two weeks longer. Consequently, Islamic religious holidays can occur on weekdays, during working and school hours.

Third, for Muslim-led religious organizations, planning and organizing religious holidays and festivals poses challenges that those celebrating statutorily protected Christian holidays do not face. Muslims across Canada have to decide each year whether to take time off from work (paid or unpaid) to attend religious services on the day of the festival. Muslim students across the country have to decide between taking an in-class exam when scheduled, or missing it to attend religious ceremonies. It is hardly surprising that organizations like ISAC, wanting to serve their communities, would organize events so as to limit the trade-off costs that are always part of religious minority life in Canada. Consequently, the fact that the Eid festivals were organized two weeks after Ramadan concluded is hardly determinative of whether the festival was religious or not.

Fourth, by characterizing the Ramadan festival as "fun" and "not religious," the Directorate did not integrate the organization's full-scale Ramadan event schedule. Ramadan itself is a period of approximately thirty days of fasting during which

various religious institutions hold special prayers, religious classes, or iftar dinners at the end of each fast. These month-long endeavours give “religious” content to the celebration of Ramadan, of which the Eid ul-Fitr festival is the final and culminating event. We learn from the Directorate’s interview with Sajan that ISAC organized Eid prayers and dinners, lectures, workshops, and a range of other public meetings for their community members.³² But we are not told whether these various events occurred during Ramadan, or how they may have been related to the festival itself.

It may be appropriate for the Directorate to consider whether social activities are more than merely incidental to the core purpose of an organization’s advancement of religion. But from the interview and follow-up questions, we find a particular focus on certain events, such as the Eid dinners, suggesting that what counts as “religious” must be organized around major, single-day religious holidays. This approach may certainly work for some religious traditions, but not all. Indeed, Ramadan is an example of an extended religious holiday period spanning thirty days, featuring not just festivals and fasting, but also a slew of activities that support the community in a time of challenging ritual practices.

Regulating “Religion”

The category of “religion,” as deployed by the Charities Directorate in the legal sense, does not adequately anticipate traditions that cannot reshape themselves to follow the Christian-infused Common Law understanding of “advancing religion.”³³ According to the Charities Directorate, charities are organizations that serve distinct purposes, as defined under Common Law:

The Courts have recognized as charitable those purposes and activities that: 1) relieve poverty, 2) advance education, 3) advance religion, 4) benefit the community as a whole in a way which the law has deemed charitable.³⁴

Of these four categories, advancing religion was the central organizing purpose for both ISAC and the Ottawa Islamic Centre. As the Charities Directorate explained in a letter to ISAC:

the Courts have established that an organization can only be considered to be advancing religion in the charitable sense to the extent that its activities advance religious, charitable purposes and are not directed towards other purposes that are not in themselves charitable under common law.³⁵

But the challenge that ISAC faced, perhaps without fully realizing it, is that the Common Law’s formulation of “advancing religion” is entrenched in a Christian frame of reference. As French scholar Nadia Marzouki explains, religions such as Islam (as well as presumably Judaism and Hinduism), can only find acceptance in the North American public sphere “through the formatting of Islam as a faith.”³⁶ This focus on faith, expressed in terms of individual belief or spirituality, coincides with the dominant Protestant-infused ideal of religion as individual faith, belief, and conscience, which is separable from (secular) practices affecting the public sphere.³⁷ As Marzouki argues, this formatting dynamic became even more significant with respect to Islam after September 11, 2001, when politicians and pundits called for an Islamic “reformation” with respect to “all forms of Islam [which] are now suspect for not looking enough like post-Reformation Christianity.”³⁸

The CRA is of course fully aware that Canada is a multicultural state and that regulating the charities sector must account for the distinctiveness of a diverse range of ethnocultural communities. In its 2005 policy statement, *Applicants Assisting Ethnocultural Communities*, the CRA offers guidelines to determine if an “ethnocultural organization or an applicant providing assistance to ethnocultural communities in Canada can be registered as a charity.”³⁹ It recognizes the need to provide more comprehensive guidance in cases of ethnocultural groups seeking to advance religion, noting:

CRA is looking at various issues that arise under this category of charity with a view to publishing comprehensive guidance on the advancement of religion. The final policy will be linked to this section when it becomes available.⁴⁰

At the time of writing, no such comprehensive guidance was available.

Without such additional guidance, we remain concerned that the Charities Directorate’s approach to “advancing religion” may be formatted in accordance with a predominantly Christian-inspired understanding of religion. This seems apparent in the ISAC case study, especially when considering how the Directorate defined ISAC’s activities as not advancing religion but designed for collateral political purposes.

OTHERING ISAC AS AN AGENT OF IRAN: THE “COLLATERAL POLITICAL PURPOSES” EFFECT

Having found that ISAC did not satisfy the Common Law test for advancing religion, the Charities Directorate concluded that ISAC’s operations were “in support of a collateral *political purpose*.”⁴¹ Specifically, the Directorate believed the Assembly’s revised constitution was “written to further unstated collateral purposes, which are... to support the operational goals of the Iranian Ahlul Bayt (a.s.) World Assembly (ABWA) in Canada.”⁴² Given the Harper Government’s combative stance against Iran at the time, this link between ISAC and ABWA rendered ISAC a domestic threat. In short, once the Charities Directorate found that ISAC did not “advance religion,” it used “collateral political purposes” to associate a domestic organization managed by Canadian citizens with a foreign country that was deemed a global threat to peace and security. In the final notice of revocation, the Charities Directorate insisted that, among the various grounds for revoking the Assembly’s charitable status was that it was a “facilitator organization to support the operational goals of the socio-political organization, Iranian Ahlul Bayt (a.s.) World Assembly (ABWA), in Canada.”⁴³ In other words, the Directorate characterized ISAC as a Canadian front for an Iranian-controlled global organization committed to spreading Iranian revolutionary ideology worldwide.

Canada-Iran Relations and the ISAC Audit

The diplomatic standoff between Canada and Iran served as background to the Directorate’s audit of ISAC. Canada’s hardening stance against Iran, which occurred roughly at the same time as the audit, may explain several of its features. The Directorate first expressed its concern about the Assembly as a front for Iran’s ABWA in 2008, two years into the Harper minority government. Since 2006, the Harper Government joined the international community in imposing sanctions in response to Iran’s nuclear program. Thereafter, Canada’s sanction regime increased as diplomatic relations became more and more tense. By 2010, Canada

had created a regime of sanctions under the Special Economic Measures Act (Iran SEMA), based upon

a finding by the Governor in Council that Iran's failure to meet its international obligations amounted to a grave breach of international peace and security that had resulted or was likely to result in a serious international crisis. The SEMA (Iran) sanctions were increasingly tightened through amendments made in October 2011, November 2011, January 2012, December 2012 and May 2013 resulting in a broad prohibition of exports and imports to and from Iran, subject to certain exceptions, and on financial transactions.⁴⁴

Canada's antagonistic relationship with Iran grew as the Harper Government gained greater power in Parliament after the 2011 elections: the amendments to the Iran SEMA all occurred after the Harper government obtained a majority in Parliament. Correspondingly, ISAC's formal audit did not begin until 2011. In fact, the Directorate's initial interview with Sajjan occurred in October 2011, nearly six months after Harper's Conservative government won a majority in Parliament, and only days after Prime Minister Harper declared Iran "probably the most significant threat in the world to global peace and security."⁴⁵

The Harper Government's antagonism toward Iran quickly resulted in a formal dissolution of diplomatic relations in September 2012. That antagonism was perhaps best expressed by then foreign minister John Baird in his October 1, 2012, address to the UN General Assembly:

Today, the most significant threat to global peace and security remains the regime in Iran. It refuses to comply with Security Council resolutions. It routinely threatens the very existence of the State of Israel.... It provides aid, comfort, and support to terrorist groups. It is guilty of the widespread and massive repression of the human rights of its own people, including gays, lesbians and religious minorities.... The Government of Canada has not only formally listed the Iranian regime as a State sponsor of terrorism under Canadian law, but we have also suspended diplomatic relations.... While Canada prizes engagement and open relations, there can be no open engagement with a regime that dishonours its word, repudiates its commitments and threatens to perpetuate crimes against humanity.⁴⁶

Closing its already sparse embassy in Tehran, Baird instructed all Iranian diplomats in Canada to leave Canada within five days.⁴⁷ Eight months later, on April 15, 2013, the Charities Directorate informed ISAC of its conclusions, namely that ISAC was a Canadian front for Iran's ABWA. Interestingly, a year later, the government leveraged its antagonism against Iran to take aim at the voluntary sector. In 2014 the Canadian government introduced an amendment to the Income Tax Act (paragraph 149.1(25)(c)) allowing the CRA to refuse to register a charity that had received a gift from a foreign state listed under section 6.1(2) of the State Immunity Act.⁴⁸ At the time, Iran and Syria were the only two countries listed, and remain so at the time of writing.⁴⁹

Canada's official policy toward Iran remains chilly under the Trudeau government. Despite Justin Trudeau's campaign rhetoric to improve relations with Iran, his government supported a Conservative party motion to cease diplomatic talks and to list Iran's Islamic Revolutionary Guard as a terrorist group. The harder Liberal stand

against Iran occurred in the wake of futile talks between consular officials about Iranian Canadians detained in Iranian jails and prevented from leaving the country.⁵⁰

The Directorate's Iranian Connection: Marshalling Evidence

Throughout the audit and in the final letters announcing its conclusions, the Charities Directorate utilized a number of strategies to suggest a suspect link between Iran and ISAC. This section examines and unpacks these strategies.

1. What's in a Name?

Not unlike Industry Canada's earlier confusion when the organization incorporated in 2011, the Charities Directorate was confused about the usage of "Ahlul Bayt" in the names of both ISAC and ABWA. Whereas Industry Canada's concern with the name was to ensure people could distinguish between the Montreal- and Toronto-based groups, the Charities Directorate's concern about the naming practice seemed motivated by its concern about Iranian influence. Indeed, it overtly queried "whether this reference to the AHLUL BAYT refers to the Ahlul Bayt (a.s.) World Assembly."⁵¹

The Directorate seemed unaware of the phrase "ahl al-bayt," which may explain its repeated requests for clarification about the term as expressed in the organization's constitution. For instance, ISAC's amended constitution read in part that the organization would "defend the principles of the AHLUL BAYT and their followers around the world."⁵² Likewise it sought the "preservation and protection of the values governing the AHLUL BAYT."⁵³ For each of these provisions, the Charities Directorate separately asked ISAC to "provide us with a detailed explanation of what the principles of the 'AHLUL BAYT' are, where, and by whom, these principles have been enunciated, and how the Assembly operates to defend these principles."⁵⁴

In his reply to the Directorate, Ghulam Sajan explained the meaning and widespread usage of this Arabic phrase:

It seems that we need to clarify the words "Ahlul Bayt".... There are over 200 million Muslims in the world who are followers of the Ahlul Bayt. Ahlul Bayt means the household. Over [a] period of time the words have been confined to the household of the Prophet Muhammad.... The Shi'a are known by several names as follows... **Followers of Ahlul Bayt**, the Prophet's household.⁵⁵

With respect to the Directorate's suspicion about an alleged ISAC-ABWA connection, Sajan replied:

The fact [that] there is an organization "Ahlul Bayt (a.s.) World Assembly" in Iran does not mean that we are a branch of it or have any direct connections with it. We have provided a link to their website simply for the Shi'a and others interested to be able to access any information about them.... While we have provided a link, we have also provided links to other sites like the site for Ayatullah Sistani. The Islamic Propagation office has useful publications which readers can obtain directly.⁵⁶

The reference to Ayatullah Sistani's site may be to the portal www.sistani.org. The English version of the portal contains links to a number of institutes that include in their name some transliterated version of Ahlul Bayt. Ayatullah

Sistani is a leading Shi'a cleric in Iraq. After the United States invaded Iraq in 2003, there was hope among some sectors that Sistani would work with them to preserve a semblance of effective transition in Iraq.⁵⁷ Notably, Sistani maintains friendly relations with Iran,⁵⁸ which is hardly surprising given the inevitable role Iran plays for Shi'a Muslims the world over, as a kind of homeland where their faith is not a matter for persecution.⁵⁹ Yet Canadians have reason to look favorably upon Sistani. In 2006, in response to the arrest of the Toronto 18 terror suspects, Sistani issued a fatwa or edict advising Canada's Muslims to obey the laws of the country.⁶⁰

2. Audit Questions and the Iranian Focus

The Directorate's initial questions to Sajan, the representative of ISAC, illustrate the degree to which Iran and ABWA were central concerns in the audit:

2.12. Does a representative of the Assembly participate in any conferences? If so, who.

2.13. Does a representative of the Assembly travel internationally? If so, who.

2.14. With reference to your response to your letter of October 18, 2008 where you "categorically deny that you are a Canadian branch of the Ahlul Bayt World Assembly . . ."... Mr. Sajan was asked why he was invited [to Iran].

2.14.1. Has the Assembly, since its inception, ever turned to the Ahlul Bayt (a.s.) World Assembly in Iran for any type of guidance, such as: assistance, instruction, leadership, advice, direction, religious guidance, spiritual leaders, scholars, and/or speakers, for any reason?

2.14.2. Are any of the Assembly's directors or trustees associated with the Ahlul Bayt (a.s.) Assembly in Iran?

2.14.3. In CRA's letter of July 21, 2008, we noted that the Ahlul Bayt (a.s.) World Assembly's website contained a report written by the Assembly. Please provide your comments.

10.10. Does the Assembly have any member organizations outside of Canada?

16.5. Does the Assembly have any foreign bank accounts?

16.13. By what means are funds transferred overseas by the Assembly?

28.1 [Foreign activities (specific to the Assembly)] Was the Assembly involved in overseas projects?⁶¹

ISAC responded that individual members may have attended conferences in Iran. Incidentally, this is not surprising. Since the dawn of the Safavid Empire in the early sixteenth century, Persia has cultivated intellectual and religious institutions in which Shi'ism could grow and develop.⁶² Major scholarly centres of Shi'a learning are based in modern Iran: Qom is the leading Shi'a seminary city in the world, with Iraq's Najaf close behind. This alone makes Iran an important destination for individual Shi'a Muslims who seek to advance their study of religion and devotional teachings. Moreover, Sajan reiterated that the mere fact that ISAC members may have traveled to Iran did not imply ISAC was a Canadian branch of Iran's World Assembly.⁶³

In its follow-up interview questions, the Directorate requested a series of “clarifications and records with respect to Ahlul Bayt World Assembly.”⁶⁴ The follow-up questions began as follows: “In CRA’s letter of July 21, 2008 we noted that the Ahlul Bayt (a.s.) World Assembly’s website contained a report written by [ISAC].” Incidentally, Sajan responded in his own handwriting that no one from ISAC submitted that report to ABWA. Rather, “it seems the World Assembly picked the information from the [ISAC] web-site.”⁶⁵ Such behaviour would not be entirely surprising. As scholars of Iran have explained, Iran exercises an, at-times, hegemonic desire to posit itself as the global leader of transnational Shi’ism, proffering itself as the “Vatican of Shi’ism” for Shi’a Muslims worldwide.⁶⁶

The follow-up questionnaire issues specific questions in bold lettering:

At this time the CRA would ask that the Assembly [ISAC] provide a detailed history of its relationship and/or contact with the Ahlul Bayt World Assembly (ABWA) regardless of purpose or outcome.

This history should answer questions, such as:

- **Who from ABWA contacted the Assembly [ISAC]?**
- **Who from the Assembly [ISAC] was in contact with ABWA?**
- **What was the purpose of ABWA’s contact with the Assembly [ISAC]?**
- **When did contact between ABWA and the Assembly [ISAC] begin?**
- **How often has ABWA contacted the Assembly [ISAC]?**
- **When did ABWA initially contact the Assembly [ISAC]?**
- **How does ABWA and the Assembly [ISAC] communicate with each other?**⁶⁷

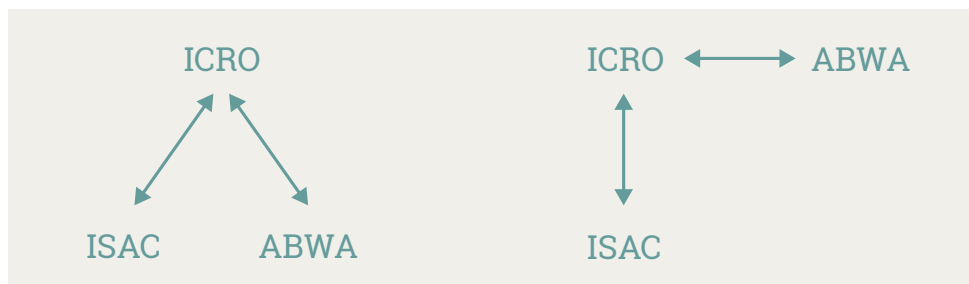
Despite Sajan’s adamant rejection of any affiliation between ABWA and ISAC, it appears that the Directorate did not believe him.⁶⁸ In its 2013 letter, the Directorate concluded that ISAC was a Canadian affiliate of ABWA. The audit emphasized evidence that ABWA’s news agency had identified ISAC as a local chapter of ABWA. Ironically, rather than give weight to the words of a Canadian citizen, the Charities Directorate put more stock in the website of an agency backed by a government that the Government of Canada officially considered unreliable and duplicitous.

3. The Spectre of Terrorism

On September 7, 2012, when the Government of Canada severed all diplomatic ties with Iran, the Governor in Council issued an order to establish a list of state supporters of terrorism.⁶⁹ Unsurprisingly, Iran was the first state listed. Consequently, the mere suspicion that ISAC might be associated with ABWA meant that by 2012, ISAC was associated with a state sponsor of terrorism, thereby bringing it under Canada’s anti-terrorism mandate. The Directorate’s research on ABWA, contained in an Appendix to its 2013 letter, claimed that among ABWA’s various affiliates was the Lebanese group Hizbullah, which has been on Canada’s terrorist entities list since 2002.⁷⁰ The Directorate claimed a link between ISAC and Hizbullah mediated through ABWA.

The link, however, is tenuous because it requires following a small amount of money through a number of organizations, whose command-and-control

relation is assumed but not firmly established. According to Appendix A, the Iranian Cultural Centre in Ottawa gave ISAC \$500. The Cultural Centre falls under the auspices of the Islamic Culture and Relations Organization (ICRO). ICRO and ABWA, we are told, work together in their shared missions: “The Ahlul Bayt (A.S.) World Assembly (ABWA) is identified as a department of ICRO, and as one of two ‘lateral organizations’ with which ICRO currently collaborates.”⁷¹ Put differently, the Directorate does not appear to know exactly how ABWA and ICRO are institutionally related; in some unspecified manner they nonetheless work together. The implication of this analysis is to posit a command-and-control relationship between ISAC and ABWA in one of the two following schemes:



Identifying with precision the command-and-control relationship between these organizations did not preoccupy the Directorate. Rather, the Directorate quickly integrates into its analysis Hezbollah and the spectre of terrorism:

- Mohammad Hassan Akhtari, ABWA's current Secretary General and Iran's former ambassador to Syria (1986–1997 and 2005–2008), is reportedly regarded as the “operational father” of Hezbollah. He earned this title by supervising the development of Hezbollah's military structure, and continued to operate Hezbollah projects in Lebanon during his second term as ambassador to Syria.
- Hassan Nasrallah, the leader of Hezbollah, is a current member of ABWA's Supreme Council.
- Former Grand Ayatollah Mohammad Hussein Fadlallah, a previous member of ABWA's Supreme Council, was the top Shi'ite cleric in Lebanon and was believed to have been responsible for attacks against Western targets.
- Naim Qassem, the Deputy Secretary General of Hezbollah, was invited by ABWA to speak at the opening ceremony of its 5th General Assembly meeting, held in Tehran in September 2011.⁷²

Nothing in Appendix A suggests that there is a robust connection between ISAC and Hezbollah. But the mere spectre of terrorism seemed sufficient for the Directorate to overcome limits and ambiguities in the evidentiary record. As the Charities Directorate concluded in its 2016 Notice of Intention to Revoke, “It is our position that activities which support the operational goals of ABWA would lack the charitable requirements to meet the public benefit test because of ABWA's strong political agenda, and its direct affiliations to both the Islamic Republic of Iran and Hezbollah, a listed terrorist entity in Canada.”⁷³

4. Researching Iran at the Charities Directorate

When the Charities Directorate recommended revocation of charitable status in its 2013 letter, it included Appendix A, a research memorandum designed to substantiate its concerns about ABWA and its Iranian Government affiliations.

A close reading of Appendix A shows that the Directorate's interpretation of the evidentiary record relied on significant misreadings of the historical record. Below is a sample of instances where Appendix A indulged in common stereotypes of Iran, in direct contrast to the very literature the Directorate cited as justification:

- Based solely on a reading of the Iranian constitution and some online resources from the US government, Appendix A claims that Iran's Supreme Leader is the most powerful figure in government.⁷⁴ One cited article by M. Rizvi characterizes the Supreme Leader in purely formal constitutional terms, while locating the office in the political thought of Khomeini. But upon review, the article offers little insight on the realities of day-to-day governance in the Iranian regime. Another cited article by Haggay Ram examines Iran's foreign policy between 1979 and 1994, which is largely irrelevant for the audit given that the Assembly was not registered as a charity until 1994. Moreover, Ram distinguishes between the dogma of Islamism and the actual practice of foreign policy, the latter of which prioritizes national integrity over exporting revolutionary ideals of Islam and Shari'a.⁷⁵ Appendix A relies upon a study by Wilfried Buchta, which the Directorate used to explain the Iranian government and its internal operations. But Appendix A repeatedly indulges in fanciful arguments that Buchta himself repudiates throughout his book. For instance, in contrast to the Directorate's formal view of Iranian politics, Buchta explains that formal, constitutionally defined authority does not manifest in actual power: "Although the Islamic-revolutionary leadership has an exclusive grip on state power, it does not hold a monopoly over the practice of politics in Iran."⁷⁶
- Appendix A describes Iran's "Islamic Culture and Relations Organization" (ICRO) as responsible for globally disseminating Iranian revolutionary ideals.⁷⁷ Citing Buchta, Appendix A claims that ICRO operates through cultural bureaus in Iran's various embassies. It then concludes that these bureaus are actually responsible to the Supreme Leader.⁷⁸ Recall that the Directorate claimed that ABWA, which collaborates with the ICRO, had influenced ISAC's operational goals. The basis for this claim was a \$500 contribution to ISAC from the Iranian Culture Centre in Ottawa in October 2011.⁷⁹ The Directorate claimed in Appendix A that "our research indicates that the Cultural Centre is linked to the Islamic Culture and Relations Organization (ICRO) and that the ICRO collaborates with ABWA."⁸⁰

While the Directorate relies on Buchta's study for support, a careful reading of Buchta suggests the exact opposite conclusion. Buchta questions whether the cultural bureaus are motivated by "patronage" or "effective control." While there is too little information to make a firm and strong determination, Buchta "believes that patronage is the clear emphasis" and not control as the Directorate implied of the \$500 donation.⁸¹ His principal rationale is that the Supreme Leader suffers a major political limitation: Khamenei has neither the popular reach nor the religious credentials that were first imagined for the position of Supreme Leader. He was a compromise candidate when elected to the office—a compromise that continues to limit his command within Iran, and among Shi'a globally. The Directorate's misreading of Buchta supports its conclusion that ISAC is a Canadian affiliate of ABWA. But if the Directorate had adopted Buchta's conclusion, the Directorate could not have characterized the \$500 donation as a sign of ABWA control and ISAC's subordination; rather, Buchta's conclusion would support seeing the donation as ordinary patronage and support, rather than a measure or index of command and control.

The audit of ISAC seems to claim that Iran is ruled by a totalitarian regime that has the capacity to command the loyalty of Shi'a Muslims worldwide, a stereotype that alarmingly echoes the rhetoric used to justify persecution of Shi'a Muslims worldwide. Since the 1979 Iranian revolution, Sunni Arab have considered their domestic populations of Shi'a as suspect, manipulable proxies for Iran.⁸² Saudi clerics commonly describe Shi'a Muslims as unbelievers and "agents of Iran."⁸³ The deposed President of Egypt, Hosni Mubarak, went so far as to say in 2006 that "Shiites are mostly always loyal to Iran and not to the countries they live in."⁸⁴ In 2009 the United Arab Emirates (UAE) deported hundreds of Lebanese Shi'a who refused to spy on Hizbullah; UAE security services inferred from their refusal that they could not be trusted, despite having lived in the UAE for years if not decades.⁸⁵ Jordan's King Abdullah expressed a similar distrust of domestic Shi'a, "warning of a 'Shiite crescent' stretching from Syria and Lebanon in the West until Iraq, Iran and the Gulf States."⁸⁶ These countries' suspicion about their domestic Shi'a population is not surprising among Sunni Arab countries, many of which are authoritarian monarchies that see in the Iranian revolution a threat to their hold on power.⁸⁷

There are a wide range of considerations involved in foreign policy development and implementation, which certainly fall outside the scope of this report. Nonetheless, we find concerning (a) the ease by which Appendix A indulges certain stereotypes of Iran and its presumed hold on Canada's domestic Shi'a communities, (b) the audit's reliance on a limited evidentiary record to cast a Canadian Shi'a organization as suspiciously connected to Iran, and (c) the temporal correlation of both of these findings with Canada's decision to heighten sanctions on Iran and ultimately sever diplomatic ties with the country.

1. Constitution of the Ahlul-Bait Association, articles 1, 4. The founders of ISAC originally referred to it simply as The Ahlulbait Group. Minutes of Meeting of Ahlulbait (A.S.) Group, February 16, 1992, in the authors' possession. The minutes also reveal that at this time the group was undecided about what to call itself formally.
2. One such booklet was Sayyid Saeed Akhtar Rizvi, *The Qur'ān: Its Protection from Alteration* (Toronto: ABANA, 1994). The preface to the book, written on behalf of the Ahlul Bayt Assembly of North America (ABANA) indicates that the text is based on a formal paper Rizvi delivered at a January 1992 conference in Tehran, Iran.
3. Minutes of Meeting of Ahlulbait (A.S.) Group, February 16, 1992; Constitution of the Ahlul-Bait Association, articles 1, 4.
4. Minutes of Meeting of Ahlul Bayt A.S., March 6, 1994.
5. *Encyclopaedia of Islam*, 2nd ed., s.v. "ahl al-bayt," accessed January 12, 2020, http://dx.doi.org/10.1163/1573-3912_islam_SIM_0378.
6. Minutes of Special General Meeting of Members, April 27, 2014.
7. Ghulam Sajan to Alexander Protic, Corporations Canada, April 11, 2011.
8. Sajan to Protic, April 11, 2011.
9. Form 3 Annual Summary (Sec 133), Corporation No. 777656-0, March 31, 2012 (signed by Ghulam Sajan, April 30, 2011).
10. Sajan to Charities Directorate concerning Name Change, December 6, 2012; Sajan to Corporations Canada, December 6, 2012. See also Form 3 Annual Summary (Sec 133), Corporation No. 777656-0, March 31, 2013 (signed by Ghulam Sajan, May 28, 2013).
11. Daniel Davies-Ostrom to Ghulam Abbas Sajan, July 21, 2008.
12. *Commissioners for Special Purposes of Income Tax v. Pemsel*, [1891] A.C. 531.
13. Davies-Ostrom to Sajan, July 21, 2008 (emphasis added).
14. Davies-Ostrom to Sajan, July 21, 2008.
15. Davies-Ostrom to Sajan, July 21, 2008.
16. Davies-Ostrom to Sajan, July 21, 2008 (italics in original).
17. In Ghulam Sajan's reply to Davies-Ostrom on behalf of the Assembly, he reiterated that many of the provisions Davies-Ostrom identified were in its older constitution, under which the Assembly had been governed since it was registered as a charity. Moreover, any problematic wording could easily be amended to ensure compliance with CRA guidelines. Sajan to Davies-Ostrom, October 18, 2008.
18. Davies-Ostrom to Sajan, July 21, 2008.
19. Souraya Ghatit to Islamic Ahlul Bayt Assembly of Canada, attn: Ghulam Sajan, April 15, 2013.
20. The early history of Shi'ism locates its formation in response to a core question of leadership upon the death of the Prophet Muhammad in 632 CE. At that time, the issue of how the nascent polity of Muslims in the Arabian Peninsula would continue as both a religious community and a political one was subject to debate. This issue raised subsidiary questions about who would lead and the bases on which leadership would be ascertained. According to what would later become the Shi'a theological position, leadership ought to devolve along the lineage of Muhammad himself. To that end, Shi'a Muslims believe the first caliph after the Prophet's death should have been 'Ali b. Abi Talib, the Prophet's son-in-law, and that he should have been followed by the Prophet's grandsons Hasan and Husayn. Historically that did not happen. Shi'a opposition to the caliphs in power put the Shi'a on the margins relative to the expanding Sunni majority of Muslims (then and now). The Shi'a were often viewed as threats to the growing polity emanating from the Arabian Peninsula, and consequently were victims of official persecution by what would become a Sunni majority across the medieval Muslim world. For primers on the history and doctrine of Shi'a Islam, see Moojan Momen, *An Introduction to Shi'i Islam: The History and Doctrines of Twelver Shi'ism* (New Haven, CT: Yale University Press, 1985); Najam Haider, *Shi'i Islam: An Introduction* (New York: Cambridge University Press, 2014).
21. Raihan Ismail, "The Saudi Ulema and the Shi'a of Saudi Arabia," *Journal of Shi'a Islamic Studies* 5, no. 4 (2012): 403–22.
22. Valeri Modebadze, "The Battle for Regional Dominance Between the Kingdom of Saudi Arabia and the Islamic Republic of Iran," *Journal of Liberty and International Affairs* 4, no. 3 (2018): 66–72.
23. Shereen Yousuf, "Right to Offense, Right to Shiaphobia: A Rhetorical Analysis of Yasir Qadhi's Framings of Offense," *Journal of Shi'a Islamic Studies* 9, no. 1 (Winter 2016): 39–62; Sarah Shah, "Chapter 6—Minorities within Minorities," in *Defining, Refining, and Enacting Religious Reflexivities in Pakistani Canadian Muslim Families* (PhD diss., University of Toronto, 2019).
24. Sarah Shah, "Canadian Muslims: Demographics, Discrimination, Religiosity, and Voting," *Institute of Islamic Studies Occasional Paper Series*; Oliver Scharbrodt, "A Minority within a Minority?: The Complexity and Multilocality of Transnational Twelver Shia Networks in Britain," *Contemporary Islam* 13 (2019): 287–305.
25. Scharbrodt, "A Minority within a Minority?," 288.
26. Jacob Davey, Cécile Guerin, and Mackenzie Hart, *An Online Environmental Scan of Right-Wing Extremism in Canada*, Institute for Strategic Dialogue, June 19, 2020, <https://www.isdglobal.org/isd-publications/canada-online>.
27. Canada Revenue Agency, "Advancement of Religion and Charitable Registration," *Canadian Charity Law*, October 24, 2017, ¶91–93, https://www.canadiancharitylaw.ca/uploads/CRAAs_Draft_Guidance_Advancement_of_religion_and_charitable_registration_is_released_through_ATIP.pdf.
28. Ghatit to Islamic Ahlul Bayt Assembly of Canada, attn: Sajan, April 15, 2013.
29. Ghatit to Islamic Ahlul Bayt Assembly of Canada, attn: Sajan, April 15, 2013, n. 22.
30. Ghatit to Islamic Ahlul Bayt Assembly of Canada, attn: Sajan, April 15, 2013. See also Cathy Hawara to Islamic Shia Assembly of Canada (Notice of Intention to Revoke), February 11, 2016.
31. For a list of public holidays in 2021, see Government of Canada, "Public Holidays," Government of Canada, modified December 23, 2020, <https://www.canada.ca/en/revenue-agency/services/tax/public-holidays.html>.
32. Islamic Ahlul Bayt Assembly of Canada, Interview with Ghulam Sajan (Pre-Audit Questionnaire), October 25, 2011, Section 3.

33. This limitation to the Common Law is also apparent when Indigenous peoples claim the protection of religious freedom for their traditions and customs; the failure of Common Law courts to recognize their claims reflects an inability to envision their traditions as "religious." *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54, [2017] 2 S.C.R. 386.
34. Davies-Ostrom to Sajan, July 21, 2008.
35. Davies-Ostrom to Sajan, July 21, 2008.
36. Nadia Marzouki, *Islam: An American Religion, Religion, Culture, and Public Life*, trans. C. Jon Delogu (New York: Columbia University Press, 2017), 21. On this characterization of "religion" in North America, and the use of "formatting" as a critical tool of analysis, see Marzouki, *Islam*, 21–27.
37. Marzouki, *Islam*, 21. While Marzouki's study focuses on the United States, her analysis applies to Canada too, given domestic controversies that parallel those she analyzes.
38. Tracy Fessenden, *Culture and Redemption: Religion, the Secular, and American Literature* (Princeton, NJ: Princeton University Press, 2007), 213.
39. Canada Revenue Agency, "Applicants Assisting Ethnocultural Communities," Government of Canada, June 30, 2005, <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/policy-statement-023-applicants-assisting-ethnocultural-communities.html>.
40. Canada Revenue Agency, "Applicants Assisting Ethnocultural Communities," ¶40 et seq.
41. Davies-Ostrom to Sajan, July 21, 2008 (emphasis added).
42. Ghatit to Islamic Ahlul Bayt Assembly of Canada, attn: Sajan, April 15, 2013.
43. Hawara to Islamic Shia Assembly of Canada, February 11, 2016.
44. Global Affairs Canada, "Canadian Sanctions Related to Iran," Government of Canada, updated November 26, 2020, https://www.international.gc.ca/world-monde/international_relations-reactions-internationales/sanctions/iran.aspx?lang=eng.
45. Mark Kennedy, "Iran is Most 'Significant Threat' to World, PM Says," *Ottawa Citizen*, October 15, 2011, A2.
46. UN General Assembly, 19th Plenary meeting, A/67/PV.19, 3–4 (October 1, 2012).
47. Anne McLroy and Mark MacKinnon, "Split with Iran Stokes Diaspora's Fear, Draws Israel's Praise," *The Globe and Mail*, September 9, 2012, <https://www.theglobeandmail.com/news/national/split-with-iran-stokes-diasporas-fear-draws-israels-praise/article4531126/>.
48. *An Act to Implement Certain Provisions of the Budget Tabled in Parliament on February 11, 2014 and Other Measures*, S.C., 2014, c. 20, s. 21.
49. *State Immunity Act*, R.S.C., 1985, c. S-18. See also the following regulation made under the act *Order Establishing a List of Foreign State Supporters of Terrorism*, SOR/2021-170.
50. Michelle Zilio, "Liberals Back Tory Motion to End Diplomatic Talks with Iran," *The Globe and Mail*, June 13, 2018, <https://www.theglobeandmail.com/politics/article-liberals-back-tory-motion-to-abandon-diplomatic-talks-with-iran-until/>.
51. Davies-Ostrom to Sajan, July 21, 2008.
52. Davies-Ostrom to Sajan, July 21, 2008, citing the Assembly's amended constitution.
53. Davies-Ostrom to Sajan, July 21, 2008, citing the Assembly's amended constitution.
54. Davies-Ostrom to Sajan, July 21, 2008.
55. Sajan to Davies-Ostrom, October 18, 2008 (emphasis in original).
56. Sajan to Davies-Ostrom, October 18, 2008.
57. Barbara Slavin, "Obama Sent a Secret Letter to Iraq's Top Shi'ite Cleric," *Foreign Policy*, August 5, 2010, <https://foreignpolicy.com/2010/08/05/obama-sent-a-secret-letter-to-iraqs-top-shiite-cleric-2/>.
58. Mohammad R. Kalantari and Ali Hashem, "Washington Doesn't Understand Shiite Clerics in Iran or Iraq," *Foreign Policy*, January 30, 2020, <https://foreignpolicy.com/2020/01/30/washington-doesnt-understand-shiite-clerics-in-iran-or-iraq/>.
59. Tahseen Shams, *Here, There, and Elsewhere: The Making of Immigrant Identities in a Globalized World* (Stanford, CA: Stanford University Press, 2020), 82–83.
60. Sean Gordon, "Obey Laws of Canada: Iraqi Cleric," *Toronto Star*, June 15, 2006, A7.
61. Islamic Ahlul Bayt Assembly of Canada, Interview with Ghulam Sajan (Pre-Audit Questionnaire), October 25, 2011.
62. Rula Jurdi Abisaab, *Converting Persia: Religion and Power in the Safavid Empire* (London: IB Tauris, 2004); Farid Mirbaghari, "Shi'ism and Iran's Foreign Policy," *The Muslim World* 94, no. 4 (2004): 555–63, 556.
63. Islamic Ahlul Bayt Assembly of Canada, Interview with Ghulam Sajan (Pre-Audit Questionnaire), October 25, 2011.
64. Follow-up to Interview Questions for Islamic Ahlul Bayt Assembly of Canada (file: 0983205), annexed to letter from J. McCaffrey to Ghulam Abbas, November 16, 2011.
65. Follow-up to Interview Questions, McCaffrey to Abbas, November 16, 2011.
66. Roschanack Shaery-Eisenlohr, "Imagining Shi'ite Iran: Transnationalism and Religious Authority in the Muslim World," *Iranian Studies* 40, no. 1 (2007): 17–35, 20.
67. Follow-up to Interview Questions, McCaffrey to Abbas, November 16, 2011 (bold in original, italics added). There was some disagreement over whether Sajan had refused to show the draft to McCaffrey or if McCaffrey simply did not ask for a copy of the draft. Notably, the CRA represented Sajan as refusing to share the draft. See also Sajan to McCaffrey, January 1, 2012.
68. Sajan went so far as to include letters he wrote to the Iranian government complaining about how he was treated by ABWA when ABWA's leadership effectively took him hostage to extort Assembly funds and loyalty; see Sajan to McCaffrey, January 1, 2012.
69. *Order Establishing a List of Foreign State Supporters of Terrorism*, SOR/2012-170.

70. Public Safety Canada, "Hizballah," Public Safety Canada, updated November 21, 2018, <https://www.publicsafety.gc.ca/cnt/ntnl-scrtr/cntr-trrrsm/lstd-ntts/crrmt-lstd-ntts-en.aspx#30>.
71. Appendix A, attached to Ghatit to Islamic Ahlul Bayt Assembly of Canada, attn: Ghulam Sajan, April 15, 2013, p. A7 (footnotes omitted).
72. Appendix A, attached to Ghatit to Islamic Ahlul Bayt Assembly of Canada, attn: Ghulam Sajan, April 15, 2013, pp. A12–A13 (footnotes omitted).
73. Hawara to Islamic Ahlul Bayt Assembly of Canada (Notice of Intention to Revoke), February 11, 2016 (footnotes omitted, emphasis added). By the time Hawara wrote to the Assembly, the Government of Canada had already (as of September 7, 2012) listed Iran as a state sponsor of terrorism. For similar language, see also Ghatit to Islamic Ahlul Bayt Assembly of Canada, attn: Ghulam Sajan, April 15, 2013.
74. M. Mahtab Alam Rizvi, "Velayat-e-Faqih (Supreme Leader) and Iranian Foreign Policy: A Historical Analysis," *Strategic Analysis* 36, no. 1 (2012): 112–27; Haggay Ram, "Exporting Iran's Islamic Revolution: Steering a Path between Pan-Islamism and Nationalism," *Terrorism and Political Violence* 8, no. 2 (1996): 7–24.
75. Marzouki, *Islam*.
76. Wilfried Buchta, *Who Rules Iran? The Structure of Power in the Islamic Republic* (Washington, DC: The Washington Institute for Near East Policy and the Konrad Adenauer Stiftung, 2000), xiii.
77. Appendix A, in Ghatit to Islamic Ahlul Bayt Assembly of Canada, attn: Ghulam Sajan, April 15, 2013.
78. Appendix A, in Ghatit to Islamic Ahlul Bayt Assembly of Canada, attn: Ghulam Sajan, April 15, 2013. See also Buchta, *Who Rules Iran?*, 50.
79. In the pre-audit questionnaire dated October 25, 2011, ISAC responded that "once in a while, the Assembly has received funds from the Iranian Cultural Center, based in Ottawa." Moreover, while ISAC received donations from within Iran in the 1990s, "it has not received any foreign donations from 2008 onward." Interview: Islamic Ahlul Bayt Assembly of Canada (File: 0983205), October 25, 2011, sec. 17.2-17.3. The audit only identified a single \$500 contribution to ISAC.
80. Ghatit to Islamic Ahlul Bayt Assembly of Canada, attn: Ghulam Sajan, April 15, 2013.
81. Buchta, *Who Rules Iran?*, 50.
82. Rainer Brunner, "Shiism in the Modern Context: From Religious Quietism to Political Activism," *Religion Compass* 3, no. 1 (2009): 136–53, 142–43.
83. Jelle Puelings, "Fearing a 'Shiite Octopus': Sunni-Shi'a Relations and the Implications for Belgium and Europe," Egmont Paper 35, Archive of European Integration, January 2010, <http://aei.pitt.edu/13830/>, 5.
84. Brunner, "Shiism in the Modern Context," 143; Puelings, "Fearing a 'Shi'ite Octopus,'" 7, quoting an interview with Mubarak on news channel Al Arabiya.
85. Bassem Mroue, "Lebanese Allege They Were Deported from UAE Because They Refused to Spy on Hezbollah," *The Canadian Press*, October 1, 2009, <https://search.proquest.com/docview/360111091>.
86. Brunner, "Shiism in the Modern Context," 143.
87. The Project on Middle East Political Science, *Sectarianism and International Relations*.

CASE STUDY

**INTERNATIONAL
RELIEF FUND FOR
THE AFFLICTED AND
NEEDY-CANADA**

INTERNATIONAL RELIEF FUND FOR THE AFFLICTED AND NEEDY-CANADA

(IRFAN-CANADA)

IRFAN-Canada incorporated under the Canada Corporations Act on October 1, 1997, and applied to the CRA for charitable status on June 25, 1998. Though it was Muslim-led, IRFAN-Canada was not a charity that advanced religion. As noted in its application for incorporation, IRFAN-Canada's purpose and aims were to "relieve poverty anywhere in the world by any means, including but not limited to, the provision of food, drink, clothing, medical supplies, medical facilities, qualified medical doctors, especially in, but not limited to, areas of natural or man-made disaster or war."¹ At all times, IRFAN-Canada anticipated having a global reach; its humanitarian activities were focused outside Canada in places experiencing military conflict, famine, and natural disaster.

IRFAN-Canada's objective and purpose, it would seem, allowed it to fall within the Common Law charitable category of poverty relief. As the Charities Directorate explained to IRFAN-Canada early in its application process,

In order to qualify for registration as a charity, an organization must be constituted exclusively for charitable purposes and must devote all of its resources to the performance of its own charitable activities... The Income Tax Act does not define the term charitable for this purpose and it is therefore necessary to refer in this respect to the principles of common law governing charity. On this basis, charitable purposes have been enumerated by the courts as the relief of poverty, the advancement of education, the advancement of religion and other purposes beneficial to the community as a whole in a way that the law regards as charitable.²

The Charities Directorate communicated a series of conditions that IRFAN-Canada needed to meet before it could qualify for charitable status. The Charities Directorate's principal concern with IRFAN-Canada's application centred on oversight and control of funding. IRFAN-Canada's model of humanitarian relief involved identifying local agents able to implement their relief program in the

theater of crisis. As expected, one condition the Charities Directorate required was that IRFAN-Canada “maintain absolute direction, control and supervision over the expenditure and maintenance of its funds by the agent.”³

After receiving assurances and subsequent clarifications from IRFAN-Canada, the Charities Directorate issued IRFAN-Canada’s charitable status effective as of November 18, 1999.⁴ From that time onward, IRFAN-Canada combatted poverty across a range of countries. But none of its endeavours caused as much political controversy in Canada’s Federal Parliament as the work it did in the West Bank and Gaza Strip in support of Palestinians under Israeli occupation. IRFAN-Canada was subject to two audits in the first decade of the millennium, each of which raised concerns about its links to the Palestinian organization Harakat al-Muqawama al-Islamiyya, popularly known as Hamas. Hamas is listed by many governments, including Canada’s as of 2002, as a terrorist entity. According to the Government of Canada, Hamas is

a radical Islamist-nationalist terrorist organization that emerged from the Palestinian branch of the Muslim Brotherhood in 1987. It uses political and violent means to pursue its goal of establishing an Islamic Palestinian state in Israel. Since 1990, Hamas has been responsible for several hundred terrorist attacks against both civilian and military targets. Hamas has been one of the primary groups involved in suicide bombings aimed at Israelis since the start of the Al-Aqsa intifada in September 2000. In 2006, Hamas participated in and won Palestinian parliamentary elections, leading to negotiations between the group and the Palestinian Authority over the establishment of a unity government. In 2007, however, Hamas overthrew the Palestinian Authority in the Gaza Strip and seized power of the coastal territory. Although the group’s political leadership resides in Damascus, Hamas uses the Gaza Strip as a base for terrorist operations aimed against Israel.⁵

While policy and academic researchers recognize that Hamas has social and political/military wings, the Government of Canada does not recognize that distinction as it relates to anti-terrorism financing. This put IRFAN-Canada in a particularly vulnerable position as any work it might do in the Gaza Strip or West Bank where Hamas may have influence meant that IRFAN-Canada’s projects ran the risk of violating Canada’s anti-terrorism policies. This vulnerability also happened to take shape while Canadian politicians fervently debated Middle East policy in 2002 during the events of the Second Intifada, as well as in 2006 after Hamas’s victory in Palestinian legislative elections. As political parties in Canada postured over which party best supported and protected the State of Israel, IRFAN-Canada’s activities became increasingly suspect amidst painfully public debates about Canada’s commitments to humanitarian relief and the War on Terror. At the end of the second audit, the Charities Directorate revoked IRFAN-Canada’s charitable status, explaining that IRFAN-Canada was not “a not for profit organization operating in Canada. Between 2005 and 2009, IRFAN-Canada transferred approximately \$14.6 million worth of resources to various organizations with links to Hamas.”⁶ Just as the ISAC audit took place in the context of Canada’s hostile attitude toward Iran, the audit of IRFAN-Canada was framed by Canada’s rebuke of Hamas. Because of the complex intertwining of different political and bureaucratic scales (global conflict, domestic partisan debate, Directorate audit practices), this case study weaves together the audit of IRFAN-Canada and a historical narrative that comprises political developments in the Gaza Strip and Canadian Parliamentary debate on issues of domestic and foreign policy.⁷

CANADA AND GLOBAL AFFAIRS I: BETWEEN THE WAR ON TERROR AND CANADA'S HUMANITARIAN OBLIGATIONS

The years 1999–2003 saw considerable violence in Israel and the Palestinian Territories, also known as the Second Intifada or the al-Aqsa Intifada. The eruption of violence coincided with Likud leader Ariel Sharon's visit to the al-Haram al-Sharif, along with a delegation of Likud party members and a contingent of Israeli riot police. Sharon's aim was presumably to assert Jewish claims to a site considered sacred and holy to Muslims. The action was considered highly provocative, and was seen as the kindling for the mass protests and violence that followed.⁸ Indeed, during the October 4, 2000, session of Parliament, Minister of Foreign Affairs Lloyd Axworthy remarked "the visit of Mr. Sharon was ill-timed and ill-considered in this context."⁹

The visit enflamed passions, resulting in sustained violence across the region. Hamas claimed responsibility for a series of high-profile terrorist attacks, e.g., the Dolphinarium discotheque attack and the Sbarro restaurant attack in 2001. This surge in violence prompted the international community, including Canada's Parliament, to take stern notice. Stockwell Day of the now-dissolved Canadian Alliance Party attacked the Liberal Chrétien Government for failing to push Yasser Arafat, then head of the Palestinian Authority, to dismantle Hamas.¹⁰

In this same period, Canada witnessed al-Qaeda's terrorist acts on its southern neighbour on September 11, 2001. Before that fateful day, Canadian parliamentarians had already agitated for action against Hamas. The new War on Terror that began on September 12, 2001, introduced new fervor to their demands, leading to the application of enhanced measures to any group identified as terrorist, including Hamas. For instance, by December 2001, the Canadian government had frozen all Canadian assets linked to the military arm of Hamas. For many right-wing politicians, though, these measures were insufficient, precisely because they alleged there was no difference between Hamas's wings. In a testy exchange on the House of Commons floor, Brian Pallister of the Canadian Alliance took issue with the Liberal Government's approach to Hamas:

Mr. Brian Pallister (Portage—Lisgar, Canadian Alliance): Mr. Speaker, when it comes to standing up to terrorists the government lacks spine. It insists on giving tax preferred status to agencies of the notorious terrorist organization Hamas which claimed credit this past weekend for the horrible atrocities that killed 26 innocent Israeli civilians. This organization has one stated purpose and that is to destroy Israel and to eliminate Jews.

When will the government stand up, grow some spine and take a real stand against terrorism by outlawing Hamas fundraising in this country?

Hon. Lawrence MacAulay (Solicitor General of Canada, Lib.): Mr. Speaker, this government condemns all acts of terrorism and any organization that supports terrorists. That is why we have added the military wing of Hamas, as the British have done, to the list of people and groups in Canada whose assets are frozen. When we make the decision to add a group to the list we look at a number of factors. We look at intelligence information, foreign issues and a number of other factors. In this case, all these procedures were followed.

Mr. Brian Pallister (Portage—Lisgar, Canadian Alliance): Mr. Speaker, the minister does not have a clue on many things and certainly not on this issue. He does not have a clue which arm of Hamas gets donations from Canadians. He does not know that. He splits hairs but Hamas does not split hairs. It does not separate its warmongering arm from its fundraising arm. It lumps them under one umbrella dedicated to the death of Jews and the eradication of Israel.

Canadians support peaceful solutions. It is clear that Hamas does not. The government's spinelessness is tiresome and embarrassing to Canadians.

Will the Prime Minister stand up and say that he will take immediate steps to eliminate Hamas fundraising—

The Speaker: The hon. solicitor general.

Hon. Lawrence MacAulay (Solicitor General of Canada, Lib.): Mr. Speaker, I will not respond to the first inconsiderate remarks that my hon. colleague made. For sure I will not.

As I said, we condemn all acts of terrorism. We have added the military wing of Hamas, as the British government has done.¹¹

The Canadian response to the Israel-Palestine conflict took shape in the shadow of the War on Terror. Hamas quickly became a political football that pitted the Liberal Party and Canadian Alliance against one another. For the Liberal Party, the conflict in the Middle East required careful calibration given the precarious social and economic situation of Palestinians and the ongoing violence against Israel. For the Canadian Alliance, any funding of Palestinian endeavours without tougher measures on Hamas was tantamount to "playing footsie with Hamas." Indeed, that was exactly what Stockwell Day of the Canadian Alliance accused the Liberal Government of doing:

Hon. Bill Graham (Minister of Foreign Affairs, Lib.): Mr. Speaker, I can commit to the House on behalf of the Government of Canada to maintain our policy to ensure that all acts we take in the Middle East are those which ensure a movement toward peace and establishing peace in that very troubled region.

The helping of Palestinians and the helping of those who are in trouble is part of what Canada is about. We will continue our policies to ensure that we stop terrorism, but at the same time enable people to get on with their lives.

Mr. Stockwell Day (Okanagan—Coquihalla, Canadian Alliance): Mr. Speaker, we would like to see a policy of funding the Canadian coast guard instead of the Palestinian coast guard. Not only is Canada funding Yasser Arafat, we are also playing footsie with Hamas and Hezbollah.

Others recognize Hamas and Hezbollah as terrorist organizations. Yet amazingly the foreign affairs spokesperson said that these organizations perform many legitimate functions and enjoy widespread popular support. They are not too popular among the people whose family members have been destroyed by these organizations.

Does the minister believe—

The Speaker: The hon. Deputy Prime Minister.

Hon. John Manley (Deputy Prime Minister and Minister of Infrastructure and Crown Corporations, Lib.): Mr. Speaker, I know the hon. member has been campaigning in the Gaspé and he may have missed a few things. Many weeks ago Hamas and Hezbollah were listed as terrorist organizations by the Government of [Canada].

I would also like to point out to him that Canadian overseas assistance does not go to the Palestinian authority, not a dime of it. We do support programs that assist Palestinians, but not the Palestinian authority.

These are important distinctions.¹²

After the November 21, 2002, Jerusalem bus bombing, for which Hamas claimed responsibility, Stockwell Day once again chose to make Hamas a wedge issue between his party and the Liberal Government:

Mr. Stockwell Day (Okanagan—Coquihalla, Canadian Alliance): Mr. Speaker, yesterday with monstrous joy Hamas once again celebrated its ongoing murdering of innocent children and others, this time with a bus bombing in Israel. It said that this pleased God and it promised even more killings.

We now know that the Liberals, in shame and not on principle, may at some point reluctantly ban groups like Hamas and Hezbollah, as Great Britain and the United States did decisively long ago.

Will the Liberals, with action, not words, please save a shred of dignity for Canadians and for these murdered children and announce as of today, not sometime in the future—

The Speaker: The hon. Solicitor General.

Hon. Wayne Easter (Solicitor General of Canada, Lib.): Mr. Speaker, the Government of Canada condemns in the strongest possible way the brutal and senseless murder that took place yesterday in Jerusalem. It strikes against everything that a civilized society stands for. Our hearts do go out to the victims of that senseless killing.

With respect to the listing, I have told the member before that there is a process in place. As the Minister of Foreign Affairs has previously said, Hamas is listed on the United Nations Suppression of Terrorism Regulations. CSIS does not need a list in this country in order to do its job.¹³

The above Parliamentary exchanges are significant for this case study because they show how the Israeli-Palestinian conflict became a political battleground for domestic partisan feuds. Once again, in mid-2003, Stockwell Day prodded the Liberal Government on its apparently lackluster attitude on Hamas, prompting the Liberal Foreign Minister to issue a telling rebuke:

Mr. Stockwell Day (Okanagan—Coquihalla, Canadian Alliance): Mr. Speaker, the terrorist group Hamas has announced that it has cut off ceasefire talks with the Palestinian authority [sic]. The declared goal of Hamas is to trash the road map process and to eliminate the state of Israel through a murderous campaign of terror.

Hamas could not exist without support from regimes in the region, such as

Iran and Syria, yet our government has publicly said and done nothing to pressure these states to end all sponsorship of terror.

Will the Prime Minister today finally take a public stand and demand specifically that Syria, Iran and others in the region cut off all support for Hamas?

Hon. Bill Graham (Minister of Foreign Affairs, Lib.): Mr. Speaker, as usual the hon. member phrases his question in a way that suggests the government does nothing on these issues. Nothing could be further from the truth. In fact, it is exactly opposite.

Every time I have met with the foreign minister of Iran and every time the Prime Minister has spoken with the Iranian authorities we have insisted that they stop their support of terror. We do that publicly and we do it privately. We use the contacts that we have with all governments in the world to stop terror.

It is a totally false indication to the House and to the Canadian public to suggest that we do anything else. We will continue to pursue those in a positive way.¹⁴

The politicization of the Israeli-Palestinian conflict through bickering over which party was tougher in the War on Terror suddenly put the spotlight on IRFAN-Canada on October 1, 2003, in the House of Commons, once again with the help of Stockwell Day of the Canadian Alliance:

Mr. Stockwell Day (Okanagan—Coquihalla, Canadian Alliance): Mr. Speaker, yesterday we reminded the Prime Minister of a Canadian Hamas fundraising group that his security officials warned him about almost three years ago.

As he will recall, the warning said, “. . . fundraising in support of violent foreign struggles takes place in Canada ... Front groups operating in Canada include the Jerusalem Fund for Human Services (Hamas Front)”.

Thirty-six months later, the Prime Minister has done nothing to seize this group's assets. Now that he has had another 24 hours to reflect, could he tell us what actions he has taken to seize this group's assets and to shut them down?

Hon. Wayne Easter (Solicitor General of Canada, Lib.): Mr. Speaker, the hon. member knows that the Government of Canada is taking very decisive steps to address the global threat posed by terrorism, by terrorists around the world. We take every piece of information seriously.

The fact of the matter is that the listing process is a very thorough and strenuous process. In the listing process we take into consideration criminal and security intelligence information. I believe that on that basis we are certainly doing our job to protect the security of Canadians.

Mr. Stockwell Day (Okanagan—Coquihalla, Canadian Alliance): Mr. Speaker, this has nothing to do with the Solicitor General. This item landed securely and firmly on the desk of the Prime Minister. It is bad enough that he will not crack down on the terrorists' fundraisers; it appears that the government even allows them some fundraising assistance.

According to the association of Palestinian Canadians, the Hamas group's parent organization is the International Relief Fund for the Afflicted and Needy, which, we have just learned, is a Canadian organization that has tax deductible

status. In other words, the Hamas front group can use its parent body to raise these funds and get a tax receipt.

This is an issue for the Prime Minister. Why will he not shut—

The Speaker: The hon. Minister of National Revenue.

Hon. Elinor Caplan (Minister of National Revenue, Lib.): Mr. Speaker, if the member opposite is talking about an organization that has a charitable status number in this country and has it inappropriately, I would like that information because we can take immediate action. I can tell him that we are very careful to ensure that anyone who has a charitable number in Canada is a legitimate charity. If anyone has information that this is not the case and gives it to us, we can take immediate action.¹⁵

It was this highly partisan House of Commons Floor debate that began IRFAN-Canada's odyssey with the Charities Directorate.

IRFAN-CANADA'S FIRST AUDIT

Nine days after Stockwell Day's remarks in the House of Commons, IRFAN-Canada received notice from the CRA that it planned to audit the charity's files. A letter from the Directorate's Compliance Division simply stated: "Your organization has been selected for an audit as a registered charity under the Income Tax Act."¹⁶ There was no indication or hint to IRFAN-Canada that the audit was triggered by accusations of terrorism financing, that its records would be subjected to an anti-terrorism financing investigatory regime, or that the level of scrutiny paid to its files might in any way be inordinate as compared to any other audit of a randomly selected charity. Nonetheless, the 2003 audit was at all times structured as an anti-terrorism financing audit covering fiscal periods ending December 31, 2001, and December 31, 2002.¹⁷ It was not until August 26, 2004, after IRFAN-Canada had retained legal counsel, and only after legal counsel presented the Hansard's record above, that Directorate officials admitted on a conference call that the 2003 audit was triggered by Stockwell Day's accusations in the House of Commons.¹⁸

In its initial interview with IRFAN-Canada, the Directorate noted that the organization operates in the West Bank, Gaza Strip, Afghanistan, Lebanon, Bosnia, Iraq, and Albania, as well as Algeria in the aftermath of the 2003 earthquakes.¹⁹ IRFAN-Canada's activities for the reporting period included the dispatch of "medical equipment to Palestine," and the organization controlled all funds by issuing payments upon presentation of invoices.²⁰ Curiously, the interview turned to the relationship between IRFAN-Canada and the Jerusalem Fund for Human Services (JFHS). This should not be surprising given that Stockwell Day specifically castigated the Government of Canada for not doing enough to curtail the efforts of JFHS prior to doing the same for IRFAN-Canada.²¹ As the Directorate noted, "IRFAN-Canada took over the projects of JFHS. JFHS and IRFAN are two different bodies... All JFHS assets passed to IRFAN. They [IRFAN-Canada] believe JFHS has dissolved."²² As part of the IRFAN-Canada audit, the Directorate did a parallel audit of JFHS and was unclear on whether JFHS had dissolved, had merged, or was simply integrated with IRFAN-Canada.²³ From IRFAN-Canada's perspective, the JFHS service projects simply became its own. But from the Directorate's perspective, IRFAN-Canada's funds were susceptible to abuse precisely because of JFHS's alleged ties to Hamas or Hamas-affiliated organizations. According to the handwritten notes in the separate audit of JFHS,

the auditor remarked that JFHS may have given support to Holy Land Foundation in the United States, which was subject to ongoing US surveillance for possible support to Hamas or Hizbullah. Following the US investigation, Directorate officials flagged possible “support to Hamas or Hizb[ullah] directly or indirectly through Holy Land Fdn (US)].”²⁴

At all times the audit centred on IRFAN-Canada’s work in the West Bank and Gaza Strip, while focusing on the rather mundane concerns any audit reveals about charities run by volunteers: transparent governance procedures, expressly documented agency agreements, and so on. For instance, in its January 2004 letter to IRFAN-Canada, the Directorate solicited information about IRFAN-Canada’s local representatives, as well as a wide range of Palestinian organizations and their personnel.

- **On IRFAN-Canada’s selection process for local agencies:** “Does IRFAN rely on its board members’ or employees’ general knowledge of charities in the area? Does the Jerusalem office manager visit and report on organizations with which he is unfamiliar? Is there a listing of charities in the area that IRFAN uses, especially any listing of local charities that have been inspected by a public or private agency and found to be operating properly?”
- **On IRFAN-Canada’s food distribution program in the West Bank:** “the project only gives the geographic area in which the [1110] parcels were distributed. Which organizations were responsible for distributing the parcels in Ramallah and Elbereh, Nablus Governorate, Jenin Governorate, Salfet and Qalqileah Governorates, and Tookarim Governorate?”
- **On IRFAN-Canada’s gift of food to the Orphan Care Society:** the auditors sought clarification about the identity and status of the person mentioned in a letter that the Orphan Care Society, a third-party organization, sent to IRFAN-Canada.
- **On IRFAN-Canada’s Nablus housing project:** “Is this a joint project involving a number of organizations in addition to the Al Lod Society and Irfan? ... If IRFAN was participating in a joint project with multiple partners, please identify the other partners involved and the parts they played in achieving the project.”
- **On IRFAN-Canada’s orphan sponsorship programs in Palestine and Lebanon:** “Is there an organization in Palestine and/or Lebanon that supervises the orphan sponsorships?”²⁵

The request for this and other information to finalize the audit was extensive in scope. Such inquiries are not entirely surprising as they help inform questions about command and control of charitable funds when a charity conducts operations in locations of crisis and violence.

On March 15, 2004, IRFAN-Canada issued its response. To assure the Directorate of its control and oversight, including of programs run by local agents, IRFAN-Canada explained its review process:

IRFAN-Canada uses several criteria in the selection of a relief organization... :

1. Organizations existing in the West Bank and Gaza Strip are subject to the Licensing Rules & Regulations of NGOs of both the Israeli Government and the Palestine National Authority.
2. Regular feedback from the field manager (Manager and Partners) in both territories keeps us apprised of any changes in the status of NGOs.

3. Networking with other Canadian NGOs working in various parts of the world.
4. Revisiting the NGOs list published by the Canadian Government on the Internet.

The Manager in Jerusalem frequently visits Established and New Organization(s) to assess their work and reputation before any commitment(s) are made with them... As stated above, ALL NGOs are subject to approval of both the Israeli Government and Palestine National Authority.²⁶

With its audit inquiries complete, the Charities Directorate explained to IRFAN-Canada its core concerns. Given the Question Period debate that prompted the audit, it is not surprising that the Directorate accused IRFAN-Canada of having operational relations “with foreign organizations with terrorist connections.”²⁷ Specifically, the Directorate wrote:

At least some of the foreign organizations with which IRFAN works are alleged to be controlled by HAMAS... We would remind you of the following Canadian legislation. HAMAS (including the political and social wings of the organization) was listed as a terrorist entity under the United Nations Suppression of Terrorism Regulations in December 2001. It was also listed under Canada’s Criminal Code as a terrorist organization in November 2002; and according to section 83.03 of the Criminal Code, it is an offence to fundraise on behalf of, or to provide property to, an organization that has been listed under the Code. Under the Charities Registration (Security Information) Act, a registered charity can be deprived of its registration if it makes its resources available, directly or indirectly, to a listed terrorist organization.²⁸

The collapsing of the political and social wings of Hamas recalls the dispute in Parliament between Brian Pallister and Lawrence MacAulay, quoted above. There, the emphasis on humanitarian obligations correlated with a tendency to distinguish between the social and political/military wings of Hamas. In contrast, the emphasis on counter-terrorism and security correlated with a tendency to view Hamas as a unity. By the time IRFAN-Canada’s first audit was completed, the once testy Parliamentary debate had become a policy stiffly applied by government agencies, such as the Charities Directorate.

Evidence Selection Bias in the First Audit

A review of the Charities Directorate’s analysis from the first audit reveals surprising evidentiary limitations and unsustainable analyses. The Directorate’s letter after the audit includes in an Appendix a chart listing each of IRFAN-Canada’s organizational partners in the West Bank and Gaza Strip. In some cases, the chart simply states that the organization is alleged to have a connection with Hamas, without reference to any evidence justifying the allegation. In other cases, reference is made to a limited body of research. The following analysis of the Charities Directorate’s evidentiary claims shows that the Directorate’s research is incommensurate with its claim, and/or consists of highly suspect foreign intelligence, applied uncritically and against the interests and expectations of Canadian citizens.

- The Medical Scientific Society is alleged by one source to have a connection to Hamas. The Directorate refers here to the book *The Palestinian Hamas*.²⁹

However, this book specifically aims to give a nuanced view of Hamas, one that allows for a meaningful separation between the social wings and the military wings.³⁰ But as the Directorate indicated, no such nuance was possible under Canadian law. Consequently, while the authors passingly make reference to the Medical Scientific Society, the Directorate read the discussion out of context and in a result-oriented manner.

- The Jericho-based Orphans and Needy Care Charity is alleged to have a connection to Hamas. The Directorate relies on an article by Yehoshua and Chernitsky, posted on the website of the Middle East Media and Research Institute (MEMRI).³¹ On closer inspection, that evidence, however, does not substantiate a link between that organization and Hamas. The MEMRI article concerns the various strategies used to combat hate within Palestinian media. In one section, the authors examine various organizations that adopt names that some might infer are meant to support Islamist supremacist thinking:

The Charity Organization for Aid to Orphans and the Needy in Jericho, which is close to the Hamas movement, concluded its summer camps with an exhibit of handicrafts. The 230 children participating in these camps were divided into groups with names that have Islamic connotations. Some of the names were: Al-Khansaa, Al-Tayyar, and Paradise.

These are names drawn from the Islamic historical tradition. But for Yehoshua and Chernitsky, these historical names are sufficient indicators of terrorist sympathies. Moreover, the authors conclude without proof that the charity is close to Hamas. The Directorate simply assumes Yehoshua and Chernitsky's conclusion to be true, and makes no effort to question or interrogate the veracity of the source. Had it done so, it would have known that the hosting website, MEMRI, is well known as a translation agency that "promotes the [Israeli] terrorism and security agenda through translation."³² More to the point, translation specialist Mona Baker states the following:

MEMRI is a strongly pro-Israel advocacy group established in February 1998 by Col. Yigal Carmon, a former member of the Israeli intelligence service... It elaborates a public narrative of itself as "independent" and "non-partisan" and repeatedly taps into the meta-narrative of the "War on Terror" by claiming to be a major player in the fight against terrorism.³³

MEMRI actively works to influence and police public narratives and policy decisions as they relate to the Arab and Muslim world. As Brian Whitaker of The Guardian relates, after receiving many MEMRI translations as free gifts: "the stories selected by Memri for translation follow a familiar pattern: either they reflect badly on the character of Arabs or they in some way further the political agenda of Israel."³⁴

- The Directorate uncritically references documents on the Saudi Committee for Support of Intifada al-Quds, made available by the Intelligence and Terrorism Information Center at the Center for Special Studies. Middle East political scientist Pete Moore describes the Center as an "Israeli government funded organization run by former Israeli intelligence personnel," which reportedly "has documents it says were seized by the IDF during its attack on Palestinian urban areas in 2002."³⁵ Moore argues that to rely on these documents for purposes affecting third-party rights and expectations would be serious error: "Is it really

possible to ignore the numerous instances where intelligence agencies forge and selectively share primary documents?"³⁶ In other words, the documentation may certainly be of interest to the anti-terrorism and security industry. But that does not mean that the Charities Directorate, when auditing Canadian citizens and Canadian organizations, can do so without requisite standards of fairness and due diligence. Canadian citizens ought to be able to expect reasonable standards of fairness, especially in regard to domestic reliance on foreign intelligence sources, which are themselves subject to political posturing and selective bias.

After receiving the Directorate's conclusions, IRFAN-Canada retained lawyer Irfan Syed to represent the organization. Syed challenged the basis of the audit. He located the Hansard's records of Stockwell Day's parliamentary remarks and led a series of conference calls between the Directorate and IRFAN-Canada. Discussions proceeded apace on the IRFAN-Canada audit, with Syed writing to the Directorate that the organization

never knowingly had any relationships with any organizations designated by the Canadian government as having terrorist connection... As charities in Israel-Palestine are registered under either Israeli law or the semi-autonomous Palestinian Authority, or both, IRFAN worked only with organizations that were licensed and operating under the local governing authority. IRFAN advises it was common for unsubstantiated allegations to be made from various sources. Therefore, unless a charity's license was revoked by the governing authorities, or it was otherwise shut down, IRFAN continued to work with those organizations which it determined best facilitated the means for IRFAN to carry out its stated charitable objects.³⁷

Six weeks after the above letter was sent, the Directorate responded that it was closing IRFAN-Canada's audit of its 2002 fiscal year. Moreover, the Directorate admitted that it found IRFAN-Canada in compliance with the relevant provisions of the Income Tax Act, apart from those areas on which IRFAN-Canada undertook the necessary action to correct oversights. Though the Directorate acknowledged that there would be no change to IRFAN's status as a registered charity, the letter ended rather ominously: "CRA may conduct a follow-up audit at a later date to evaluate IRFAN's continued compliance with the Act."³⁸ And follow up it did.

CANADA AND GLOBAL AFFAIRS II: HUMANITARIAN AID IN A HAMAS-RUN PALESTINIAN AUTHORITY

On January 20, 2008, the Directorate completed a preliminary review of IRFAN-Canada based on an "audit plan to review funding going to Afghanistan in addition to a follow up of IRFAN-Canada's written undertaking from the 2002 prior audit."³⁹ The audit aimed to cover the fiscal period of January 1, 2005, to December 31, 2007, though as it turned out, the audit extended into 2009. The dates of the audit are hardly coincidental, given that period's electoral politics in both Canada and the Palestinian Territories.

Canada's 39th General Election took place on January 23, 2006, with the Conservative Party taking the greatest number of seats. Stephen Harper became Canada's 22nd Prime Minister on February 6, 2006. Two days after Canada's federal election, Palestinians in the West Bank and Gaza Strip went to the polls to elect the leadership of the Palestinian Authority. In that election, Hamas secured over 40 percent of the vote, and 74 of the 132 seats in the Palestinian Legislative Council.⁴⁰

Hamas displaced the long-standing Fatah party in the legislative assembly, inaugurating a standoff between President Mahmood Abbas of Fatah and the now Hamas-led government.⁴¹ Israel and the international community reacted harshly and swiftly to Hamas's democratic electoral victory:

The US, the EU, and a number of other governments responded swiftly by cutting off aid to the Palestinian Authority (PA) and refusing to work with the Hamas-led government until it recognized the right of Israel to exist. Israel's response was to withhold Palestinian customs and tax revenues, which it collects on its behalf, and increase the closures of territory in the West Bank and into and out of Gaza.⁴²

The Middle East Quartet, comprised of the UN, the EU, Russia, and the US, issued a cautious statement, which read in part:

The Quartet reiterates its view that there is a fundamental contradiction between armed group and militia activities and the building of a democratic State. A two-State solution to the conflict requires all participants in the democratic process to renounce violence and terror, accept Israel's right to exist, and disarm, as outlined in the Road Map.⁴³

The newly formed Canadian government under Stephen Harper joined the international community in condemning Hamas and severing any and all aid sent to the Palestinian Authority. Indeed, after Israel, Canada was the first country to cut off aid and sever diplomatic ties with the Palestinian Authority.⁴⁴

The issue of aid once again brought to the fore whether and to what extent one could meaningfully distinguish between Hamas's social wings on the one hand and its military wings on the other. In parliamentary debate throughout 2006 and 2007, members of Parliament challenged the Conservative government on its failure to live up to Canada's humanitarian commitments with respect to Palestinians living in poverty. And with each challenge, the Conservative government maintained its deference to Israeli military operations, and its totalizing view of Hamas as a singular terrorist organization with which it could not do business.

May 8, 2006

Ms. Caroline St-Hilaire (Longueuil—Pierre-Boucher, BQ): Mr. Speaker, children in a Palestinian day care centre supported by CIDA are being deprived of medical care because an Israeli bank is refusing to forward donations made by the Quebec organization Aide médicale à la Palestine and meant for those children. Yet the government gave assurances that humanitarian aid would not be affected by the end of Canada's relations with the Palestinian authority. What exactly does the Minister of International Cooperation plan to do to put an end to these arbitrary and discriminatory measures?

Hon. Josée Verner (Minister of International Cooperation and Minister for la Francophonie and Official Languages, CPC): Mr. Speaker, CIDA is continuing to fund aid for the Palestinian population, but it is reviewing the situation and has suspended funding that was intended for the Palestinian authority, for Hamas.

Ms. Caroline St-Hilaire (Longueuil—Pierre-Boucher, BQ): Mr. Speaker, as far as I can tell, children in a daycare centre are part of the population. How can the minister reconcile this decision by the Israeli banks with her joint statement with the Minister of Foreign Affairs that Canada would continue to support the Palestinian people and meet their humanitarian needs?

Hon. Josée Verner (Minister of International Cooperation and Minister for la Francophonie and Official Languages, CPC): Mr. Speaker, I want to repeat to my colleague that future funding depends on the Palestinian government's commitment to non-violence, the recognition of Israel and the peace accords that have been signed. That said, Canada is continuing to respond to the Palestinians' humanitarian needs through multilateral organizations and other partners not associated with Hamas.⁴⁵

May 9, 2006

Ms. Caroline St-Hilaire (Longueuil—Pierre-Boucher, BQ): Mr. Speaker, in reply to my question yesterday, the Minister of International Cooperation said that Canadian humanitarian aid money would not be going to Hamas. What we are talking about is a YWCA day care centre 65% funded by CIDA and sponsored by a Quebec organization, Aide médicale pour la Palestine. These are donations intended for children, not Hamas. How can the Minister say that the money is going to Hamas when in fact it is an Israeli bank that is refusing to transfer money intended for little children in a day care centre? It is hard to confuse that with Hamas.

Hon. Josée Verner (Minister of International Cooperation and Minister for la Francophonie and Official Languages, CPC): Mr. Speaker, Canada continues to respond to the humanitarian needs of the Palestinians through multilateral organizations and other partners that are not associated with Hamas. Future funding will depend on the commitment demonstrated by the Government of Palestine to non-violence, the recognition of Israel and the peace accords that have already been signed.

Ms. Caroline St-Hilaire (Longueuil—Pierre-Boucher, BQ): Mr. Speaker, I would remind the Minister that on March 29, she and her colleague the Minister of Foreign Affairs stated that “—Canada will continue to support and respond to the humanitarian needs of the Palestinian people”. In the Minister's view, does aid intended to provide playground equipment for children in a daycare centre not come within the definition of humanitarian aid?

Hon. Josée Verner (Minister of International Cooperation and Minister for la Francophonie and Official Languages, CPC): Mr. Speaker, Canada has suspended four projects involving direct aid to the Palestinian Authority and is in the process of restructuring eight projects to ensure that they will not benefit the Palestinian Authority.⁴⁶

Supporting Palestinians facing a humanitarian crisis but living under a Hamas-led Palestinian government constituted a point of considerable domestic squabbling in Parliament. When the Government debated Bill C-293 on development assistance abroad, the Conservative-led Government was criticized for inhibiting

aid for the Palestinian people. Bloc Québécois MP Caroline St-Hilaire⁴⁷ chastised the Government for over-prioritizing security and anti-terrorism to the detriment of poverty reduction, the latter also being an effective strategy against terrorism. She remarked in the House of Commons:

We have often pointed out in the House of Commons that one of the ways to fight terrorism is to intensify cooperation and more specifically international assistance. Poverty is the most significant weapon of mass destruction on the planet. It is also fertile ground for terrorists, which is why it is so important to increase international assistance and to promote solid and effective cooperation. However, this assistance has to be used for humanitarian purposes and not for national security purposes. Since the events of September 11, 2001, there seems to be some pressure on countries to allocate some of the assistance they receive to security measures and to fighting terrorism. These objectives are highly commendable, but international assistance is not the right vehicle...

Take Palestine, for example. Much of the money intended for the Palestinians is being withheld by Israeli banks, which deprives the population directly. When the ministers of Foreign Affairs and International Cooperation withdrew Canadian aid from the newly elected government of the Palestinian territories, the agreement was that the Canadian government would keep on providing humanitarian aid to the Palestinian people through UN agencies and non-governmental organizations. Only direct aid to the new government was to be suspended. But the reality is quite different. Aid to NGOs is being maintained, but evidence suggests that it is not reaching its destination. An entire population is being held hostage. Not only do the Palestinians live in a very difficult political situation, but they also have serious problems making a living. Many young people cannot even go to school anymore. Canada is helping to mortgage future generations. *The Bloc Québécois denounced the Canadian government's position, deeming its decision premature. We all agree that we need to take a cautious and strict attitude toward Hamas, but we have to honour our commitments of humanitarian aid to the Palestinian people. We stigmatize everyone working directly or indirectly for the Palestinian government, but that does not make them terrorists. We must distinguish between those who live in Palestine and those who live for terrorism.*⁴⁸

Funding for humanitarian relief in the West Bank and Gaza became a politically divisive issue in Parliament, with the Conservative-led Government adopting a zero-sum approach to the Palestinian Authority, while the Bloc Québécois questioned the wisdom of that approach given the very real, but admittedly messy, humanitarian context.

Of course, this was not only a political kerfuffle in Parliament. It plagued the international community. The EU devised a workaround plan that would channel all money to the Office of the President of the Palestinian Authority. In other words, the EU aimed to bypass the Hamas-controlled Palestinian government by working directly with the Fatah-led office of President Mahmoud Abbas. That plan was initially blocked by the US government,⁴⁹ but ultimately found Quartet approval and led to a "Temporary International Mechanism" (TIM) through which Quartet and multilateral aid passed.⁵⁰ Public documents under the auspices of the

TIM reveal that Canada made a financial contribution in November 2007 for salary and pension payments to public service providers and pensioners.⁵¹

The international community's refusal to dispatch funding through the Hamas-led government had overt humanitarian costs. For some, Israel's occupation in the name of security implied its enhanced responsibilities to provide humanitarian assistance.⁵² Others held that bypassing Hamas pandered both to the domestic politics of donor countries and to the Fatah wing of the Palestinian Authority. Moreover, it inadvertently (a) increased Gaza's dependence on humanitarian assistance, (b) undercut economic development, and (c) preserved the status quo of Gaza's isolation from the international political community.⁵³ Gaza's dilemma was complicated by the institutional topography of the Gaza Strip: given the small size of the territory and the limited range of local actors able to deliver services, any humanitarian organization could expect to be separated from Hamas by only a few degrees. Moreover, some scholars recognized that, post-2006, Hamas employed creative and effective governing strategies over the Gaza Strip. This line of argument contributed to the view that Hamas's various wings could not be amalgamated as the Canadian Government had done when it put Hamas (both the social and political/military wings) on the Terrorist Entities List. Indeed, the more the international community isolated Hamas, the more diverse, complex, and disaggregated its various wings had to become to achieve the practical goals of keeping the peace in the Gaza Strip, including creating an informal "tunnel economy" to offset its crumbling economic situation.⁵⁴ Even under such difficult financial restraints, Hamas was able to "keep the economy afloat, while devising its own revenue collection system on businesses, real estate, smuggled goods, and created its own autonomous Gaza-based bank and insurance company."⁵⁵

As international NGOs continued to channel humanitarian aid to Gaza, they were repeatedly met with a series of regulatory burdens. On the one hand, these regulatory burdens reflect a War on Terror–informed policy that recognizes that charities working in conflict zones are especially vulnerable to becoming conduits of terrorist financing, whether willingly or unwillingly.⁵⁶ On the other hand, these same regulations could be used as proxies in service of Israel—a strategy some have called *lawfare*.

Lawfare is a term that blends law with warfare, and refers to the use of legal processes to pursue (legitimate or illegitimate) military aims through other means. Human rights scholar William Schabas writes about lawfare as follows:

As a term, it was apparently used for the first time by Major General Charles Dunlap, an American military lawyer, in a lecture at Harvard University in November 2001. He said lawfare was a practice whereby "the rule of law is ... hijacked into just another way of fighting ... to the detriment of humanitarian values as well as the law itself."⁵⁷

In the case of Gaza, humanitarian aid organizations have been subjected to legal review, audit, and regulatory oversight. For instance, in 2019 Oxfam faced a \$160 million lawsuit alleging that its agricultural development project in Gaza violated US laws that prohibited material support for Hamas, a terrorist group.⁵⁸ In 2018, Norwegian People's Aid settled a lawsuit brought by the US government, which claimed that the organization's democracy training programs for youth in Gaza were effectively forms of support for Hamas. Other organizations subjected to such legal claims for their work in Gaza included the Carter Center and Doctors without Borders.⁵⁹ Many of these cases are brought by lawyers such as David Abrams, who

is described as an “American pro-Israel activist behind a legal campaign accusing non-profits of illegally helping terrorists.”⁶⁰

Another legal case of particular significance for IRFAN-Canada was the US government’s 2004 prosecution of Holy Land Foundation, for providing material support to Hamas. The theory underlying the claim was that Holy Land Foundation raised money in the United States, which it then “funneled to Hamas through various charitable entities in the West Bank and Gaza. Although these entities performed some legitimate charitable functions, they were actually Hamas social institutions.”⁶¹ In the course of the government’s prosecution of Holy Land Foundation, it filed on May 29, 2007, a pre-trial brief to which it attached as Appendix A a list of 246 individuals and entities under the heading “Unindicted Co-conspirators and/or Joint Venturers.”⁶² But it submitted the list without sealing it, rendering it publicly available for widespread review. Various organizations on that list sued the Federal Government for violating their due process rights under the 5th Amendment, claiming that the widespread publication of the list had detrimental effects on their ongoing activity and effectiveness. Federal courts in 2009 and again in 2010 agreed.⁶³ Importantly, on that list was “Jerusalem Fund, aka IRFAN.” Records from the second audit indicate that the Directorate was in part motivated by IRFAN-Canada’s inclusion on the list of unindicted co-conspirators, though that was not necessarily communicated to IRFAN-Canada at the outset.⁶⁴

IRFAN-CANADA’S SECOND AUDIT

With the second audit, IRFAN-Canada was asked to provide a range of documentation. Because IRFAN-Canada had recently moved offices, it requested more time to locate and provide the materials.⁶⁵ The Directorate, however, interpreted the requested delay as evidence that the organization had violated record-keeping requirements. As auditor J. McCaffrey recalled in her notes from a phone call with Rasem Abdel-Majid of IRFAN-Canada, “I advised him that I felt the information that we had requested, such as the phone bills and minutes of meetings[,] should each be in their respective file folder and easy to copy and send in.”⁶⁶

As it located materials, IRFAN-Canada dispatched them to the Directorate.⁶⁷ Nonetheless, subsequent correspondence in May 2009 suggests that the Directorate was not fully satisfied with the documentation disclosed. IRFAN-Canada responded in considerable detail about bank accounts that had been closed and cell-phone accounts of former directors no longer with the organization, and provided explanations for why recent records for long-since-closed telephone accounts simply did not exist.⁶⁸ In short, IRFAN-Canada was being asked to account for presumed absences in the record, most of which were due to the fact that, in the ordinary course of business of a volunteer-managed charity working in conflict zones,

- certain costs were cut or avoided;
- accounts with foreign banks were closed when project cycles ended;
- foreign banks in developing regions did not have the reporting practices the Directorate presumed them to have;⁶⁹
- personnel cycled in and out of the organization; and
- regularized documentation in foreign locations was interrupted in contexts of conflict.

As IRFAN-Canada's lawyer later explained, the deficiencies in the record were "a combination of inadvertence, honest mistakes and circumstances in the Middle East (in particular, the war in Gaza—the centre of many of the Charity's activities—occurred at a key point during the audit, from December 2008 through to January 2009), which make obtaining these documents difficult."⁷⁰

The Charities Directorate responded simply that IRFAN-Canada's failure to provide all records requested and in the manner requested could constitute a violation of the Income Tax Act s. 230(2), which requires registered charities to keep records and books of account at an address in Canada. "Failure to maintain adequate books and records in Canada," McCaffrey wrote, "is grounds for revocation of a charity's registration."⁷¹ In other words, the Directorate had discretionary power in the matter, and threatened to use it to revoke IRFAN-Canada's charitable status. IRFAN-Canada responded by noting that as of 2007 it had retained the accounting firm Deloitte to perform all auditing, and provided the Directorate with copies of the foreign office's audited statements for the 2007 and 2008 fiscal years.⁷²

Neither IRFAN-Canada's document disclosures nor its attempt to ensure due diligence and transparency by retaining a respected accounting firm satisfied the Directorate. By January 2010, the Directorate decided, based on s. 188.2(2)(a) of the Income Tax Act, that the organization did not adequately satisfy the requirement to provide information and documents, and therefore was not in compliance with the Income Tax Act. As revealed in the exchange of letters between the Charities Directorate and the lawyer for IRFAN-Canada, Terrance S. Carter, the Directorate proposed to suspend the receipting privileges of IRFAN-Canada,⁷³ thereby undercutting one of the principal mechanisms by which IRFAN-Canada generated donations for its charitable work. Cathy Hawara,⁷⁴ then Acting Director General of the Charities Directorate, explained that s. 188.2(2)(a) allowed (but did not require) the Directorate to apply the suspension sanction to address situations where records were not adequately maintained in Canada, were not provided to the CRA for inspection, or had not been provided in "such reasonable time" as required.⁷⁵

Though the proposed suspension was fully within the Directorate's discretion to impose, the standards by which the decision was made were hardly clear, precise, or objective. The Directorate's characterization of the standards of evaluation reflects a discretionary and subjective set of considerations. Phrases such as "better record-keeping," "higher level of due diligence," and "significant portion of its books and records in Canada" suggest subjective evaluative standards with respect to compliance requirements.⁷⁶ Furthermore, the Directorate's application of these standards was shaped by its concern about IRFAN-Canada's potential linkages to terrorism. Gesturing to the first audit, the Directorate recalled that "IRFAN-Canada had been put on warning that the results of the audit in 2004 raised concerns of a serious nature that required better record-keeping and a higher level of diligence in future."⁷⁷ In this instance, the ordinary audit practices concerning compliance with the Income Tax Act seem to be read in the shadow of Canada's anti-terrorism policies, which will be addressed in greater detail below (see Section V.A.). Indeed, the Directorate interpreted the gaps in IRFAN-Canada's records as suggesting a hidden connection between IRFAN-Canada and Hamas. As the Directorate remarked, "the need to follow up on findings from our earlier audit concerning IRFAN-Canada's involvement at that time with organizations associated with Hamas explains why our difficulty in obtaining the books and records that are necessary to conduct a thorough and comprehensive audit presents such a serious concern."⁷⁸ But IRFAN-Canada's lawyer considered this reliance on record-keeping as little more than pretext: "CRA has chosen to set an unreasonably high standard

for compliance with ... the ITA and assumed that any failure to meet that standard is based on a wilful attempt by the Charity to suppress records that demonstrate alleged support for terrorist organizations.”⁷⁹

IRFAN-Canada argued in response to the suspension that the Directorate’s audit was politically motivated. The Directorate seemed concerned about this accusation, and devoted an entire appendix (Appendix D) to explaining why there was no political motivation underlying the audit whatsoever. The Directorate asserted that the audit inquiries occurred completely within the ambit of “the public service and have not been the subject of any directive from any political level of government.”⁸⁰ Moreover, the audit was consistent with Parliament’s intent in the Income Tax Act.⁸¹ Yet despite the Directorate’s defence, the audit was precisely the kind of action for which the Financial Action Task Force (FATF) would later criticize Canada in its 2016 Mutual Evaluation. The FATF is a multilateral organization tasked with developing recommendations on anti-money laundering and anti-terrorism financing, and ensuring states comply with those recommendations. Canada has been a member of the FATF since 1989, and was subject to a review of its compliance in 2016. As already discussed (see p. 14 et seq), the FATF found that Canada pursued collateral approaches in the absence of a robust evidentiary record on anti-terrorism financing grounds, thereby calling into question Canada’s standards for evaluating charities and the risks they posed.⁸²

The Directorate’s suspension of IRFAN-Canada’s receipting privileges did not end the matter. The audit continued, and IRFAN-Canada once again turned to lawyer Irfan Syed, who had assisted the organization during the first audit.⁸³ The record reveals a series of interviews and meetings between Directorate officials and IRFAN-Canada representatives. The meeting of May 19, 2010, explored in detail the operation of IRFAN-Canada’s Orphan Sponsorship Program run out of its Ottawa office,⁸⁴ while the meetings of May 26–28, 2010, focused on due diligence procedures implemented since the first audit.⁸⁵ IRFAN-Canada also completed questionnaires related to its work, such as the May 27, 2010, questionnaire on governing documents, political activities, fundraising, and other business matters.⁸⁶

IRFAN-Canada’s lawyer continued to challenge the audit and one of its prompts: namely, its listing in 2007 as an unindicated co-conspirator in the Holy Land Foundation case in the US. IRFAN-Canada sought US legal counsel to get its name expunged from the record. Likewise, IRFAN-Canada employed the aid of Israeli legal counsel to challenge the Israeli government’s designation of the organization as an “unlawful association” in 2004.⁸⁷ As legal counsel explained, neither jurisdiction afforded IRFAN-Canada sufficient standing and legal capacity to respond to such allegations.⁸⁸ Additionally, Royal Bank of Canada (RBC) requested IRFAN-Canada to close its accounts, while the Bank of Montreal refused to open any account for the organization. It brought suit against RBC, which was the only bank in Canada that could send funds via wire transfer to the Bank of Palestine, where IRFAN-Canada had bank accounts that were used to fund its humanitarian programming in the West Bank and Gaza Strip.⁸⁹

On December 14, 2010, the Charities Directorate issued its audit findings in its Administrative Fairness Letter. The Directorate identified “serious non-compliance” with various reporting requirements of the Income Tax Act and its Regulations.⁹⁰ Moreover, the Directorate insisted that “our current audit of IRFAN-Canada has revealed its association, since 2004, with fifteen organizations which we have documented as having ties to Hamas.”⁹¹ Aware of the political debate on the separability of Hamas’s military and socio-economic wings, the Directorate reiterated the Government of Canada’s refusal to make any such distinction:

we do not accept claims that support provided to Hamas can be distinguished from the political and terrorist activities that led it to being listed by Canada and other nations. It is to be noted that Canada's position with regard to the designation of Hamas as a listed entity does not set this facet of its operation apart from the organization as a whole.⁹²

Appendix G of the Directorate's letter outlined alleged links between IRFAN-Canada and Hamas. Those connections included various Ministries of the Palestinian National Authority, which after 2006 was governed by a Hamas-led Palestinian Legislative Council.⁹³ In other words, overnight, completely appropriate recipients of charitable funds became unlawful recipients, despite a fair democratic election as confirmed by international election monitors.⁹⁴ Certainly, the Directorate did not make the political decision to cut off ties with the Palestinian Authority upon the 2006 election. Nor did it make the politically and academically contested claim that all of Hamas's wings belong under the singular umbrella of "terrorist entity." Those decisions were and remain the prerogative of the government of the day.

The Directorate concluded its letter by recommending that IRFAN-Canada's charitable status be revoked.⁹⁵ On March 9, 2011, the Directorate issued its Notice of Intention to Revoke (NIR) IRFAN-Canada's charitable status.⁹⁶ Thereafter, Alastair S. Bland, the director of the Review and Analysis Division (RAD) of the Charities Directorate, wrote on April 9, 2011, to inform IRFAN-Canada that its revocation would be published in the relevant gazette.⁹⁷

Evidence Selection Bias in the Second Audit

Public service officials take pride in the fact that they do their work at arm's length from the politicians who sit in Parliament. In that sense, the Directorate quite rightly took issue with accusations of political bias or manipulation. While the Directorate had no hand in the political decisions made about Hamas, that did not preclude the Directorate from employing selection bias in the evidence it marshalled or the interpretations it gave to the evidence. This section demonstrates, through a close reading of the Administrative Fairness Letter, that the Directorate's conclusions about IRFAN-Canada relied on evidence subject to selection and interpretive biases. While the Directorate's analysis invoked technical requirements under the Income Tax Act, the focus of the analysis centred on what the Directorate termed "Activities Contrary to Public Policy":

It is well established at law that purposes which offend public policy are not charitable. Canada's public policy recognizes that depriving terrorist organizations of access to funds is a fundamental tool in undermining terrorist activities as it weakens their supporting logistical and social infrastructures. In this regard, it is very clear that Canada's commitment to combatting terrorism extends to preventing organizations with ties to terrorism from benefiting from the tax advantages of charitable registration.⁹⁸

To establish IRFAN-Canada's links to Hamas, the Directorate relied on a range of secondary research, which it footnoted at length. But as shown below, it either misread the literature or did not fully account for how its preferred sources were limited in their scope and analytic rigor.

The first example occurs in Appendix F of the Directorate's Administrative Fairness Letter, where it attempts to substantiate Canada's adoption of a dominant

Washington Beltway claim that “the delivery of social and humanitarian services is an integral part of Hamas’s operational strategy to fulfill its political goals. We therefore do not accept claims that support provided to Hamas can be distinguished from the political and terrorist activities that led to it being listed by Canada and other nations.”⁹⁹ In Appendix F, the Directorate claims that mosques and religious groups in Gaza “continue to provide a key recruiting ground for the organization [Hamas]—many members of the movement cite the mosque as the place where they were first drawn to the group.”¹⁰⁰ To substantiate this point, the Directorate relies on the work of Jeroen Gunning¹⁰¹ to claim that Hamas is committed to establishing an Islamic state, and that Hamas’s social and charitable works are pretexts for its ongoing political and military movement against Israel. But a careful review of Gunning shows that this is precisely not the conclusion he supports. Indeed, on the first page of his book, Gunning begins by criticizing Western politicians (and policy bureaucrats) for their simplistic rendering of Hamas’s welfare network “as solely dedicated to funding, promoting and supporting terrorism without much consideration of what other purposes this network may serve, and what contradictions this introduces.”¹⁰² In other words, the Directorate relies on Gunning to prove exactly what Gunning says is unprovable. Gunning’s study emphasizes that “Hamas cannot be reduced to its use of violence, that it must be studied in the wider context of Palestinian society and politics, and that any analysis must include (though not stop at) an attempt to understand Hamas on its own terms.”¹⁰³ Indeed, in contrast to the political view the Directorate is required to reiterate, Gunning claims that Hamas is here to stay and that anyone interested in peace in the region “must come to terms with Hamas as a central political player ... and that contradictions within it must be explored rather than dismissed.”¹⁰⁴ Whether or not this is possible will of course depend on the political stands one takes at the outset. Gunning compellingly says that “how we study a phenomenon affects both our premises and what we find, obliging us to adopt a critically self-reflective methodology.”¹⁰⁵ He asserts that to understand Hamas requires that we understand it on its own terms. But when the Canadian government denies any distinction between Hamas’s various wings, when the majority of Canada’s terrorist entity list consists of Muslim-related organizations, and when the Directorate’s audit employs evidence selection and interpretive biases, it is hardly surprising that the Directorate could read Gunning for what it wanted to find, rather than for what Gunning actually argued.

The second example concerns the Directorate’s heavy reliance on Matthew Levitt’s study of Hamas,¹⁰⁶ in particular to further justify the political decision to classify Hamas as singularly terroristic.¹⁰⁷ Levitt’s study is well known for promoting the position that Hamas’s wings are indistinguishable. In fact, Gunning identifies Levitt as a principal proponent of the view that Hamas’s social wings are in service of its military and political wings.¹⁰⁸ IRFAN-Canada challenged the Directorate’s reliance on Levitt’s study. Lawyer Terrance S. Carter explained the limits of Levitt’s “fungibility” theory of Hamas:

This theory attempts to tie the “social services” component of the Hamas Charter to the work of humanitarian organizations. The fungibility argument suggests that Hamas is actively involved in charitable organizations—particularly zakat committees—in the Occupied Territories in order to facilitate the fungibility of funds across the Hamas organization... From this, however[,] [Levitt] extrapolates that support to charitable organizations or zakat committees in the Occupied Territories is indirect support for Hamas.¹⁰⁹

Carter and Gunning are not alone in criticizing Levitt. Steven Erlanger remarked that Levitt's conclusions make little sense when we take into account Hamas's 2006 electoral victory. Keep in mind that Levitt's book was first published by Yale University Press in May 2006, which suggests it was in press at or around the time Hamas succeeded in the January 2006 elections. Erlanger explains that Levitt's book "appears to have been quickly massaged to take some account of major events that occurred after the manuscript was turned in."¹¹⁰ Methodologically problematic is the fact that Levitt never actually went to the region for research purposes, nor did he have any background in the region's politics. Rather, Erlanger retorts that this is a "book written by an expert in financial counterterrorism, and it depends almost entirely on American and Israeli sources, including Palestinian documents captured by the Israelis."¹¹¹

Pete Moore identifies with poignant precision the fundamental flaws of Levitt's method:

In one manuscript the author Matthew Levitt not only commits a range of amateur research mistakes but renders the kind of shoddy analysis that continually justifies failed American policy in the Middle East. Along the way, Levitt ignores most of the scholarly and comparative literature on the Islamic Resistance Movement of Palestine, and similar groups, to deploy instead primitive arguments not addressing any known academic debate. He relies on highly biased data, misrepresents some of his sources and, in the opinion of this reviewer, takes the kinds of shortcuts that would end most graduate student careers.¹¹²

At no point did the Directorate consider the criticisms directed at Levitt's study, instead, staunchly standing by him. But its defense had nothing to do with Levitt's sources, his training, or his method of analysis. As Cathy Hawara, then Director General of the Charities Directorate, explained,

Dr. Levitt served as deputy assistant secretary for intelligence and analysis at the US Department of the Treasury from 2005 to early 2007. He also served as a U.S. State Department counterterrorism advisor to the special envoy for Middle East regional security (SEMERS), General James L. Jones, who would go on to serve as the National Security Advisor under the Obama Administration. In addition, he has provided analytic support for the Federal Bureau of Investigation's counterterrorism operations, with a particular focus on terrorist fundraising. Dr. Levitt has also testified before the U.S. House of Representatives Committee on International Relations Subcommittee on the Middle East and Central Asia and the Subcommittee on International Terrorism and Non-proliferation.¹¹³

The Directorate did not address the fungibility thesis, Levitt's methods of analysis, or the limits of Levitt's evidentiary archive. It ignored the academic and analytic criticism. The Directorate instead simply deferred to US government institutions, and Levitt's professional affiliations therein as proxies for his reliable expertise.

The third example concerns the evidence the Directorate relied upon to justify its conclusions about IRFAN-Canada's links to Hamas. It is worth looking in detail at what the Directorate considers evidence of terrorist links.

- **The Holy Land Foundation litigation in the US.** The Directorate wrote in its Administrative Fairness Letter that “court documents released during the successful 2008 conviction in the United States of the Holy Land Foundation for Relief and Development (HLF) on terrorist financing charges named IRFAN-Canada on a list of unindicted co-conspirators considered to be ‘entities that are and/or were part of the Global Hamas financing mechanism’.”¹¹⁴ As mentioned above, this particular list has a troubling legal history, which the Directorate did not take into account.

On July 26, 2004, a US grand jury indicted various leaders of the Holy Land Foundation for providing material support to a foreign terrorist organization, among other things. When the US government filed its trial brief on May 29, 2007, US prosecutors appended Attachment A, which listed 246 unindicted co-conspirators and/or joint venturers.¹¹⁵ Listed under the category “Global HAMAS financing mechanism” was “Jerusalem Fund, aka IRFAN.”¹¹⁶ The US Government admitted in subsequent litigation that it normally would have included the Attachment under seal, precluding public release. Indeed, it admitted as much before the US Court of Appeals (5th cir.). Certain organizations such as the North American Islamic Trust (NAIT), which were on the list, filed a lawsuit complaining that the listing violated its Constitutional rights. US courts agreed. In his opinion for the 5th Circuit Court of Appeal, Justice Garza noted:

the Government did not argue or establish any legitimate government interest that warranted publicly identifying NAIT and 245 other individuals and entities as unindicted coconspirators or joint venturers, and that the Government had less injurious means than those employed, such as anonymously designating the unindicted coconspirators as “other persons,” asking the court to file the document under seal, or disclosing the information to the defendants pursuant to a protective order.¹¹⁷

The court found that the Government’s inclusion of NAIT “was simply an untested allegation of the Government,” which ultimately violated NAIT’s 5th amendment rights to due process.¹¹⁸

The Directorate’s reliance on Attachment A to claim a link between Hamas and IRFAN-Canada is coloured by the constitutional violation that made the public release of Attachment A possible. In response, the Directorate admitted that Attachment A was only one factor in the Directorate’s decision to closely examine IRFAN-Canada, and that doing so was proper, based on the lower court decision of Justice Solis concerning Attachment A.¹¹⁹ Solis’s decision recognized that there were 5th amendment violations, but the lower court’s remedy was simply to seal the file, as should have been done when the government first filed its brief. Neither the lower nor the appellate court denied the government the capacity to create such lists or name someone or an organization an unindicted co-conspirator or joint venturer.

The Directorate’s response fails to acknowledge that if Attachment A were sealed in the first place, the Directorate would never have had open, public access to that document for purposes of the audit. If it received Attachment A through intelligence networks between the US and Canada, that may have required the Directorate to invoke a different legislative regime (e.g., the CSRIA) to preserve the confidentiality of such intelligence. But a CSRIA action is a very different mechanism than standard audit procedures. The Charities Directorate never addressed this legal complexity. Rather the Directorate relied on the

lower court decision, not realizing that it had already been partially reversed. Strangely, the Directorate's letter was written a year after Justice Garza filed his appellate decision in 2010.

- **Network Charts.** The Directorate provided a series of charts meant to document the various organizations connecting IRFAN-Canada to Hamas. Importantly, the sheer number of links that separate Hamas and IRFAN-Canada reveal the insubstantial nature of the connection.
- **Palestinian Government Ministries Post-2006.** The network charts show that any IRFAN-Canada project that was funded through a government ministry in Gaza was automatically deemed to support Hamas after 2006. While under any other circumstance, working with a Ministry of Health or a Ministry of Telecommunications would be the responsible thing for a charitable organization to do in an underdeveloped state, that same practice after January 2006 in the Occupied Territories became grounds for revoking an organization's charitable status. The Directorate of course was not responsible for the Government of Canada's decision about Hamas after the 2006 elections. But neither did the Government of Canada seem forthcoming in supporting humanitarian aid reaching these areas under the TIM or other mechanism. Indeed, floor debates in Parliament raised profound questions about how best to balance humanitarian assistance with War on Terror policies that were complicated by Hamas's 2006 victory.
- **Evidence Designating Terrorist Organizations.** The Charities Directorate relied nearly entirely on Israeli and US designations to determine whether IRFAN-Canada worked with local organizations that were linked to Hamas. Appendix G includes a chart in Hebrew issued by the Israel Money Laundering and Terror Financing Prohibition Authority, which designates organizations as "unlawful associations." At the top of the chart is the official insignia of the government institution responsible for it. The chart is then followed by an "informal translation." But the translation does not include the insignia, or any indication of the Israeli government ministry responsible for the chart. There is no CRA disclaimer accompanying the chart that addresses where it came from, or who provided the "informal translation" (whether the translation is Canadian or Israeli). Nor is the Israeli intelligence accompanied by Palestinian Authority evidence. In 2007, after considerable violence between Fatah and Hamas, Mahmood Abbas declared a state of emergency, which led to the Fatah party taking control of the Palestinian Authority in the West Bank, while Hamas maintained control over Gaza. This move prompted Israel and other states to divert aid for Palestine to the Fatah-controlled West Bank, thereby bypassing Hamas entirely.¹²⁰ As such, it is reasonable to presume that the Fatah-led Palestinian Authority would share with Canada and Israel similar concerns about Hamas. But on March 27, 2011, at the request of IRFAN-Canada, the Department of International Organizations of the Palestinian Ministry of Interior issued a "Good Conduct Certificate" for IRFAN-Canada. Admittedly, this letter is dated after the Directorate concluded its audit. Nonetheless it was part of IRFAN-Canada's submissions on appeal, prior to the group being listed as a terrorist organization on Canada's terrorist entity list. As such the letter did not get the attention it might otherwise deserve. For that reason, it is worth quoting at length here:

We at the Department of International Organizations in the Ministry [of Interior] certify that the above mentioned organization is registered with us... The organization adheres to all of the legal and administrative regulations

in accordance with the Civil Organizations and Committees law number 1 of 2000. Following a detailed review and examination of the organization's work in Palestine, it is verified that it has not committed any legal, administrative or financial violations. It has also been submitting annual financial and administrative reports as required.

Based on our great concern for the best interests for the Palestinian society, which is suffering from difficult economic and living conditions as well as high levels of unemployment, the Ministry wishes to affirm the important role that IRFAN-Canada plays in cooperation with the local organizations working in Palestine in accordance with the observed Palestinian laws. The Ministry extols the achievements of the abovementioned organizations over the past years, which include support for the health, education and economic sectors. It provides a number of financial scholarships to Palestinian university students, funds small income generating projects for poor families, sponsors orphans as well as other humanitarian assistance. The Ministry emphasizes the importance of continuing the work of the mentioned organization in Palestine.

The Ministry warns of the negative impact that will result from the suspension of this organization's work in Palestine where the non-governmental organizations play an active role taking into consideration the particularity of the country, which is collapsing under the occupation, and that has resulted in a significance increase in poverty cases and unemployment rates.¹²¹

Based on both select evidence and misreadings of the secondary literature, the Directorate seemed fairly clear that IRFAN-Canada's revocation was in part due to its links to Hamas. Certainly, it never had the chance to see the above letter from the Palestinian National Authority. But that only raises further questions about how it marshalled evidence from some sources and not others. Why was the substantial bulk of evidence from Israel and the United States? How did it come into the Charities Directorate's possession? Was there an effort to solicit evidence from the PNA that might corroborate Israeli evidence and intelligence?

While we do not know the answers to the above questions, we know that the Charities Directorate had a chance to respond to the Palestinian Ministry of Interior's letter when IRFAN-Canada filed an appeal at the Federal Court of Appeal, though it did not. Given the procedural posture of IRFAN-Canada's appeal, the Directorate did not need to address the above letter in its affidavit to the court.¹²²

After 2002 and certainly after 2006, working with any organization in the West Bank or Gaza Strip was viewed through the narrow lens of the War on Terror. That lens created what various scholars consider a myopic policy approach that simplifies a complex reality on the ground. While governments around the world focused on combatting terrorism after September 11, 2001, they risked sacrificing their humanitarian obligations. This was the case in the West Bank and Gaza Strip after the events of 2002 and 2006.

1. "Application for Incorporation of a Corporation Without Share Capital Under Part II of the Canada Corporations Act," attachment to Industry Canada's Letters Patent for IRFAN-Canada, File No. 341942-8, October 15, 1997, in the authors' possession.
2. Doug McCrae to IRFAN-Canada, c/o Christopher H. Kozlowski, April 19, 1999 (emphasis in original).
3. McCrae to IRFAN-Canada, c/o Kozlowski, April 19, 1999.
4. McCrae to IRFAN-Canada, c/o Kozlowski, November 26, 1999.
5. Public Safety Canada, "Hamas (Harakat Al-Muqawama Al-Islamiya) (Islamic Resistance Movement)," Public Safety Canada, updated November 21, 2018, <https://www.publicsafety.gc.ca/cnt/ntnl-scrtr/cntr-trrrsm/lstd-ntts/crrmt-lstd-ntts-en.aspx#25>.
6. Public Safety Canada, "International Relief Fund for the Afflicted and Needy - Canada (IRFAN - CANADA)," Public Safety Canada, updated November 21, 2018, <https://www.publicsafety.gc.ca/cnt/ntnl-scrtr/cntr-trrrsm/lstd-ntts/crrmt-lstd-ntts-en.aspx#32>. The second audit of IRFAN-Canada took shape over a period of years, resulting not only in the revocation of its charitable status, but also its inclusion on Canada's terrorist entities list as of April 24, 2014.
7. The analysis herein relies on materials from IRFAN-Canada's submissions to the Federal Appeals Court to seek a reversal of its charitable status revocation. The files include letters and minutes of meetings between IRFAN-Canada and the CRA. They also include a range of material documenting the humanitarian work of IRFAN-Canada in Algeria, Bosnia-Herzegovina, and the West Bank and Gaza Strip. Many of the files were acquired as a result of IRFAN-Canada's ATIP request; some portions of internal CRA documents released to IRFAN-Canada were redacted, and could not be reviewed, analyzed, and incorporated into this analysis.
8. Joel Greenberg, "Sharon Touches a Nerve, and Jerusalem Explodes," *The New York Times*, September 29, 2000, A11.
9. Canada, House of Commons Debates, 36th Parl, 2nd Sess, No. 126 (October 4, 2000), at 1445.
10. Canada, House of Commons Debates, 37th Parl, 1st Sess, No. 132 (December 14, 2001), at 1135.
11. Canada, House of Commons Debates, 37th Parl, 1st Sess, No. 124 (December 4, 2001), at 1445-50 (emphasis added).
12. Canada, House of Commons Debates, 37th Parl, 1st Sess, No. 139 (February 5, 2002), at 1440.
13. Canada, House of Commons Debates, 37th Parl, 2nd Sess, No. 30 (November 22, 2002), at 1145-50.
14. Canada, House of Commons Debates, 37th Parl, 2nd Sess, No. 113 (June 6, 2002), at 1135.
15. Canada, House of Commons Debates, 37th Parl, 2nd Sess, No. 131 (October 1, 2003), at 1440-45 (emphasis added).
16. Claude Senecal, Charities Directorate Compliance Division, to IRFAN-Canada, attn: Sami A. Kaoud, October 10, 2003.
17. "Charity Audit: Pre-Audit List," in Senecal to IRFAN-Canada, attn: Kaoud, October 10, 2003.
18. Minutes of Conference Call to 416.289.9666 ext 27), August 26, 2004, 10:30-11:45 a.m. between J. Torrance and Lila Farhang (CRA, Directorate), and N. Syed, R. Abdel-Magid and S. Kaoud (IRFAN-Canada).
19. Initial Interview with Claude Senecal, October 14, 2003.
20. Initial Interview with Senecal, October 14, 2003.
21. See the following Parliamentary exchange on September 30, 2003:

Mr. Stockwell Day (Okanagan—Coquihalla, Canadian Alliance): Mr. Speaker, we know that the Libyan embassy in Ottawa is providing backdoor travel visas to help terrorist fundraisers transfer hundreds of thousands of dollars to violent groups abroad. It does not stop there and this is where the Prime Minister comes in. According to senior Canadian intelligence officials a Hamas front group, the Jerusalem Fund for Human Services, is raising dollars in Canada right under the Prime Minister's nose. The Prime Minister has been aware of this group's activities. Why has he refused to give the order to shut it down?

Mrs. Marlene Jennings (Parliamentary Secretary to the Solicitor General of Canada, Lib.): Mr. Speaker, a legislative process has been put in place to deal with the global threat posed by terrorism. The Criminal Code at this time contains 31 entities and the assessment process for other possible listings continues and is ongoing.

Mr. Stockwell Day (Okanagan—Coquihalla, Canadian Alliance): Mr. Speaker, I wish to quote from a Canadian Alliance access to information request. It states:

—fundraising in support of violent foreign struggles takes place in Canada... Front groups operating in Canada include the Jerusalem Fund for Human Services (Hamas Front)— This came from a secret intelligence memorandum to the Prime Minister, not to the Solicitor General, over 36 months ago. He still has not ordered this group's assets frozen or its activities stopped. Why does he ignore his security advisor and allow terrorist groups like this to operate with impunity? He is not protecting Canadians. Who is he protecting?

Canada, House of Commons Debates, 37th Parl, 2nd Sess, No. 130 (September 30, 2003), at 1440.
22. Initial Interview with Senecal, October 14, 2003.
23. "Relationship between JFHS and IRFAN," a collection of notes by Directorate auditors included in audit file, in the authors' possession.
24. "Audit Plan," handwritten notes of CRA auditor, in the authors' possession.
25. Senecal and Judy Torrance to Rasem Abdel-Magid, January 20, 2004.
26. Abdel-Majid to Senecal, March 15, 2004.
27. Torrance to Abdel-Majid, July 23, 2004.
28. Torrance to Abdel-Majid, July 23, 2004.
29. Shaul Mishal and Avraham Sela, *The Palestinian Hamas: Vision, Violence, and Coexistence* (New York: Columbia University Press, 2000).
30. N. T. Anders Strindberg, "Challenging the 'Received View': De-Demonizing Hamas," *Studies in Conflict and Terrorism* 25, no. 4 (2002): 263-73; Steven Salaita, "Review of *The Palestinian Hamas: Vision, Violence and Coexistence*, by Shaul Mishal and Avraham Sela," *The Arab Studies Journal* 8/9, nos. 2/1 (Fall 2000/Spring 2001): 168-70; Quintan Wiktorowicz, "Review of *The Palestinian Hamas: Vision, Violence and Coexistence*, by Shaul Mishal and Avraham Sela," *International Journal of Middle East Studies* 35, no. 3 (2003): 511-13.
31. Y. Yehoshua and B. Chernitsky, "Incitement in the Palestinian Authority After the Aqaba Summit," MEMRI, Palestine Special Reports no. 20, August 22, 2003, <https://www.memri.org/reports/incitement-palestinian-authority-after-aqaba-summit>.

32. Mona Baker, "Narratives of Terrorism and Security: 'Accurate' Translations, Suspicious Frames," *Critical Studies of Terrorism* 3, no. 3 (2010): 347–64, 349.
33. Baker, "Narratives of Terrorism and Security," 353.
34. Brian Whitaker, "Selective Memri," *The Guardian*, August 12, 2002, <https://www.theguardian.com/world/2002/aug/12/worlddispatch.brianwhitaker>.
35. Pete W. Moore, "HAMAS inside the Beltway," *Middle East Law and Governance* 1, no. 1 (2009): 117–23, 120–21.
36. Moore, "HAMAS inside the Beltway," 120–21.
37. Naseer (Irfan) Syed to Charities Directorate, attn: Torrance, November 19, 2004.
38. Torrance to Syed, December 21, 2004.
39. Log of Action, Form T2020 prepared by "JM", which likely refers to J. McCaffrey, an auditor with the Directorate. See also Naushad Quaraishi, Charities Directorate, to Mohammad Khadim, President of IRFAN-Canada, August 26, 2008.
40. Various international observers remarked that the elections were held in a fair and responsible manner. See, for example, National Democratic Institute for International Affairs, *Final Report on the Palestinian Legislative Council Elections*, National Democratic Institute, January 25, 2006, https://www.ndi.org/sites/default/files/2068_ps_elect_012506.pdf.
41. Mandy Turner, "Building Democracy in Palestine: The Liberal Peace Theory and the Election of Hamas," *Democratization* 13, no. 5 (2006): 739–55.
42. Turner, "Building Democracy in Palestine," 740.
43. United Nations, "Statement of Palestinian Elections by Middle East Quartet," United Nations, January 26, 2006, SG/2103-PAL/2041, <https://www.un.org/press/en/2006/sg2103.doc.htm>.
44. Gloria Galloway, "Following Israel's Lead, Canada Cuts Aid to Hamas," *The Globe and Mail*, March 30, 2006, A1. Notably, being the first government to cut ties with Hamas was a point of pride for the Conservative government. For instance, MP Dave Van Kesteren (Chatham-Kent–Essex, CPC) celebrated the government accomplishments in its first 100 days: "Mr. Speaker, it has been roughly 100 days since the Prime Minister and this Conservative government took office. . . . We are the first government to take a hard line on Hamas." Canada, House of Commons Debates, 39th Parl, 1st Sess, No. 25 (May 17, 2006), at 1405. Admittedly, not all saw it the same way. As Keith Martin, MP (Esquimalt–Juan de Fuca, Lib.), characterized it, the Government was "cutting funding to Hamas but not allowing these funds to get to the Palestinian people." Canada, House of Commons Debates, 39th Parl, 1st Sess, No. 31 (June 1, 2006), at 1400.
45. Canada, House of Commons Debates, 39th Parl, 1st Sess, No. 18 (May 8, 2006), at 1435.
46. Canada, House of Commons Debates, 39th Parl, 1st Sess, No. 19 (May 9, 2006), at 1450.
47. In 2006, for the first session of the 39th Parliament, Hon. Caroline St-Hilaire served on the Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development, later assuming the role of vice chair.
48. Canada, House of Commons Debates, 39th Parl, 1st Sess, No. 35 (June 7, 2006), at 1840–45 (emphasis added).
49. "US 'Blocks' Palestinian Aid Plan," *BBC News*, May 5, 2006, http://news.bbc.co.uk/2/hi/middle_east/4976368.stm.
50. Council of European Union, "Press Release: 2728th Council Meeting, General Affairs and External Relations," May 15, 2006, 9901/06 (Presse 126).
51. "Temporary International Mechanism payment for Palestinian Population – Press Release," United Nations, November 6, 2007, <https://www.un.org/unispal/document/auto-insert-206902/>.
52. Sari Bashi, "Justifying Restrictions on Reconstructing Gaza: Military Necessity and Humanitarian Assistance," *Israel Law Review* 49, no. 2 (2016): 149–68.
53. Tamer Qarmout and Daniel Béland, "The Politics of International Aid to the Gaza Strip," *Journal of Palestine Studies* 41, no. 4 (2012): 32–47.
54. Benedetta Berti, "Non-State Actors as Providers of Governance: The Hamas Government in Gaza between Effective Sovereignty, Centralized Authority, and Resistance," *Middle East Journal* 69, no. 1 (2015): 9–31.
55. Berti, "Non-State Actors as Providers of Governance," 24.
56. FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations*, FATF, updated October 2020, <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/internationalstandardsoncombatingmoneylaundryandthefinancingofterrorismproliferation-thefatfrecommendations.html>.
57. William A. Schabas, "Gaza, Goldstone, and Lawfare," *Case Western Reserve Journal of International Law* 43, no. 1/2 (2010): 307–12, 309 (footnotes omitted).
58. Ben Parker, "Oxfam Faces \$160 Million Legal Threat over Palestine Aid Project," *The New Humanitarian*, September 12, 2019, <https://www.thenewhumanitarian.org/news/2019/09/12/NGO-counter-terrorism-Gaza-Palestine-oxfam-lawsuit>.
59. See "Norwegian People's Aid Settles Enforcement Case over Democracy Building and Mine Removal Projects US Says Were Material Support," *Charity and Security Network*, April 18, 2018, https://charityandsecurity.org/news/news_npa-us_settle_case/. On the Carter Center and Doctors Without Borders, see Ben Parker, "A Q&A with the Pro-Israel US Lawyer Rattling NGOs on Counter-Terror Compliance," *The New Humanitarian*, September 25, 2018, <https://www.thenewhumanitarian.org/interview/2018/09/25/qa-pro-israel-us-lawyer-rattling-ngos-counter-terror-compliance>.
60. Parker, "A Q&A with the Pro-Israel US Lawyer."
61. *United States v. Holy Land Foundation for Relief and Development et al*, No. 09-10560 (5th Cir, January 13, 2012), at 4, <http://www.ca5.uscourts.gov/opinions%5Cpub%5C09/09-10560-CR0.wpd.pdf>.
62. "Attachment A" (CR No. 3:04-CR-240-G), *United States of America v. Holy Land Foundation et al* (DC, Texas), on file with authors.
63. *United States of America v. Holy Land Foundation*, et al, 624 F.3d 685 (2010).
64. In Form T20 "Charities Office Audit Report," 8, Directorate officials noted in 2011 (well after the two US cases deciding on the due process violation), that there was "clear evidence" of links between IRFAN-Canada and Hamas, with specific reference to the Holy Land Foundation litigation in the US.

65. Abdel-Majid to McCaffrey, March 13, 2009.
66. Record of Verbal Communication between McCaffrey and Abdel-Majid (Form T2020), February 18, 2009. The formal request, conveyed via letter, extended to a range of documentation. See McCaffrey to Abdel-Majid, February 2, 2009, requesting copies of phone bills, minutes, bank statements, cancelled cheques, wire transfer documentation, lists of volunteers/employees, and any and all fundraising material for the period of January 1, 2005, to December 31, 2009.
67. See Abdel-Majid to McCaffrey, February 25, 2009 (re: phone bills); Abdel-Majid to McCaffrey, March 5, 2009 (re: bank transfers); Abdel-Majid to McCaffrey, March 13, 2009 (re: bank statements and cancelled cheques); Abdel-Majid to McCaffrey, March 27, 2009 (re: minutes, fundraising materials, list of volunteers/employees, and additional bank statements); Abdel-Majid to McCaffrey, April 21, 2009 (re: additional minutes of meetings).
68. Kaoud to Terry De March, Director General, 26 May 2009.
69. See, for instance, Kaoud to De March, June 25, 2009; Kaoud to De March, July 23, 2009, reiterating that banks under the auspices of the Palestinian National Authority do not customarily return cancelled cheques, making it difficult to obtain copies to satisfy the Directorate's requests.
70. Terrance S. Carter to Cathy Hawara, Director General, Canada Revenue Agency, February 24, 2010.
71. McCaffrey to Abdel-Majid, July 10, 2009.
72. Kaoud to De March, July 23, 2009
73. See, for example, Hawara to Carter, February 11, 2020.
74. Throughout the report, we avoid using the names of Charities Directorate personnel, and instead focus on the policies, with two exceptions. We name Cathy Hawara and Alastair S. Bland (below) in the IRFAN-Canada case study given their testimony discussed in Section V below on Charities Directorate policies are related to anti-terrorism financing.
75. Hawara to Carter, April 6, 2010.
76. Hawara to Carter, April 6, 2010.
77. Hawara to Carter, April 6, 2010.
78. Hawara to Carter, April 6, 2010.
79. Carter to Hawara, February 24, 2010.
80. Appendix D, in Hawara to Carter, April 6, 2010.
81. Appendix D, in Hawara to Carter, April 6, 2010.
82. FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures—Canada*, Fourth Round Mutual Evaluation Report (Paris: FATF, 2016), 61.
83. McCaffrey to Carter, April 30, 2010.
84. Orphan Sponsorship Questionnaire, May 19, 2010, completed by Directorate officials Leah Harris, Julie McCaffrey, C. Penel, and Souraya Ghatit, in the presence of Rasem Abdel-Majid and Khaled Masoud, and their lawyer Naseer (Irfan) Syed.
85. Interview on Due Diligence Procedures by Harris, May 26, 2010; interview with Harris, Ghatit, Syed, Abdel-Majid, Sami Kaoud, and Fahed Al-Sheikh (via teleconference from Ramallah) on due diligence procedures in West Bank Office, May 27, 2010; minutes of interview concerning processing in-kind gifts (between Lise Sabri, Abdel-Majid, Syed, McCaffrey, Harris, and Ghatit), 28 May 2010; minutes of Interview re: Zabeeha 2006 Project (present: Sabri, Abdel-Majid, Syed, Harris, Ghatit), May 28, 2010.
86. Questionnaire completed by IRFAN-Canada for audit period January 1, 2005–April 13, 2010, May 27, 2010.
87. See, for instance, Kenneth Mann to Syed, February 20, 2010.
88. Carter to Hawara, October 8, 2010.
89. Record of Verbal Communication (Form T2020) by Harris re: telephone call from Syed, lawyer for IRFAN-Canada, November 3, 2010. See also Syed to Harris, Auditor, November 5, 2010.
90. Administrative Fairness Letter (AFL) of Harris to Carter, December 14, 2010.
91. AFL of Harris to Carter, December 14, 2010.
92. AFL of Harris to Carter, December 14, 2010.
93. Appendix G in AFL of Harris to Carter, December 14, 2010.
94. See, for example, National Democratic Institute, *Final Report on the Palestinian Legislative Council Elections*, National Democratic Institute, January 25, 2006, https://www.ndi.org/sites/default/files/2068_ps_elect_012506.pdf.
95. AFL of Harris to Carter, December 14, 2010.
96. Notice of Intention to Revoke (NIR) of Hawara to Carter, March 9, 2011.
97. Revocation of Registration, Alastair S. Bland, Director of Review and Analysis Division, to Abdel-Majid, April 11, 2011. Notably, this letter was the only formal indication of RAD's involvement in the audit. As explained below (see Section V.A.1.), RAD was tasked within the CRA with managing and effectuating the government's anti-terrorism financing regime in relation to charities that might be affiliated with terrorism financing.
98. Harris to Carter, December 14, 2010.
99. Harris to Carter, December 14, 2010.
100. Appendix F, Harris to Carter, December 14, 2010.
101. Jeroen Gunning, *Hamas in Politics: Democracy, Religion, Violence* (London: Hurst & Company, 2007), 1.
102. Gunning, *Hamas in Politics*, 1.
103. Gunning, *Hamas in Politics*, 3.

104. Gunning, *Hamas in Politics*, 3.
105. Gunning, *Hamas in Politics*, 3.
106. Matthew Levitt, *Hamas: Politics, Charity and Terrorism in the Service of Jihad* (New Haven, CT: Yale University Press, 2006).
107. Appendix F, Harris to Carter, December 14, 2010, citing Levitt, *Hamas*.
108. Gunning, *Hamas in Politics*, 1.
109. Carter to Charities Directorate, attn: Harris, February 22, 2011.
110. Steven Erlanger, "Militant Zeal," *The New York Times*, June 25, 2006, 10.
111. Erlanger, "Militant Zeal."
112. Moore, "HAMAS inside the Beltway."
113. Appendix A, Hawara to Carter, March 9, 2011.
114. AFL of Harris to Carter, December 14, 2010.
115. Government's Amended Memorandum in Opposition to Petitioners Islamic Society of North America and North American Islamic Trust's Motion for Equitable Relief, *United States v. Holy Land Foundation For Relief and Development, et al.*, US District Court for the Northern District of Texas (Dallas Division), CR No. 3:04-CR-240-P, https://www.aclu.org/sites/default/files/images/asset_upload_file142_36171.pdf.
116. Attachment A can be obtained through a range of open-access sources. One such source is "Attachment A," The Investigative Project on Terrorism, accessed August 17, 2020, https://www.investigativeproject.org/documents/case_docs/423.pdf.
117. *United States v. North American Islamic Trust*, USCA (5th cir), No. 09-10875, October 20, 2010, 4.
118. *United States v. North American Islamic Trust*, No. 09-10875, 10.
119. Hawara to Carter, March 9, 2011.
120. Mark MacKinnon, "Neighbours Meet to Bolster Abbas," *The Globe and Mail*, June 25, 2007, <https://www.theglobeandmail.com/news/world/neighbours-meet-to-bolster-abbas/article1087774/>.
121. Letter of Fadwa al-Sha'ir, Director General, General Administration of NGOs, Palestinian National Authority, March 27, 2011.
122. *International Relief Fund for the Afflicted and Needy (Canada) v. Minister of National Revenue*, Court File No: A-130-11, Leah Harris, Aff. ¶19–24, March 31, 2011.

CONCLUSION

Muslims in North America and Europe have long had to contend with being the imagined foreigner or outsider. The tendency to view the Muslim as Other has a long history that predates the tragic events of September 11, 2001.¹ Nevertheless, that day remains the cornerstone of modern justifications for increased security measures at airports, enhanced financial tracking measures, and a herd of ramped-up national security measures that disproportionately target Muslims. Today's Europe features states that ban burkas and devote government resources to fashioning a "moderate" Islam.² In the United States, over two dozen states have legislated "Sharia bans,"³ while all over North America, right-wing groups protest the construction of mosques and promulgate online hate against Muslims in increasing numbers.⁴ While this is a global phenomenon that has been analyzed in several academic and community-based studies, its presence in Canada is felt in myriad ways. This report examines one location of this trope within Canada: audits of Muslim-led charities.

Through its case studies and overview of government policies, this report raises the possibility that the bias deeming Muslims foreign and threatening informs the structure, design, and/or bureaucratic application of whole-of-government policies, such as the anti-terrorism financing regime and the counter-radicalization policy. In some cases, such as the National Strategy to counter radicalization, we appreciate the non-discriminatory tenor and tone with which the government articulates the policy. However, as the case studies suggest, general policies that use indeterminate phrases such as "extreme ideas" or risk-based assessments that focus on one sub-group over others implicitly intimate what auditors should look for when implementing otherwise standard audit procedures.

This report is principally a story of three organizations that were audited by the Charities Directorate. The three case studies of the Ottawa Islamic Centre, the Islamic Shi'a Assembly of Canada, and IRFAN-Canada offer a narrative that we believe raises important questions that will require action and further study if we, as members of Canada's democratic polity, are to achieve the accountability that we expect of democratically representative institutions of government.

What these case studies bring to the fore are concerns regarding how anti-terrorism financing and anti-radicalization imperatives of the government shape the practices employed in the audits of these Muslim-led charities. To reiterate, Canada's anti-terrorism financing policy is designed to comply with its obligations as a member state of the Financial Action Task Force (FATF). As part of that compliance, Canada is required to have a "risk-based assessment" model by which to allocate scarce resources and direct its attention to what it considers the most immediate risks of terrorism financing: Canada's anti-terrorism financing policies lurked in the background of the ISAC audit, with the alleged link between ISAC and Hizbullah via Iran's ABWA. In the case of IRFAN-Canada, the policy seemed to cast

a shadow over both the 2004 and 2008 audits, with this organization bearing the brunt of foreign policy debates on Palestine that were playing out in Parliament. In the Ottawa Islamic Centre case, the Charities Directorate's use of standard audit techniques allowed it to allege—without needing to prove—that the organization was fostering “radicalization,” based on at times tenuous evidence from speeches given elsewhere in the past by guest speakers.

Relatedly, we are left trying to understand how and why the Charities Directorate selected the evidence it did, and adopted the interpretations it did in the course of the audits in all three case studies. Each of these case studies raises concerns about sources, methods, and modes of gathering and interpreting evidence – matters that are germane to a transparent, accountable and just democratic society. Ultimately, this report raises concerns about the extent to which Muslim-led charities can be treated fairly and equitably within the current structuring of Canada's anti-terrorism financing and anti-radicalization regimes and its operationalization through the Charities Directorate and the Review and Analysis Division (RAD).

Recommendations

With the above findings in mind, we offer the following recommendations:

To the Canada Revenue Agency

1. **Suspend the Review and Analysis Division (RAD) pending review of Canada's Risk-Based Assessment model and strategy to combat extremism and radicalization.** The CRA should suspend the Review and Analysis Division of the Charities Directorate until the Government of Canada revises its Risk-Based Assessment model for combatting anti-terrorism financing in compliance with FATF requirements, and Public Safety provides necessary explanatory guidance on its strategy against violent extremism and radicalization regarding what counts as an extreme idea justifying administrative disruption tactics. This suspension is especially necessary as recent events raise questions about whether organizations such as those addressed herein can obtain fair and impartial justice through judicial review proceedings, such as at the Federal Tax Court.⁵
2. **Suspend discretionary use of revocation power in audits of Muslim-led charities where anti-terrorism financing or counter-radicalization policies inform the audit.** For as long as the Anti-Terrorism Financing RBA and the Counter-Radicalization policies remain structured as they currently are, the Charities Directorate should suspect its discretionary use of its deregistration power when auditing Muslim-led charities in the shadow of the two whole-of-government regimes.
3. **Enhance transparency between the Charities Directorate and charities audited out of concern for prevention of terrorism financing and radicalization.** As the Charities Directorate and RAD testified, organizations subject to audit may not be informed that the audit operates in the shadow of anti-terrorism financing and counter-radicalization policies. For as long as the Charities Directorate and RAD continue to audit charities using standard audit practices while informed by these policies, it should adopt enhanced transparency measures between the Charities Directorate and the audited organization so that the organization has sufficient and meaningful notice of the nature of the audit and its potential scope of inquiry.

A review and revision of Canada’s Risk-Based Assessment of terrorism financing in Canada. Convene a robust review, comprised of a diverse array of stakeholders, to review and revise Canada’s anti-terrorism financing regime to better control against possible disproportionate effect on a subset of Canadian citizens and charitable organizations. The review and revision should also comply with the most recent guidance from the FATF.

Provide greater guidance to government officers on how the policy is to be applied in a non-discriminatory fashion. Public Safety’s national strategy to combat radicalization centres “extreme ideas” as a key feature of analysis in radicalization. “Extreme ideas” is an ambiguous concept that ultimately grants agents, who enjoy discretionary authority under relevant legislation and regulations, the power to determine what constitutes an “extreme idea” and who might hold such an idea. While the current policy attempts to be neutral in how it identifies the conditions of radicalization, its approach is operationalized alongside an anti-terrorism financing regime that raises the suspicion of disparate impact on Muslim-led organizations. The two sets of policies operate in parallel, with anti-terrorism measures cast as prosecutorial, and counter-radicalization as preventative or pre-crime measures. As both tactics operate in tandem across the whole of government, policies and procedures against radicalization have the capacity to disparately affect certain communities over and against all others.

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