An Independent Academic Review of The Canada Revenue Agency (CRA) Audit of The Muslim Association of Canada (MAC)

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An Independent Academic Review of The Canada Revenue Agency (CRA) Audit of The Muslim Association of Canada (MAC)

Executive Summary

Charities perform valuable functions and are an important part of Canadian society. That valuable function, the generation of benefits not serviced by profit-centred activities such as businesses nor met by governmental programs, has long been acknowledged and encouraged. Canadian law encourages such benevolence through the conference of tax privileges onto charities: they neither contribute to public coffers – are 'tax exempt' – and can confer tax creditable receipts onto those who donate to their works.

The privileged tax status comes with attendant responsibilities. Charities must, in the conduct of their affairs, remain within the confines of the terrain from which their tax-privileges derive. They risk the loss of status should they fall afoul of charities law.

While the Muslim Association of Canada was granted the authority to occupy charitable terrain, that privilege was challenged by the administrative authority – the Canada Revenue Agency (CRA) - responsible for ensuring that charities comply with the law. Through a compliance audit, the agency questioned whether MAC had transgressed the boundaries upon which its tax privileged status sat.

Part of that audit raised concerns about compliance related to terrorist abuse. Based in part on allegations of terrorist abuse, the CRA concluded that MAC's registered charitable status ought to be revoked. The allegations contributed to a court action by MAC asserting that the administrative actor exhibited bias and discrimination towards a Muslim charity or otherwise violated its Charter Rights. Following the litigation, and ensuing discussions between MAC and the CRA, the precise state of the audit remains in flux: the audit venture is not complete.

At the behest of MAC, an independent academic review was convened to inquire into compliance concerns related to alleged terrorist abuse. More broadly, the review was tasked with proffering recommendations on improving the administrative governance structure.

A significant challenge in any probing of the administrative compliance realm is transparency. Tax law generally protects taxpayer privacy – CRA audits, short of certain exceptions, are privileged and not open to public scrutiny. In the instance of the MAC audit, more light avails due to the intervening litigation. And a series of recent studies of CRA audits provide insight on CRA audit processes in connection with the discernment of terrorist abuse.

Informed by multiple informational sources – specific materials relevant to the MAC audit, scholarship on terrorist abuse as it connects to the charitable sector and recent studies of CRA audits – this review of the CRA audit of MAC discloses a constellation of problematic dimensions. The MAC audit experience speaks cogently of Islamic charities, of the court of public opinion, of the balance between administrative transparency and the damaging impacts of allegations of

terrorist abuse and of whether administrator actors treat Islam and Islamic charities in a fair and unbiased manner.

Not uniquely tethered to the MAC audit by the CRA, this review speaks more broadly to the conjunction of terrorist abuse and the charitable sector. The fusion unto tax-centric compliance analysis of terrorist abuse burdens any charity with analysis and distinctions that the state itself may not be prepared to make. Acting under state authority, the review expresses concern over the fact that administrator not only applies the law as it intersects with known terrorist organizations but that the actor also assesses who else might be considered, in its estimation, a terrorist. The CRA, the charity's regulator, engages in assessments of what constitutes support for terrorism, or for 'extremism', such as whether discrete speech acts qualify as terrorist abuse. Of broad concern to the regulated sector, this invariably collides with other perspectives, or simply stated, places charities in the unenviable position of making decisions about what actors, or actions, the administrator of charities law might think are linked to terrorism.

Drawn from this review are a series of recommendations to improve administrative frameworks as they relate to compliance in the context of charities governance.

Recommendations

Recommendation 1

> *That the CRA consider developing a methodology that would enhance the sharing of information about audits and audit practices and processes. That methodology could rely, in part, on anonymized data to preserve audit privacy while permitting enhanced insight on administrative action. That the collection and sharing of data entertain the possibility of collecting and sharing data related to the religions, and to religious identity, so to permit assessment and comparison.*

Recommendation II

> *In the interests of enhanced transparency, that Federal Government consider amending the tax statute to permit appeals of CRA decisions to the tax court of Canada. Relatedly, that in any administrative decision, particularly as it might implicate public disclosures, that the CRA attach a paramountcy to non-disclosure and to the retention of privacy given the devasting impacts of any such disclosures on members of the charitable sector.*

Recommendation III

> *To mitigate against any potential bias, prejudice or discrimination, that the CRA secure, in relation to compliance analysis, individuals with an expertise and intimate familiarity with diverse cultures and religions including Islam.*

Recommendation IV

To help charities with the diligent exercise of compliance with charities law, the administrator of charity's law consider regularly releasing warnings about non-listed actors whose activities raise serious concerns about terrorist abuse.

ACADEMIC STUDY

Part 1: Introduction

1.1 Terms of Reference – Scope of the Review

In late 2024, the Muslim Association of Canada (MAC) sought an independent academic review of an audit of their charitable enterprise that was conducted by the Canada Revenue Agency (CRA). The objective of the review is to determine whether the CRA had alleged that connections existed between MAC and terrorist abuse and, if so, whether, through the audit, any such allegations had been substantiated.[1] More broadly, MAC sought to offer its experience as a grounded case study of the administrative agency's audit practices and alleged abuse of the charitable form and the opportunity to proffer recommendations.

Several themes were identified by MAC for the purpose of the inquiry: the effectiveness of the audit methodology employed by CRA; the credibility of sources relied upon; whether findings of terrorist financing or abuse were made; and matters in relation to the Muslim Brotherhood and possible foreign influence on the audit.

Administrative audits typically occur under the rubric of confidentiality. Taxpayer privacy, enshrined in tax law, limits the disclosure of tax-related information. In the context of the MAC audit, the informational parameters are wider: intersecting litigation prompted the disclosure of materials that would otherwise not be in the public domain. This yields access to broader information than would otherwise avail in the context of any particular CRA audit.

As prescribed by the terms of reference, the review centers on the theme of allegations of links between MAC and terrorist abuse and any substantiation of any alleged links.

It is pertinent, at the outset, to acknowledge the prominence of contemporary discourses on Islamophobia and Islam-centric discrimination and bias.[2] That MAC is Muslim-based charity primes for convergence. This confluence is attributable to a post-September 11, 2001, narrative that has regrettably not been purged.

1.2 Methodology and Materials Considered

This review employs standard academic methodology. Consistent with cannon, it considers and relies on material that is publicly accessible.

The evidential record reviewed consists of documents, materials and information gathered by the CRA in the pursuant of the audit. The material is extensive, the compilation and summary of an

[1] Appendix I – Terms of Reference (undated).
[2] For instance, (then) Deputy Prime Minister Chrystia Freeland, in her bid to assume the leadership of the Liberal Party in the wake of Justin Trudeau's departure, pledged, if chosen, to terminate allegedly discriminatory practices by the CRA in relation to Muslim charities: https://www.cbc.ca/news/politics/freeland-cra-rad-muslim-audits-1.7463471; Report of the Standing Senate Committee on Human Rights, 2023, Combatting Hate: Islamaphobia and Its Impacts on Muslim's in Canada: https://sencanada.ca/content/sen/committee/441/RIDR/Reports/RIDR_Islamophobia_Report_e.pdf

exercise that involved multiple CRA agents, emails communications, websites, interviews and documents. In addition to audit materials, the record consists of the documents, affidavits, transcripts and other information disclosed by the litigation.[3]

The terms of reference afforded the reviewer access to MAC executives. In January 2025, the reviewer attended at the offices of MAC in Mississauga, Ontario and met officers and individuals associated with MAC. In the interests of fulsome transparency, this openness to dialogues with MAC officers was not exploited. It could reintroduce new evidence, new materials, and, as such, not be consistent with an academic review centered on the existing body of information that framed the CRA audit.

Academic methodology dictates reliance on, and integration of, broader accumulations of knowledge. Studies and scholarship related to relevant aspects were examined and incorporated.

Prior to engaging in this review, the reviewer had no previous relationship with MAC nor with any agents, officials or others known to the reviewer to be associated with the MAC charitable enterprise. Nor had the reviewer any relationships with the CRA, or any of its officers or employees.

A review is not an advocacy venture. It is not, *a priori*, an attempt to validate or refute the legitimacy of the CRA audit: that would jeopardize the very idea of an 'independent academic' project. Advocacy has its central place in the legal landscape as does impartial external examination. Impartial examination, the traditional domain of the courts, typically decides matters of law and assigns legal responsibility. This review takes its lead from the ordering of public inquiries which resist the temptation to attribute liability, or 'find fault' but aim to provide recommendations on how a particular field of interest might be improved.

Any faults or flaws, whether they relate to understandings of facts or law, lie entirely with the reviewer.

Part 2: The Audit Trajectory

2.1 The Contours of the Audit

The CRA conducted an audit of MAC's charitable enterprise that stretched over a period of at least 9 years.[4] It began in 2015 when MAC was advised that it had been selected for an audit. MAC is

[3] To facilitate an independent review, MAC created and shared with the reviewer, a google-assisted compendium of materials. Those materials were arranged under the headings of the CRA audit, the court challenge, 'leaked' documents and 'negative' media. Academic rigour mandates the rejection of any consideration of 'leaked' documents since their authenticity cannot be determined. Having reviewed one such document, the reviewer resisted examining any others. Evidentially unsound, they form no part of this review.

[4] At the time of writing, matters continue to unfold. The last communication between MAC and the CRA in relation to the audit discloses the signing of a compliance agreement between the CRA and MAC and the levying of penalties for non-compliance, the latter of which is under appeal.

a registered charity, the largest Muslim-based charity operating within Canada.[5] The 2015 communication did not announce specific compliance concerns.

The CRA is the administrative authority responsible for overseeing the compliance of registered charities with charities law. Audits are a tool the CRA uses to periodically investigate and enforce compliance.

The audit involved a sequence of site visits to MAC operations, interviews with MAC officers and employees, and the disclosure of documents and information about the operations of MAC facilities, donations, events and services. In 2021, MAC received a detailed (150 page) administrative fairness letter (AFL) from the CRA outlining compliance concerns. The AFL indicated that there were sufficient reasons to revoke MAC's status as a registered charity.[6]

From 2021 through to January 2022, MAC responded to the AFL through a series of meetings and communications with the CRA. It acknowledged certain compliance deficiencies, provided a detailed and lengthy response to the compliance concerns, and offered to enter into a compliance agreement to remedy any compliance deficiencies.[7] Part of its response alleged that the audit reflected bias towards Islamic charities. MAC conveyed its intention to launch a *Charter-based* challenge of the audit.

In April 2022, MAC initiated legal proceedings in Ontario.[8] MAC alleged that the CRA violated MAC's *Charter* rights and otherwise discriminated against MAC.[9]

In September 2023, the Ontario court determined that the MAC challenge was premature.[10] Subsequent communications between MAC and the CRA lead to a compliance agreement and penalties levied against MAC for non-compliance.[11]

2.2 The Non-Compliance Concerns Identified By The CRA

In its 2021 AFL, the administrative agency identified areas of non-compliance with charities law and detailed the evidence upon which its assessment relied.[12] Loosely divided into two parts, the first series center largely on failing to remain within the charitable form: the second relate more

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[5] https://apps.cra-arc.gc.ca/ebci/hacc/srch/pub/dsplyRprtngPrd?q.srchNmFltr=Muslim+Association+of+Canada&q.stts=0007&selectedCharityBn=880495163RR0001&dsrdPg=1

[6] Charities Directorate, Audit of the Muslim Associations of Canada, March 17, 2021 (Administrative Fairness Letter – AFL) p 154.

[7] Terrence Carter, August 30, 2021; Terrence Carter, December 3, 2021: Terrence Carter January 12, 2022.

[8] https://drive.google.com/file/d/1nk8U_9_7UQQfWSVArByXgQ2GmDiGxmdP/view

[9] https://drive.google.com/file/d/1nk8U_9_7UQQfWSVArByXgQ2GmDiGxmdP/view

[10] *Muslim Association of Canada v Attorney General of Canada*, 2023 ONSC 5171. MAC's appeal was rejected: *Muslim Association of Canada v Canada (Attorney General),* 2024 ONCA 541:

[11] Compliance Agreement, April 2, 2024: https://drive.google.com/file/d/1B2PIMkwsf_shkHpN_Q87XmxNtKbSzYK-/view: penalties: https://docs.google.com/document/d/1AViu3t_OWjNo-sDPzbQH00TpWJ3viGsJxge0HcnDOSE/edit?tab=t.0

[12] AFL, 2021 and Charities Directorate, Audit of the Muslim Association of Canada, September 12, 2023 (Administrative Fairness Letter, AFL 2023).

tightly to financial administration in the context of governance. In either case, the concerns connote non-compliance with charities law.

Within the first series, the CRA determined that MAC had advanced non-charitable, collateral purposes: had engaged in activities contrary to public policy; had violated the public benefit test; had failed to devote its resources exclusively to charitable activities; had failed to direct and control its resources and had conferred an undue benefit. With respect to the second series, the CRA determined that MAC improperly issued official receipts, failed to maintain adequate books and records, failed to file accurate charities information returns, and failed to properly document payments to employees.

To the extent that allegations of terrorist abuse are raised in the AFL, they are relevant to the first series of compliance concerns.

2.3 Intersecting Developments

A series of developments occurred within the overarching time-frame of the CRA audit. Directly referrable to the audit was litigation by MAC against the CRA alleging that the audit was discriminatory and violated its freedom of religion, freedom of expression, freedom of association and freedom from discrimination guaranteed by the *Charter of Rights and Freedoms*.[13] The Ontario court determined that the action was premature since it interfered with an on-going investigation that had not reached its conclusion.[14]

Not part of the specific landscape but intensely relevant was a series of reports centered on bias, discrimination and fairness in the administration of charities law, particularly in relation to Islamic, or Muslim, entities.[15] Amidst these developments the CRA agree to enhance its training of audit officials including mandatory courses on unconscious bias.[16]

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[13] Muslim Association of Canada v Attorney General of Canada, April 11, 2022: https://drive.google.com/file/d/1nk8U_9_7UQQfWSVArByXgQ2GmDiGxmdP/view

[14] *Muslim Association of Canada v Attorney General of Canada*, 2023 ONSC 5171.

[15] Anver Emon and Nadia Hasan (2021) Under Layered Suspicion: A Review of CRA Audits of Muslim-Led Charities, (hereinafter *Under Layered*) https://www.layeredsuspicion.ca/: Office of the Taxpayer's Ombudsperson, (2023) Charity Begins with Fairness: More to Explore: An Examination into the Fairness of the Audit Process for Registered Charities in Canada (hereinafter *Ombudsperson*) https://www.canada.ca/en/taxpayers-ombudsperson/programs/reports-publications/special-reports/charity-begins-with-fairness.html: International Civil Liberties Monitoring Group (2021) The CRAs Prejudiced Audits: Counter-Terrorism and the Targeting of Muslim Charities in Canada (hereinafter *Civil Liberties*) https://iclmg.ca/wp-content/uploads/2021/06/Prejudiced-Audits-ICLMG-2021.pdf.

[16] CRA Response to the 2023 Systemic Examination Report: Charity Begins with Fairness: https://www.canada.ca/en/revenue-agency/corporate/about-canada-revenue-agency-cra/service-improvements-updates/charity-begins-fairness.html. Additionally, an ardent critic of the CRA practice in relation to Muslim entities was recently appointed to a federal advisory committee on the charitable sector: https://www.canada.ca/en/revenue-agency/news/2022/04/new-members-appointed-to-the-advisory-committee-on-the-charitable-sector.html.

In October 2025, the National Security and Intelligence Review Agency (NSIRA) released a review of the CRA's Review and Analysis Division (RAD) - the entity responsible for charity law governance in relation terrorist abuse.[17]

These intersecting developments are clearly pertinent because MAC is a Muslim-based charity and because all center, in one or another, on charitable governance and modern efforts to prevent terrorist abuse. The findings of the reports are integrated in this review. Suffice at this point to note that all find fault with the administrative agency's audit mechanism.

While the pertinence of the court challenge is obvious, it also clearly constitutes – similar to the present effort - an independent assessment. Although the court decided that the *Charter* challenge was premature, Justice Koehnen did share some of MAC's concerns about the audit. He expressed doubt as to whether a Christian, or Jewish, charity would have been treated in the same manner as MAC.[18] Given an audit triggered by terrorist abuse concerns, he questioned the relevance of CRA references to activities – play time, recreation time, class time and like - to the revocation of charitable status.[19] In subsequent court matters in relation to the litigation, Justice Koehnen further opined that, short of the prematurity angle, there was considerable merit to MAC's claims. In speaking directly to the matter of the allocation of litigation costs, rather than explicitly to legal matter of *Charter* violations, he stated:

> "…the process that had been completed struck me as being characterized by overreach by the CRA. The applicant argued that the process that was complete was marked by misinformed cultural stereotypes and discriminatory attitudes and that minority groups were particularly vulnerable to such measures, especially where the investigation is as exhaustive as it was and where it required substantial resources to address. On the case as it was argued before me, the applicant's position has merit and, in the absence of the prematurity principle, would probably have been successful."[20]

Part 3: Audits, the Canada Revenue Agency (CRA) and the Governance of Charities

The audit by the administrator actor occurred within the rubric of charities law. The broad governance tenets are canvassed first followed by a separate section focused on the fusion of governance with terrorist abuse.

3.1 Audits, Charities and Taxation

Audits are a tool the CRA uses to ensure that charitable entities comply with charities law. The CRA - Charities Directorate is the administrative agency charged with monitoring compliance. The responsibility of a fiscal agency derives from the link between charities and federal taxation

[17] National Security and Intelligence Review Agency, *Review of Canada Revenue Agency's Review and Analysis Division*: https://nsira-ossnr.gc.ca/en/reviews/find-a-review/
[18] *Muslim Association of Canada v Attorney General of Canada*, 2023 ONSC 5171, paras 47-56.
[19] Ibid paras 51-53.
[20] *Muslim Association of Canada v Attorney General of Canada*, Supreme Court of Justice – Ontario, 2023 December 18 (CV-22-00679625-0000), para 10.

law.[21] Since the advent of income taxation, federal law has sought to incentivize donations to charities.[22] It achieves incentivization through the conference of tax advantages. Charities benefit from an exemption from taxation – the resources they garner are not subject to taxation – and tax-related benefits are conferred onto those donate to charitable entities.[23] Through this tangible connection to taxation, charities effectively 'spend' tax dollars. Because of this fiscal dimension, charities are policed by a fiscal agency – the Canada Revenue Agency (CRA) - to ensure the legitimacy of that spending. Deviations from that spending framework detected through audits or otherwise – non-compliance – places an entity outside of the charitable realm. Consequently, the charity loses the privileges conferred by taxation law.

Most entities that operate as charities could operate as non-profits, a separate tax-classification that equally exempts entities from taxation.[24] But the donor-incentivization piece, central to fund-raising efforts, only attaches to 'registered' charities. Securing incentivization – the ability to issue tax-relevant receipts - is a principal reason an entity seeks the 'registered' designation rather than chose to operate as non-profits.[25]

3.2 The Legal Tenets

Charitable governance terrain stretches from entry to exit. Charities enter this terrain by the securing of status as 'registered' charities. Federal tax law defines a 'registered' charity as an entity that has applied for, and received, that status.[26] Once obtained, the entity is subject to tax-centric compliance. They exit this terrain when that registered status ends.

Despite the tax tie, federal tax law does not define 'charity' but relies on common law conceptions. The common law understands the concept to require a charitable purpose. Four general charitable purposes are acknowledged: the advancement of religion, the relief of poverty, the advancement of education and other purposes beneficial to the community.[27] To qualify to be registered as a charity, an entity must espouse one of these purposes. Implicit in this concept is the idea that purpose is for the public benefit.[28] A purpose is not charitable unless it is for the benefit of the public.

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[21] Although the Canadian constitution locates charities within provincial legislative authority, federal law, through taxation, is the *de facto* governing authority: British North America Act, 187, 30-31 Vict. c. 3 (Constitution Act) sections 92 (7): see David Duff, (2011) 'Charities and Terrorist Financing', University of Toronto Law Journal, 73, p 77-79.
[22] See generally, Rod Watson (1985) 'Charities and the Canadian Income Tax Act: An Erratic History' 5:1, The Philanthropist 3.
[23] *Income Tax Act*, RSC 1985, c 1 (*ITA*) s 149 (1) (f) and s 118.1.
[24] *ITA,* s 149 (l)
[25] See generally, Karine Levasseur (2008) Charity in Canada: A Governance and Historical Institutional Lens on Charitable Registration, Doctor of Philosophy, School of Public Policy and Administration, Carleton University).
[26] *ITA*, s 149 (2).
[27] *Vancouver Society of Immigrant and Visible Minority Women v Canada (Minister of National Revenue) [*1999] 1 SCR 10 para 144.
[28] Ibid para 147.

It is not sufficient simply to have a charitable purpose. In refining the terrain, to qualify as a charity an entity must be constituted and operated *exclusively* for charitable purposes and must devotes its resources to its charitable activities.[29] It cannot be 'mainly' or 'chiefly' for charitable purposes but 'exclusively.'[30] 'Exclusively,' as understood in the common law, contains some flexibility. Some pursuit of ancillary or incidental purposes, and some devotion of resources, is consistent with 'exclusivity.' But when a purpose becomes collateral - or an end in itself - the exclusively restraint is violated.[31]

Illegality is anti-thetical to the idea of 'public benefit.' Law acknowledges that an entity no longer operates with the charitable sphere if its actions are illegal or contrary to public policy.[32] Although the boundaries of public policy can be porous, illegality clearly contemplates criminal activity.[33]

These attributes of the legal structure literally define the field. They posit activities that push a charity off the tax privileges pillar. Though these tenets establish the boundaries, their application relies on contextual discernment. That discernment is done by the regulator.

Other central structural pieces of law consist of specific administrative requirements. Charities must maintain adequate books and records.[34] Adequate anticipates sufficient to enable the regulator to determine whether its charitable status ought to be revoked. In relation to public accounting, registered entities must file an annual information return (generally known as a T1030).[35] The annual information return essentially functions as a conventional 'tax return,' an instrument that permits scrutiny and accountability in relation to taxation law.

3.3 The Canada Revenue Agency – Charities Directorate (CRA)

The CRA administers charities law. Its central task is to determine whether the law is met or not. It is neither an advocate nor a promoter of the interests of the charitable sector. It administers the provisions of the federal tax act that relate to charities.

Administration is operationalized in three central ways. First, the regulator decides whether the tax-centric edicts are satisfied or not. This is its purest function – straight administration of charities law.

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[29] *ITA* s 149. 1 (1).
[30] *Guaranty Trust Company of Canada v Minister of National Revenue* (1967) SCR 133, at p.143
[31] *Vancouver Society of Immigrant and Visible Minority Women v Canada (Minister of National Revenue – MNR)* [1999] 1 SCR 10, para 40.
[32] *Everywoman's Health Centre Society (1988) v Canada (Minister of National Revenue – MNR0 (CA)* [1992] 2 FC 52, para 14.
[33] For a discussion of public policy and charities, see Adam Parachin (2020) Why and When Discrimination is Discordant with Charitable Status: The Problem with 'Public Policy', the Possibility of a Better Solution, 6 Canadian Journal of Comparative and Contemporary Law 305.
[34] *ITA* s 230 (2)
[35] *ITA* s 149.1 (14). See, https://www.canada.ca/en/revenue-agency/services/forms-publications/forms/t3010.html.

Second, organized around a distillation of that law, the CRA creates policies. Policy is obviously not law nor are policies adopted necessary ordained by charities law.[36] They generally facilitate the administration of the law.

Third, rather a strict 'administrator', the CRA performs an educative function. It deliberately and expansively releases information to guide charities on satisfying the exigencies of tax law.[37] Through this, the regulator helps to cultivate compliance rather than merely administer the law.

3.4 The CRA Charities Directorate and Audits

The administrative actor occupies the full scope of governance: it grants 'registered' charitable status, monitors compliance and has the power to revoke charitable status.[38] Audits are devices used to investigate compliance and are conduits for remedial action.

An audit can result in a series of outcomes. Most severe, it can lead to the levying of sanctions and penalties and a notice of an intention to revoke charitable registration status. Less formally, audits can lead to compliance agreements or a combination of a compliance agreement and sanctions. Compliance agreements, the product of dialogues about legal deficiencies, are arrangements wherein a charity agrees to remedy compliance faults. This remedying is monitored. Negative audit determinations can be appealed to the CRA Appeal's Branch and ultimately to the courts.[39]

Audits are exceeding rare; less than 1% of registered charities are subjected to an audit in any given year.[40] There are almost 90,000 registered Canadian charities. Audits implicate enhanced investments in resources. The conduct of regular audits of all registered entities would be impractical.

Not practical, the administrative agency operates on a risk-based approach.[41] It surveys the landscape to identify and assess the risks of deviations from the legal framework. When risk analysis detects minor, or low-level potential non-compliance, remedial action may consist of contacting the charity and communicating potential compliance deficits.[42] This encourages

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[36] An example of CRA policy would be the policy to engage in dialogues with charities when an audit reveals areas of putative non-compliance. Compliance-related dialogues with charities are not foreshadowed by law. Equally, strict law does not require that the administrative agency engage in education and solicit voluntary compliance with tax norms.

[37] See for example, https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/educating-charities-terrorist-abuse.html

[38] Although the Canadian constitution locates charities within provincial legislative authority, federal law, through taxation, is the *de facto* governing authority: Duff, *supra*, p 78.

[39] https://www.canada.ca/en/revenue-agency/services/about-canada-revenue-agency-cra/complaints-disputes/objections-appeals-registered-charities-registered-canadian-amateur-athletic-associations-rcaaas-other-listed-qualified-donees.html

[40] https://drive.google.com/file/d/1UiaI205jVIVekVFzoRnjUWo23XRAa1ab/view

[41] https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/compliance-audits/we-promote-compliance.html

[42] https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/compliance-audits/we-promote-compliance.html.

voluntary compliance. Audits are reserved for situations where there is potential evidence of serious compliance deficiencies.[43]

A series of factors influence the decision to initiate an audit: public complaints about possible tax-cheating; information received from other governmental entities; articles in the media; review of specific legal obligations under the tax statute; information derived from the charity's annual information return (T1030s); and follow-up with regards to previous non-compliance.[44]

An audit can be triggered by either of two divisions housed with the CRA: a generic non-compliance division and the Review and Analysis Division (RAD). RAD focuses on possible non-compliance related to terrorist abuse.

The aim of an audit is to investigate compliance with charities law. Regardless of which division triggers the audit, that is the objective. In this, allegations of terrorist abuse may inform compliance analysis. But the discernment and decision-making rests on whether compliance has been achieved or not.

Administration of the law happens under privacy protections.[45] Information gathered to enable enforcement is privileged subject to certain statutory exemptions. It is shared with the administrator only. Materials collected for an audit, materials that enable decision-making, are confidential. RAD has the primary responsible for delivering the agency's privacy mandates.[46] Statute-based exemptions permit limited public disclosure: certain information contained on T1030s information returns, information in relation to sanctions and penalties imposed, and the 'registered' status of charities including revocations of status.[47]

Respective of privacy mandates, the CRA maintains a public charities website.[48] The website permits a 'search' of 'registered charities.' The website enables verification of a charity's status including whether its status has been revoked or any sanctions, or penalties, have been levied.

In addition to any rote disclosure of information, the CRA may provide, upon request, certain information about a charity.[49] Framed in permissive terms, and in specific reference to occasions upon which a CRA audit might have led to a suspension of status or an assessment of a tax or penalty, an inquiring party may receive any letter or notice provided by the CRA in relation to such

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[43] Ibid. Myska states that '..revocation is a consequence typically reserved for cases of serious and intentional non-compliances.':' Julianne Myska Affidavit, para. 20: https://drive.google.com/file/d/1M4epaeq6YP3Xlx3rYW2zbhRS4mnKB-u0/view

[44] Ibid.

[45] *ITA* S 241 (1).

[46] 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-smmary-review-analysis-division.html

[47] *ITA* s 241 provides for such exceptions. The identities of penalized entities can be discerned through a search of the CRA website: https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/penalties-suspensions.html.

[48] https://apps.cra-arc.gc.ca/ebci/hacc/srch/pub/dsplyBscSrch?request_locale

[49] https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/confidentiality-public-information.html.

actions.[50] Disclosed information does not include interim dealings with respect to audits CRA, matters such as whether an entity is being audited, or the status of a CRA audit.[51]

Part 4: Terrorist Abuse, Charities and Governance

The creation of RAD and the location of terrorist abuse within the umbrella of Canadian charity law occurred as part of global developments. The terrorist incidents of September 2001 in the United States ignited sustained global action against terrorism and terrorist financing.[52] Captured by this mobilization was identification of the abuse of non-profits as conduits for terrorist financing.[53]

This mobilization, part of globally-lead efforts to contend with terror, caused the Canadian integration of terrorist abuse with charitable governance.[54] As an initiative, it is not inherently problematic to seek to prevent terrorist abuse. Vast legal eco-systems have emerged since 2001 to attend to virtually all dimensions of terrorist finance. But the unfolding of this strategic project has not been clean: its effects on non-profits have been profound.

4.1 Terrorist Abuse

The constating international instrument that triggered a focus on non-profits (charities) called for the prevention of terrorist financing through the non-profits sector. This denotes resources that finance acts of terrorism.[55] In its simplest animation, finance refers to the few dollars a lone terrorist actor disconnected from any larger terrorist enterprise uses to purchase the explosive materials or other weapons. More fulsomely, it contemplates the resources required to maintain organized terrorist groups, from the finances needed to train and house agents, to the funding needed to secure materials, travel arrangements, and other costs of realizing a terrorist incident.

Despite the anchor to finance, terrorist abuse embraces something more ample than financial assistance – whether the clandestine funneling of resources, the raising of resources or other

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[50] https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/confidentiality-public-information.html: https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/information-about-a-charity.html

[51] Ibid.

[52] Security Council Resolution 1373 mandated an assault on terrorism and on terrorist financing: UNSC 1373, 21 September 2001.

[53] Article 3 (d) of UNSC 1373 called for states to become parties to the *International Convention for the Suppression of the Financing of Terror*. Amongst other matters, the preamble to *Convention* notes that '..States take steps to prevent and counteract, through appropriate domestic measures, the financing of terrorists and terrorist organizations, whether such financing is direct or indirect through organizations which also have, or claim to have charitable, social or cultural goals…:' *International Convention for the Suppression of the Financing of Terror*, 9 December 1999.

[54] Public policy considerations, a feature of charitable governance, informed governance before September 2001 and any furtherance of crime would constitute non-compliance. However, the terrorist incidences in the United States introduced an enhanced focus on charitable entities as entities prone to exposure to terrorist financing abuse.

[55] The Financial Action Task Force Glossary provides that terrorist financing '..is the financing of terrorist acts, and of terrorists and terrorist organizations:' Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation,* The FATF Recommendations, Updated to February 2025.

finance-centric support. International standards, reliant of the language of 'terrorist financing abuse', describe the concept as:

> 'the exploitation by terrorists and terrorist organizations of NPOs (non-profit organizations) to raise or move funds, provide logistical support, encourage of facilitate terrorist recruitment, or *otherwise support* terrorists or terrorist organizations and operations."[56]

The description notionally implies that, while labelled as terrorist *financing* abuse, abuse connotes more than any mediation of financial assistance. It captures logistical support, encouraging recruitment, or *other support*.

The mooring of terrorism to finance remains a core feature of the contemplation of 'abuse' but it has stretched. The United Kingdom model, for instance, moving well beyond 'financing,' understands abuse to connote radicalization, extremist views, and the glorification of terrorism.[57] It is 'abusive' to celebrate acts of terrorism or to 'radicalize' individuals to the terrorist cause. The Australian charities regulator similarly frames the notion as the 'misuse of charities for terrorist purposes or to foster extremism.'[58] In specifically renouncing any finance-centric conception, misuse attaches to charities that support terrorism whether *financially or otherwise*.[59] The Canadian posture is consistent with this stretch. Direct or indirect support for terrorist groups or terrorism qualifies as abuse.[60] Consistent with a broad conception, Canadian examples of abuse extend to materials placed on a charity's website that promote terrorism, or violent extremism, or the hosting by organizations of speakers that express extremist views.[61]

This gravitation from the financial realm obviously expands the remit of actions that the CRA might consider in identifying terrorist abuse. Simultaneously, it imposes weightier prevention responsibilities on charities to remain within the governing law.

4.2 The Impacts of Terrorist Abuse Discourse on Charities

Not anticipated by the original cry to tackle any terrorist abuse in the context of charities was the impacts this unleashing would trigger. Under the urgent logic of dealing with terrorist financing abuse – the language that typically frames this discourse –states have misused this logic to shrink

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[56] https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/BPP-Combating-TF-Abuse-NPO-R8.pdf.coredownload.inline.pdf, p 7.
[57] https://www.gov.uk/government/publications/protecting-charities-from-abuse-for-extremist-purposes/chapter-5-protecting-charities-from-abuse-for-extremist-purposes
[58] https://www.acnc.gov.au/sites/default/files/documents/2021-07/Download%20the%20Charity%20Compliance%20Report%202015%20and%202016%20%5BPDF%5D.pdf p 21.
[59] Ibid.
[60] https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/educating-charities-terrorist-abuse/assessing-reducing-terrorist-risk.html
[61] https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/educating-charities-terrorist-abuse/assessing-reducing-terrorist-risk.html.

civic space and to target civil society organization, including charities.[62] Increasingly restrictive measures have hampered their organizational work, reduced their ability to function and squeezed their access to resources. Relatedly has been an enhanced focus on 'foreign' funding and 'foreign influence', sometimes tied to terrorism and sometimes not, with consequent burdensome constraints imposed.[63] Critically, too, part of the cost of any 'logical' stifling is the elimination of the value that charitable organs offer in building resistance to terrorist inclinations.[64] They meaningfully contribute to peace building, 'channel' discontent and permit constructive engagement which can undermine forces that draw individuals to terrorism.[65] It is axiomatic that in the court of public opinion mere 'allegations' of terrorist abuse – whether valid or not - impugn a charity's reputation and impede its ability to deliver public benefits.

While negative consequences have fallen on charities generally, the experience has been acute for Islamic entities. In the wake of September 2001, the instance that catalyzed the abuse discourse, financial connections to al Qaida and Hamas become a launching point for targeting Islamic charities, for making assumptions about donors to Islamic institutions and for 'suspicion'.[66] Institutions were regularly investigated for 'suspicious links' to terrorism, branded as 'enablers' and shuttered. Since the 'suspicious' association attaches to a religion, any Muslim, or Muslim donor, risked a 'plausible' link to terrorism.[67]

This uneven impact, planted two decades ago, has a presence in Canadian the terrorist abuse narrative. A 2021 study based on an examination of the experiences of three Islamic charities, determined that 'structural bias and prejudicial policies' appeared to be influencing CRA practice in relation to audits of charities.[68] Another found that agency was 'unduly' targeting Muslim charities.[69] Signs of possible emerging trends likely undergirded the decision by the National Security and Intelligence Review Agency to review the practices of the CRA's RAD.

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[62] See, Report of the Special Rapporteur on the Rights to Freedom of peaceful assembly and association, United Nations Human Rights Council, 2022, A/HRC/50/23, p 9-16.
[63] See generally: S Watson & R Burles (2018) Regulating NGO Funding: Securitizing the Political, 32(4) International Relations 430: G Goncharenko & I Khadaroo (2020) Disciplining Human Rights Organizations through an Accounting Regulation: A Case of 'Foreign Agents' Law in Russia, (2020) Critical Perspectives on Accounting 72; K Dupuy & A Prakash (2020) 'Global Backlash against Foreign Funding to Domestic Nongovernmental Organizations' in W. Powell & P. Bromley eds. *The Nonprofit Sector: A Research Handbook*, 3rd ed. Stanford Press; G. Steinberg & B Wertman (2018) 'Value Clash: Civil Society, Foreign Funding and National Sovereignty' 24 Global Governance 1.
[64] Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, (2019) Impact of Measures to Address Terrorist and Violent Extremism on Civil Space and the Rights of Civil Society Actors and Human Rights Defender, A/HRC/40/52, p 5-6.
[65] Report 2019, ibid p 5.
[66] William Vlcek (2022) *Terrorist Financing*, Columbia University Press, at 35-36: Ibrahim Warde (2007) *The Price of Fear: The Truth Behind the Financial War on Terror,* University of California Press, p 127-150.
[67] *Ibid* Vlcek, p 35.
[68] *Supra, Under Layered*.
[69] *Supra, Civil Liberties*.

4.3 The Risk-Based Approach to Governance

Much of the criticism of the deleterious impact accreted at the feet of FATF.[70] Initially conceived to oversee the development of global anti-money laundering law, it absorbed terrorist financing in 2001.[71] From that point onward, the FATF released authoritative guidance on the prevention of the abuse of non-profits.[72] By 2016, it acknowledged the chilling impact of that trajectory, contending that its guidance had been misinterpreted and wrongly applied.[73] Significantly, it confirmed that states, in attending to potential abuse, ought not to unduly disrupt or discourage the activities of legitimate entities.[74] It did not speak to whether particular categories of non-profits were more impacted than others.

One of the roles of the FATF is to assess the measures implemented by individual states. It assesses states against international standards. Canada's framework was investigated in 2016. Its measures attentive to charities were found to be compliant with international standards.[75] However, in a 2021 follow-up, Canada's rating was reduced to 'partly' compliant on the basis that it had not paid sufficient attention to terrorist risks and vulnerabilities within the domestic context.[76] The Canadian focus was predominantly on charitable activities with an international reach.

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[70] Accusations included the idea that its works was not empirically grounded in the relation to the actual vulnerablity of non-profits to abuse: Peter Romaniuk and Tom Keatinge, (2018) Protecting Charities from Terrorists…and Counterterrorists: FATF and the Global Effort to Prevent Terrorist Financing Through the Non-Profit Sector, 69 Crime, Law and Social Change, 265, p 267-272.

[71] https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Standards%20-%20IX%20Special%20Recommendations%20and%20IN%20rc.pdf.coredownload.pdf. The Financial Action Task Force (FATF) - an entity forged to develop standards related to money laundering - had previously forged 40 recommendations attentive to global money laundering. The FATF recommendations distil the content of various international initiatives into a consolidated set of standards. The standards are widely considered as the bedrock standards that a state must meet to comply with global anti-money, anti-proceeds of crime, anti-terrorist financing and anti-proliferation law. The Financial Action Task Force (FATF) was conceived in 1989 to develop measures to combat money laundering: Economic Declaration of the (then) G-7 Group of Nations: https://g7.utoronto.ca/summit/1989paris/communique/index.html

[72] The FATF project is organized around recommendation 8, initially identified as special recommendation 8 of a set of recommendations related to terrorist financing. The initial recommendation provided: 'Countries should review the adequacy of their laws and regulations that relate to entities that can be abused for the financing of terrorism. *Non-profit organizations* are particularly vulnerable, and countries should ensure they cannot be misused: (i) by terrorist organizations posing as legitimate entities; (ii) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; and (iii) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organizations': https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Ixspecialrecommendations.html

[73] https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/BPP-Combating-TF-Abuse-NPO-R8.pdf.coredownload.inline.pdf, p 6. Additionally, the FATF noted the undue targeting of non-profit organizations and the curtailment of human rights under the guise of preventing terrorist financing abuse: https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/Unintended-Consequences.pdf.

[74] https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/BPP-Combating-TF-Abuse-NPO-R8.pdf.coredownload.inline.pdf

[75] FATF (2016) Anti-money Laundering and Counter-terrorist Financing Measures: Canada Mutual Evaluation Report: https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/MER-Canada-2016.pdf.coredownload.pdf

[76] FATF (2021) Anti-money Laundering and Counter-terrorist Financing Measures: Canada Mutual Evaluation Report; https://www.fatf-gafi.org/content/dam/fatf-gafi/fur/Follow-Up-Report-Canada-2021.pdf.coredownload.inline.pdf, p 4-5.

As the lead actor in prescribing approaches to terrorist abuse, the FATF's counsels the adoption of focused, proportionate, and risk-based measures that do not unduly disrupt or discourage legitimate activities.[77] It anticipates as assessment of the unique risks of terrorist abuse present in discrete countries, a consideration of the nature of those risks, and an assessment of the exposure of state-based non-profit entities to that risk.[78]

The international actor does not engage in the analysis of individual state-based risks. Drawn from its experience, it does delineate certain common risk exposures. Organizations involved in 'service activities' – meaning housing, social services, education and health care – are exposed to enhanced risk of terrorist abuse, particularly when they operate in 'international conflict zones' where there is an active terrorism risk.[79] Non-profit entities engaged in expressive activity such as recreation, arts and advocacy, according to the FATF, present less exposure to risk.[80]

Canada regularly conducts inherent national risk analysis. In 2023, Canada identified terrorism as the leading threat to national security.[81] It ranked the vulnerability of non-profits – charities and not-for-profits – as high. Consistent with the FATF, it acknowledged that entities involved in services activities close to an active terrorist threat posed the greatest risks. It also acknowledged that ties between Canadians and communities around the world, while vulnerable to risks, did not, of themselves, constitute risks of terrorist abuse. This assessment is largely consistent with the 2015 national risk analysis that framed the CRA audit of MAC.[82]

Part 5: Terrorist Abuse, Canadian Governance and Charities

In response to international urgings, Canada adopted two measures uniquely centered on potential terrorist abuse of charities: it enacted the *Charities Registration (Security Information) Act* (*CRSI*): and it created an administrative unit – the Risk Analysis Division (RAD) - located within the CRA.[83]

Additionally, Canada increased information sharing amongst governmental departments and state-based entities and enhanced collaboration. With regards to the CRA, it enabled the sharing of financial intelligence with the agency.[84] Tax-centric governance by the CRA became a partner in a whole-of-government strategy attentive to terrorist abuse.

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[77] https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/BPP-combating-abuse-non-profit-organisations.pdf. This approach is consistent throughout all FATF international guidance. It is not peculiar to non-profits and terrorist financing abuse but governs all aspects of the FATF standards,

[78] The FATF guidance uses the language of 'non-profit' entities to accommodate the realities of globalism. Canadian registered charities come within this language.

[79] FATF 2015, Best Practices in Combating the Abuse of Non-Profit Organizations, p 13: https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/BPP-combating-abuse-non-profit-organisations.pdf

[80] Ibid.

[81] See Chapter 4, https://www.canada.ca/en/department-finance/programs/financial-sector-policy/updated-assessment-inherent-risks-money-laundering-terrorist-financing-canada.html#a6

[82] https://www.canada.ca/en/department-finance/services/publications/assessment-inherent-risks-money-laundering-terrorist-financing.html#_Toc424288855

[83] SC 2001, c 41, s 113.

[84] *Proceeds of Crime (Money Laundering) and Terrorist Financing Act,* SC 2000, c 17, s. 55 (3).

5.1 The Charities Registration (Security Information) Act (CRSI)

The *CRSI* was part of a package of laws designed to attend to terrorism.[85] The *CRSI* creates an agile and swift mechanism for dealing with terrorist abuse. Specific to the charities' context, the *CRSI* provides for the issuance of a certificate that constitutes conclusive proof that an entity is ineligible to be registered as a charity, or in the case of a registered charity, that it does not comply with the requirements to continue to be registered.[86] It is a ministerial, not an administrative, tool. Its mechanics are deftly direct. If there are reasonable grounds to believe that the entity has made, or will make, resources available to support terrorist activities, the Minister can apply for a certificate.[87] The Minister signs a certificate based on information obtained in confidence related to national security.[88] A judge determines whether the certificate is reasonable based on the confidential information.[89] The certificate is decisive: it terminates eligibility to be registered as a charity, or vitiates charitable status.

To date, despite its' obvious efficacy, the *CRSI* has never been used to render an entity 'ineligible' for registration or to revoke charitable status.[90] As a ministerial tool, the *CRSI* is not within the CRA's administrative remit.[91] Information known to the tax administrator may inform use of the *CRSI.* But the choice to use this tool is executed at the ministerial level.

A palpable connection exists between the non-use of the CRSI and the generic CRA exercise of authority related to charitable non-compliance. In 2005, Michel Dorais, (then) commissioner of the Canada Customs and Revenue Agency stated that if a charitable entity had links to a terrorist organization, it would likely be faulted – and liable to de-registration – on the grounds of money not flowing to charitable purposes or failing to maintain adequate books and records.[92] In the context of the MAC litigation, this relationship between generic non-compliance and terrorist abuse was reiterated.[93] Part of the rationale for relying on the CRA route rather than the *CRSI* was transparency - the idea the CRA compliance venue could be more transparent in communicating specific concerns about abuse with a charity.[94] The *CRSI* channel, reliant on security information, could leave a charity completely in the dark.

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[85] Broader, non-charities specific, terrorist financing measures were also adopted: see generally, *Anti-terrorism Act,* SC 2001, c 41.
[86] *CRSI,* s 8.
[87] *CRSI*, s 4(1).
[88] *CRSI*, s 3 and 4.
[89] *CRSI,* s 7.
[90] Affidavit of Sophie Amberg, at para 19: https://drive.google.com/file/d/1gjwWtcKqwp6Idv9OLs1j3RNzb5ct7-_x/view
[91] In 1999, a Senate Committee recommended giving the CRA the power to deny charitable registration to any group on the basis of a certificate from the Canadian Security Intelligence Agency that the group constitutes a threat to national security: Report of the Special Senate Committee on Security and Intelligence, 1999, at 76.
[92] Senate, Special Committee on the Anti-Terrorism Act, Fundamental Justice in Extraordinary Times: Main Report of the Special Committee on the Anti-Terrorism Act, February 2007 as cited in David Duff, Charities and Terrorist Financing, (2011) 61 University of Toronto Law Journal, 73, p 101.
[93] Amberg affidavit, *supra* para 19-21
[94] Ibid para 20.

5.2 The CRA RAD Unit

The Risk Analysis Division (RAD) is a specialized unit with a mandate to assess terrorist abuse risks within the charitable sector.[95] Part of the wider compliance structure, an assessment may trigger the conduct of a compliance audit.

Created in the wake of 2001, RAD liaises with other federal actors to enable the realization of Canada's 'whole of government' anti-terrorism strategy. It participates with the financial intelligence community and is authorized to receive information that a charity might be directly, or indirectly, involved in abuse.[96] This information sharing enables a pan-governmental approach.

That RAD exists and is integrated into the national anti-terrorism strategy is a matter of public record. Its work product - its risk-assessments and the information upon which those assessments rely – is not. These are strictly confidential since they may implicate matters of national security. Although RAD risk-assessments are confidential, if an audit occurs, the thrust of the assessment, or compliance concerns related to terrorist abuse, may be disclosed in private communications with the audited entity.

Tethered to terrorism, RAD's expertise lies in the assessment of compliance risks related to abuse. The main risk indicators for terrorist financing that it considers are sympathy and ideological support, material or financial support, associations to organizations and individuals, conducting activities close to foreign high-risk areas and operating in Canada while subject to foreign influence.[97] Other contributing risk factors considered include deceptive practices, ineligible individuals or individuals implicated in criminal or fraudulent activity and ineffective governance.

In the conduct of any risk-assessments, RAD draws on open-sourced information and on confidential security information. Selection for audit generally rests on an assessment of whether the risk indicators are sufficient to invite further inquiry or to justify a need to explore matters further with a particular charity.

FATF advice specifically countenances that investigative expertise, skill and professional competence are central to the capacity to thoroughly examine potential terrorist abuse.[98] The ability to robustly and effectively discern terrorist abuse rests on expert knowledge.

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[95] 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-smmary-review-analysis-division.html.

[96] *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17, s 55.

[97] See https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/internal-audit-program-evaluation/internal-audit-program-evaluation-reports-2025/internal-charities-audit-process.html

[98] https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/BPP-Combating-TF-Abuse-NPO-R8.pdf.coredownload.inline.pdf, p 25.

5.3 Recent Study of RAD Audits

When MAC was advised it has been selected for an audit in 2015, the specialized CRA unit had not attracted much attention nor had the conduct of compliance audits attentive to alleged terrorist abuse within the charitable sector galvanized any serious scrutiny.

By 2025, this situation has changed. Prompted by concerns that national security terrorist discourses were unjustifiably tainting Muslim-based charities and that the charities regulator was unduly and unfairly targeting entities linked to Islam, a series of reports, the product of different bodies and reliant on different methodologies, emerged. These challenge the credibility of RAD audits.

A March 2021 academic report, the result of a qualitative study of the experiences of three Muslim-led charities whose charitable status had been revoked by the CRA, discerned problematic patterns of prejudice occurring within the administrative realm. Cautiously framed by the language of 'potential' patterns, the academic report made 6 central findings: that bias cast Muslims, and Muslim-entities as inherently foreign and enabled the suspicion that domestic charitable bodies serviced foreign interests; that bias informed the idea of 'religious' activities and that this lent an element of suspicion to the context of audits involving minority religious groups; that the risk-based assessment methodology deployed by RAD rendered Muslim charities vulnerable to accusations of terrorist financing and that this heavily shaped charities audited by the CRA and the interpretation and construction of information obtained during an audit; that Canadian counter-radicalization policy introduced bias and that this meant that audit analysis could rest on stereotypes about religion and a penchant for violence; and that audits, a tool to enforce compliance with tax law, could provide cover for structural bias against Muslim charities.[99] The report 2021 concluded:

> 'Ultimately, the 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).[100]

A May 2021 report by a civil liberties group examined RAD-based CRA audits in relation to Muslim entities. Distilling information from public sources, the report found that during the 2008-2015 period, the revocation of the charitable status of 8 charities flowed from RAD audits. Of these 8, 6 were Muslim charities.[101] Mathematically, this translated into 75% of RAD revocations during the 7-year interval relating to Muslim entities. [102] Within the broader realm of all registered charities, this meant that although Muslim charities represented less than 1% of all registered entities, 75% of RAD-related revocations descended upon a miniscule portion of the registered charity populous. In examining a second period – 2016-2019, a period within less information

[99] *Under Layered*, *supra,* p 5.
[100] Ibid p 88.
[101] *Civil Liberties, supra* p 4 and 32-34.
[102] Ibid p 5.

availed, the report found that an additional 4 Muslim charities, also linked to RAD investigations, had had their charitable status revoked.[103] Drawn from this data, the report concluded: '..it can only be assumed that the vast majority of charities being audited by RAD are Muslim charities, and that all are charities based in and led by racialized communities." [104]

In November 2023, the Canadian Senate issued a report on Islamophobia. In addition to other matters, the report of the Standing Senate Committee on Human Rights addressed discrimination in the context of the charitable sector. Following a series of public hearings during which the Committee heard from various members of the community, the committee wrote '…it is clear RAD's work to date – regardless of the intention of its employees – has demonstrated structural bias against Muslim entities'.[105] In terms of remedial action and reform, the 2023 Senate Committee report recommended:

> '..that the Government of Canada introduce legislation requiring the Canada Revenue Agency to collect and publish data on religious organizations subject to audits and revocations , and to analyse and such data to develop a strategy to reduce bias…that the Minister of National Revenue review the mandate and functioning of the Review and Analysis Division of the Canada Revenue Agency, taking into account the conclusions pending review by the National Security and Intelligence Review Agency…that the Department of Justice introduce legislation to establish an independent civilian body to review decisions by the Canada Revenue Agency's Charities Directorate and provide timely decisions on appeals.'[106]

Late in 2025, the National Security and Intelligence Review Agency (NSIRA) released its review of the RAD division of the CRA.[107] In 2023, the NSIRA had been tasked with determining whether, in executing upon its function to detect and assess risks of terrorist abuse, RAD treated charities fairly and without discrimination on the basis of religion. To conduct the review, the NSIRA examined RAD-related audits and had access to more information that other recent studies. The review determined that a '..lack of rigour in RAD's processes led to RAD to audit a number of charities that did not present with credible risks of terrorist abuse..' and that '…with respect to RAD's final audit findings, terrorism-related concerns were not always

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[103] Ibid p 36- 37.
[104] Ibid p 37. Enlivened by such concerns, the ICLMG contributed a report to the Financial Action Task Force which is currently reviewing Canadian compliance with global standards attentive to money laundering and terrorist finance abuse: Submission to the Financial Action Task Force in Regard to the Fifth Mutual Evaluation of Canada, International Civil Liberties Monitoring Groug, August 28, 2025: https://iclmg.ca/wp-content/uploads/2025/09/FATF-Submission_ICLMG_final.pdf
[105] Report of the Standing Senate Committee on Human Rights, *Combatting Hate: Islamophobia and its Impact on Muslims*, November 2023 Report, p 51: https://sencanada.ca/content/sen/committee/441/RIDR/reports/Islamophobia_FINAL_e.pdf
[106] Ibid p. 13
[107] National Security and Intelligence Review Agency, *Review of Canada Revenue Agency's Review and Analysis Division*: https://nsira-ossnr.gc.ca/en/reviews/find-a-review/

present.'[108] It found that of the audits considered, 67% were 'discernably' Islamic or Sikh.[109] Given that the regulator does not collect demographic data, it could not be demonstrated that the RAD's inquiries were free from discrimination.[110] The review found that RAD's risk indicators could make Islamic charities more susceptible to regulatory oversight and that it did not a valid evidence-based method that would justify scrutiny of particular entities for terrorist abuse concerns.[111] The absence of methodological rigour risked introducing discrimination onto RAD audits.[112] With respect to specific outcomes, the review found that terrorist abuse concerns were not present in 5 of 8 recent final audit outcomes and that where specific concerns were identified by RAD, these were shared with the audited entity.[113] Finally, the NSIRA review found that there was an observed severity of outcome distinction between RAD audits and audits conducted by the CRA's more generic compliance division, there was not enough information to explain this differential.[114]

Overarchingly, these recent examinations of RAD collectively construct a damaging portrait. In contrast to the FAFT advice that investigative expertise ought to be a hallmark of terrorist abuse analysis within the charitable sector, they suggest that the Canadian approach is wanting.

Part 6 : Centering on the CRA Audit of MAC

6.1 The CRA Decision with Respect to Non-Compliance

It is important to begin with a clarification of the existing status of the CRA-RAD audit of MAC. At the time of writing, the CRA has entered into a compliance agreement with MAC. The regulator has neither suspended nor revoked MAC's charitable status for any compliance reason. Equally, the CRA levied financial penalties against MAC for non-compliance with charities governance. This dimension is currently the subject of an appeal.

For several reasons, this explicit enunciation of the current situation warrants emphasis. First, in connection with allegations of possible terrorist abuse, a specific tool – the CRSI *Act* – avails to deal directly with suspicions of terrorist abuse within the charitable realm. Anchored in the 'reasonable grounds to suspect standard,' it provides a ready and swift ministerial response mediated by an extremely low threshold that can be readily crossed.[115] As confirmed by the CRA, the preferred course is to address potential abuse through charitable governance rather than resort to the *CRSI,* in part because this medium is more 'transparent' since the *CRSI* process can rely on security information that is not disclosed.[116] In a CRA audit, non-classified information can be

[108] Ibid p IV.
[109] Ibid p 8.
[110] Ibid p 10.
[111] Ibid p 12.
[112] Ibid p 15.
[113] Ibid p 19.
[114] Ibid p 21.
[115] Anne-Marie Boisvert (2022) The Reasonable Grounds to Believe Standard in Canadian Criminal Law, p 2-4: https://publicorderemergencycommission.ca/files/documents/Policy-Papers/The-Reasonable-Grounds-to-Believe-Standard-in-Canadian-Criminal-Law-Boisvert.pdf
[116] *Supra,* Amberg para 20

shared.[117] Given the extremely low threshold of proof, serious and sustained concerns about any MAC intersections with terrorism ought, as a matter of law, have been addressed through resort to the *CRSI Act.* Given the interconnected of the CRA, in particular, its RAD division, with overarching governmental actors attentive to terrorist abuse, it is reasonable to conclude that materials considered by the administrative actor were deemed not sufficient to overcome this elementary evidential threshold.

Second, the recent examinations of RAD audits provide ample grounds to believe that any audit of any Islamic charity could be infused with bias. Since MAC is such an entity, there is ample reason to anticipate a distorted compliance assessment happened.

Third, negative media portraits focused on allusions to terrorist abuse have descended onto MAC.[118] This nasty exposure derives principally from the *Charter* litigation in which, similar to the findings of the recent reports, MAC alleged bias and discrimination by the administrator actor. MAC has endured this stigma and paid a hefty public image price. Had inquiries into RAD's work been more timely, and not accumulated *post facto,* it is possible that CRA audit might not have proceeded as it did and, consequently, MAC would not have been exposed to such negative media coverage.

6.2 The Comparative Deficit

An equally important point of departure is comparison. Any assessment of administrative action invites comparison. Quantitative analysis might compare the number of audits of one type of religious entity with the number of audits of other entities having some different religious affiliation. Qualitative analysis might compare actual audit experiences, whether, in the context of audits triggered by RAD, similar or different questions are raised or similar or different analysis is applied. Comparing the trajectory of one apple to the trajectory of others creates the ability to contrast experiences, to discern patterns, or to expose and evaluate similarities and differences.

Citing reasons of privacy, the CRA does not maintain data about audits and religious entities.[119] And, given the privacy mandates of tax law, there is no bank of audit experiences, no public record of what transpires over the course of an audit. This means there is very little ability to compare the MAC audit with other audit ventures.

Despite this general comparative deficit, the recent studies of CRA audits shed some disturbing light. The March 2021 academic study, through a qualitative analysis drawn, in part from interviews with Muslim-identified charities that had their charitable status revoked, determined that the administrative CRA-RAD audit process hinted of structural bias against Muslim-charities.[120] It detected patterns of audit practices that leave Muslim entities vulnerable to

[117] Ibid.
[118] https://docs.google.com/spreadsheets/d/168PHHR0oHHLwkLIpcflO70W97cIHup-SnqM-ppMaG8s/edit?gid=2133964971#gid=2133964971.
[119] *Supra, NSIRA*, p 11.
[120] *Supra, Under Layered*, p 5-6.

accusations of terrorist abuse.[121] The themes raised in the MAC audit - the failure to deliver a public benefit, the purpose of a collateral purpose, etc. – resonate with the findings of the academic study. The study indicated that serious and sustained scrutiny of religious practice does occur within the context of Islamic charities. Tellingly, it revealed that Muslim-based entities have a trenchant fear of the administrator actor.[122]

The May 2021 study, drawn from publicly available information, disclosed a bias tenor inherent in CRA audits, again, in particular, in connection with RAD-related audits. Despite the extremely modest representation of Muslim-based charities within the Canadian charitable sector, a hefty portion of charities investigated and penalized by the regulatory authority were Muslim-entities.[123] Discrimination attached specifically to compliance analysis derivative of the discourse on terrorist abuse.[124]

While such revelatory nudges speak strongly of something being amiss in the context of RAD-related audits, they beg for comparative analysis: whether Christian, Jewish or other charities experience similar treatment at the hands of the administrative actor. In its report, the NSIRA specifically noted that *Charter* analysis depended on comparative analysis, that any claim of RAD-based prejudice relied on proof of differential treatments between one Charter-protected group and non-group members.[125]

Recommendation 1

> *That the CRA consider developing a methodology that would enhance the sharing of information about audits and audit practices and processes. That methodology could rely, in part, on anonymized data to preserve audit privacy while permitting enhanced insight on administrative action. That the collection and sharing of data entertain the possibility of collecting and sharing data related to the religions, and to religious identity, so to permit assessment and comparison.*

6.3 Privacy and CRA Administrative Action

In the regulation of charities, the tax statute seeks to establish a balance between administrative transparency and taxpayer privacy. While privacy is tightly constrained, the *Act* prescribes certain exceptions – the CRA can disclose information in relation to penalties levied, and in relation to revocations of charitable status.[126] Additionally, upon request a person may obtain a copy of the entirety, or any part, of any Ministerial letter to a charity that relates to a suspension of charitable status or a penalty.[127] Access to such information is famed in permissive language – there is no

[121] Ibid.
[122] Ibid p 1-12.
[123] *Supra, Civil Liberties*.
[124] Ibid.
[125] *Supra, NSIRA* p 10-11.
[126] *ITA* s 241.
[127] https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/confidentiality-public-information.html

explicit right to such additional disclosure. Of course, if an audit investigation concludes simply in a compliance agreement and nothing more, no exemption to privacy is triggered.

Designed to balance privacy with administrative transparency, it is readily apparent how an element of the disclosure matrix could disadvantage charitable entities in the court of public opinion. If a penalty is levied against a charity, any inquiring member of the public can only secure the disclosure of the regulator's perspective, of its assessment and its rationales. In an extensive protracted, perhaps evidentially dense, compliance audit, the perspectives, arguments and responses advanced by a charity cannot be publicly disclosed by the CRA. In this, the public only has access to one side of the story. Privacy law precludes any sharing of such information by the regulator. In the instance case, and in the absence of the exceptional circumstances of the intervening *Charter* litigation, publicly disclosed information consequence upon any penalization of MAC for compliance with charities law would convey nothing of the protracted, and detailed case advanced by MAC.[128]

Administrative decisions rendered by the regulator are, of course, amenable to review – first to the CRA's internal appeals' division – and then to judicial review by the Federal Court of Appeal. While transparent, persuasive arguments have emerged that appeals of CRA decisions ought to be brought to the tax court through a trial *de novo*.[129] Judicial review operates on the basis of the 'reasonableness' standard, whether, on the basis of existing written record, the decision by the administrative actor is reasonable. 'Reasonable' does not mean 'right' and judicial review does not entail witnesses and consideration of evidence. [130]

With the MAC audit by the CRA, it is arguable that a trial *de novo* before a court would have assured adequate deliberation upon the entirety of the matter. The sufficiency, or legitimacy, of matters in relation to alleged terrorist abuse could have been vetted before a full court. Again, the Ontario court which fulsomely examined the entirety of the audit – including evidence and witnesses - strongly indicted the CRA/RAD audit ought to be faulted. There is ample reason to think that the tax court, in a fulsome consideration of the audit, might have similarly faulted the CRA for aspects of its audit. In this, fulsome disclosure of all CRA-RAD audit activities before an independent court would arguably have vindicated MAC, or, at the very least, ensured that an inquiring public had access to a complete narrative.

Finally, the posture adopted by the CRA in the 'intervening' *Charter* litigation did not appear to reflect an adequate appreciation of the importance of privacy in the context of the underlying interests at stake. Resident RAD expertise ought to have been aware of the devastating

[128] Of course, MAC, or any other audited entity, can freely chose to share any such communications which, in fact, MAC chose to disclose on its website. But an inquiring public is not particularly likely to investigate any penal action beyond seeking access to the CRA's explanation.
[129] See generally, Special Senate Committee on the Charitable Sector, *Catalyst for Change: A Roadmap to a Stronger Charitable Sector*, June 2019, 63-78. This shifting of appeals to the tax court typically centers on concerns about the common law concept of charity has failed to keep pace with modern society and a full trial *de novo* would better service modernization.
[130] Ibid p 71-72: see also generally p 69-78.

implications of any public release of any allegations of terrorist abuse. In the course of the *Charter* action, MAC sought a sealing order to protect any public release of audit materials and, while the CRA could have consented, it opposed the motion.[131] MAC is the largest Muslim-based Canadian charity.[132] Its benevolence works implicate religious institutions, schools, and community projects and span the country. Public disclosure of audit materials containing allegations of abuse risked exposing the entity to gravely adverse consequences. Such exposure obviously fuels Islamophobia, disables a 'channel for marshalling discontent' and eliminates constructive engagement with the Canadian Muslim community. Consent to sealing order could have preserved the confidentiality of the audit materials. In balancing the public interest in transparency against the impacts of allegations of abuse on a charity - particularly given that the negative consequences of the 2001 fusion of non-profits and terrorist abuse have fallen harshly on Islamic entities – the context clearly urged for the paramountcy of non-disclosure. Moreover, the CRA resistance to the sealing order contrasts starkly with a later CRA's request to keep the identity of CRA officials out of the public domain. In late December 2023, the CRA asked MAC to purge certain identities from materials shared on its website, apparently out of concern that publicity might present risks to its employees.[133]

Recommendation 2

> *In the interests of enhanced transparency, that Federal Government consider amending the tax statute to permit appeals of CRA decisions to the tax court of Canada. Relatedly, that in any administrative decision, particularly as it might implicate public disclosures, that the CRA attach a paramountcy to non-disclosure and to the retention of privacy given the devasting impacts of any such disclosures on members of the charitable sector.*

6.4 The CRA and the RAD Risk-Assessment

Standard CRA audit methodology involves two stages: the selection of an entity for audit, and any underlying analysis, and the conduct of the audit. In the present context, the selection of MAC for audit was triggered by RAD rather than triggered by the CRA's generic compliance division. RAD conducted a risk assessment– the product of a desk audit and an audit referral analysis - and referred MAC for an audit.[134]

Any assessments preceding the formal invocation of the audit – the notification to MAC that it would be audited - would not normally be known. In this case, the desk-audit and the audit referral, came to light because of the intervening court litigation. The unusual access to these documents opened a slender window onto pre-audit analysis.

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[131] https://drive.google.com/file/d/1we91Js-ql12LTVDVPllCV-RNEKmQGi3N/view; https://drive.google.com/file/d/1bWtEd2ltaJ0HzvsAPsQ71t6QW6GEjzgG/view
[132] https://www.macnet.ca/about-us-mac/
[133] McCarthy Tetrault letter December 22, 2023.
[134] Risk-Assessment (also known as audit referral), Review and Analysis Division (CRA), April 22, 2013: https://drive.google.com/file/d/1-BwLksWsBF55U58Oi_ln3uPQIZThac83/view

The pre-audit RAD assessments reveal the continuity between the pre-audit assessments and the formal audit. The CRA team that initiated the audit conducted the audit, a flow designed to ensure the continuance of expertise.[135] The risk themes identified by pre-audit materials frame the audit. The risk indicators identified connected to terrorist abuse - foreign financial support from states reported to have terrorist connections; relationships with persons known to have supported terrorism; sympathy for foreign political movements; and general possible compliance concerns – and the more conventional non-compliance concerns – gaps in financial management, neglect in oversight and the growth of MAC reflected by acquisitions of real estate – shaped the formal audit. This reveals an obvious continuity between pre-audit considerations and the audit. The operationalization of this continuity – that the MAC audit investigated these precise themes – is clear.

Although Justice Koehnen referred to the audit as 'prompted' by concerns of terrorist abuse, the pre-audit materials indicate slippage, or as noted by Micheal Dorais, an entity linked to terrorist abuse was liable to faulted on other compliance grounds – money not flowing to 'charitable purposes' or inadequate books and records. The pre-audit materials speak of other compliance concerns. This begs whether 'suspicion' of terrorist abuse breeds enhanced scrutiny of 'other compliance concerns' and becomes a tacit tool to 'punish' presumed terrorist abuse by other means. This slippage might be amplified since charities are not informed – as the audit begins – of the reasons for the audit.[136]

Some of the open-sourced information noted in the RAD audit-referral proved discredited. The FATF advises that risk-assessments may draw on open-source information: it equally advises reliance on sources of knowledge from 'accredited' institutions.[137] Thomas Quiggin is noted in audit-referral and is re-iterated in the desk review.[138] As an 'authority', Quiggin has been discredited.[139] The CRA avowed that, in the conduct of the audit it did not consider the Quiggin material.[140]

A discredited 'authority,' and certain other less credible sources are cited in the pre-audit materials. The materials also reveal disclosures from a financial intelligence body – FINTRAC - that date back to 2009.[141] Apart from the recent studies of RAD operations, there is a distinct absence of information as to whether other charities – with domestic or international operations – have triggered financial intelligence notifications. There is no general tracking of FINTRAC disclosures, nor of how often disclosures result in action. A recent internal audit of CRA practices might be more on point. A 2025 internal audit of audit practices recommended that RAD risk-

[135] *Supra* Amberg, para 58
[136] Affidavit Anver Emon, February 3, 2023, para 10.
[137] https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/BPP-Combating-TF-Abuse-NPO-R8.pdf.coredownload.inline.pdf p 15.
[138] Audit Review, p. 64; Desk Review, p 15.
[139] https://www.cbc.ca/news/canada/toronto/islamic-relief-muslim-charity-canada-terror-1.6870177
[140] Affidavit of Julianne Myska, December 23, 2022, at para 51: https://drive.google.com/file/d/1M4epaeq6YP3Xlx3rYW2zbhRS4mnKB-u0/view
[141] Audit Review, p 61-63.

indicators in relation to terrorist abuse ought to be periodically reviewed to ensure they remained current and effective. Equally, it recommended the development of standards to ensure impartiality in any decision-making.[142] As the NSIRA review found, RAD processes lack credibility.[143]

6.5 Sources of Knowledge and Expertise

In its analysis of compliance related to terrorist abuse contained in the AFL, the CRA relies on internal expertise as well as information extracted from experts. Internal expertise connotes that the RAD arm of the CRA was created specifically to 'expertly' assess terrorist abuse risks.

In the AFL, ample evidential weight appears to be given to the expertise of Lorenzo Vidino, an external expert.[144] At the time of the audit, Vidino held a position as at 'accredited' institution and had previously testified in Canadian Senate Hearings.[145] Disturbing criticism of Vidino's scholarship has emerged.[146] Although academics are not immune to bias nor to 'advocacy' propensities, unfolding developments disclose troubling questions about the independence of his scholarship and his perspectives in relation to Islam. The CRA relied upon other sources of knowledge, but Vidino's views loom large. However, at the time Vidino was an academic at an 'accredited' institution.[147]

Extensive portions of the CRA analysis of terrorist abuse in connection with MAC draw on what is sometimes described as 'links' methodology.[148] Sometimes known as 'links analysis', sometimes known – in the examination of social networks – as 'social network analysis', or 'associational analysis,' such methods distill ties or connections between actors and nefarious activity. In security narratives where reliance on connections to 'bad actors' tends to be pronounced, it is identified as a pre-emptive security tool. Considerable dispute exists over the implications and effectiveness of such 'links', or associational, methods. It risks capturing innocent activity through associational connections, risks 'over-inclusion' and can fail to accurately discern between suspicious activity and authentic legitimate activity.[149] Notably, the NSIRA found that RAD audits relied on 'association:'

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[142] https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/internal-audit-program-evaluation/internal-audit-program-evaluation-reports-2025/internal-charities-audit-process.html#h_4
[143] NSIRA, *supra* p 22.
[144] AFL 2021, p 15-19
[145] L Vidino, Director, Program on Extremism, George Washington University: https://extremism.gwu.edu/lorenzo-vidino.
[146] Vidino is currently subject to a class action alleging he received money to 'concoct' false narratives of Muslims: https://williamsrecord.com/466517/news/prof-farid-hafez-sues-gwu-lorenzo-vidino-for-10-million/
[147] At the time of writing, Vidino remains in his academic post.
[148] Emon affidavit, June 13 at 48.
[149] Richard K. Gordon, "Losing the War against Dirty Money: Rethinking Global Standards on Preventing Money Laundering and Terrorism Financing" (2011) 21:3 Duke J Comp & Intl L 503 at 539-544; Richard K. Gordon, "Terrorism Financing Indicators for Financial Institutions in the United States" (2012) 44:3 Case W Res J Intl L 765 at 795; Syed Hussain Gowhor, "Effectiveness criteria of suspicious transaction reporting for early detection of terrorist financing activities" (2024) 31:6 Journal of Financial Crime 1516; Valsamis Mitsilegas, "Surveillance and Digital Privacy in the Transatlantic War on Terror: The Case for a Global Privacy Regime" (2016) 47:1 Colum

> 'Most comprehensive risk assessments that the NSIRA reviewed considered in some way the charity's association to organizations or individuals of concern to RAD. Because RAD does not weigh risks when assessing charities, NSIRA was unable to determine, in every case, whether the associations, in RAD's assessment, related to concerns that elevated a charity's risk of terrorist abuse or were simply presented as context.'[150]

In discerning connections between the Muslim Brotherhood, and other 'suspicious' entities, the CRA relies on emails and other materials as indicia of 'links' to the support of terrorism.[151] These associational connections all involve Islam, or ties to persons associated with the Islamic religion or ties to states with significant Muslim populations. Of the 'links' drawn to the Muslim Brotherhood, Justice Koehnen stated:

> 'To the extent that some of the religious philosophy of the Muslim Brotherhood might also be reflected in the political party of the same name, I very much doubt a Christian church would have its charitable status revoked if it made statements that were similar to the one made by certain Canadian political parties to promote greater social or economic equality.' [152]

Leaders of Muslim charities, volunteers and employees exist within their religious communities. Any anointing of the notion that associations – connections - indicates terrorist abuse risks over-identification and the attraction of 'guilt' by association. There is a keen resonance with the assumptions woven in the immediate aftermath of September 2001, that 'all Islamic charities' were suspect of funding terror.[153]

Lengthy parts of the CRA's AFL center on abuse in specific relation to Muslim narratives or implicate understandings of Islam.[154] None of the RAD materials that preceded the AFL indicate expert knowledge of the particularities of the Islamic faith, of the richness of its dimensions or of its means of cultural expression. Through the actual audit, arranged around the risk themes identified in preliminary assessments and drawn from the information culled from MAC and elsewhere, the CRA engaged in the intricate dissection of Islam, of the 'Muslim Brotherhood,' and of associational links with understandings of the 'Muslim Brotherhood' and of MAC's constating documents and practices.

An illustrative example is the CRA's dissection of Eid festivals. In its articulation of whether these festival's 'advance religion' and are therefore 'charitable,' the AFL speaks of 'prayer hours,' and the severance of 'social' activities from 'religious' practice.[155] This minute analysis – counting 'prayers' hours and discounting festival attributes as 'social' rather than part of advancing religions

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HRLR 1; David B. Bulloch, "Tracking Terrorist Finances: The Swift Program and the American Anti-Terrorist Finance Regime" (2011) 3:4 Amsterdam Law Forum 74, p 89.

[150] *Supra*, *NSIRA* p 13.

[151] AFL 2021, p 51-57: see *supra*, Emon affidavit June 13.

[152] *Supra, Muslim Association of Canada,* para. 50.

[153] *Supra* Warde p 130-131.

[154] AFL 2021, p 12-32, 38-41, 44-59 and 71-88.

[155] AFL 2021, p 71-74.

contrasts with Islamic tradition that understands days long festivals as central to Islam.[156] It ignores that social aspects can be a constituent part of religious activity.[157]

In this, it is difficult to conclude that the audit was animated by expert knowledge of Islam. It is more tenable to perceive elements of bias informing the compliance analysis of MAC. Within evolving Islamophobic narratives, the assurance of CRA resident expertise about Islam would enhance the legitimacy of audits and diminish concerns about partiality.

Recommendation III

> *To mitigate against any potential bias, prejudice or discrimination, that the CRA secure, in relation to compliance analysis, individuals with an expertise and intimate familiarity with diverse cultures and religions including Islam.*

6.6 Allegations of Terrorist Abuse

The audit involves multiple non-compliance concerns only certain of which are generally undergirded by themes related to terrorist abuse. Specific segments attentive to this theme, in varying degrees, include the advancement of a non-charitable collateral purpose – the Muslim Brotherhood; the conduct of activities contrary to public policy; and the lack of a public benefit.[158] Notably, though the CRA was concerned about ties between the Muslim Brotherhood and terrorism:

> '…the CRA did not base its audit conclusions regarding MAC's advancement of a charitable purposes on these concerns. A charity that advances the interests of another organizations, even if that organization is not a terrorist organization, is not operating exclusively for charitable purposes…'[159]

6.6.1 The Non-Compliance Matrix

The task of the CRA is the discernment of non-compliance with charities law. Terrorist abuse is not a category of non-compliance. Nor is 'violent extremism,' a sub-category of the terror-related lexicon. The discernment of relationships or activities that might connote such abuse informs compliance analysis.

Since allegations of abuse and violent extremism underpin analysis and compliance decision-making, the question of whether the CRA 'substantiated' any 'allegations' sits somewhat off center. Indicia of potential terrorist abuse feature as part of possible non-compliance missteps. In a criminal context, 'substantiation' refers to proof beyond reasonable doubt. In a civil context, it refers to a balance of probabilities. In a tax-centric administrative charitable compliance context,

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[156] Carter Response, December 3, 2021, p 35 -37: https://drive.google.com/file/d/1SRczRY0TTE4MRJrD_RkfGqqaO8QMa5be/view
[157] *Loyola High School v Quebec (Attorney General)* [2015] 1 SCR 613 at para. 60.
[158] Julianne Myska, Senior Audit Advisor, recognizes these are the most concerning areas of non-compliance identified by the CRA; Affidavit of Julianne Myska, 23 December 2022, para 6; https://drive.google.com/file/d/1M4epaeq6YP3Xlx3rYW2zbhRS4mnKB-u0/view
[159] *Supra,* Myska, para. 32.

the idea of 'substantiation' has no proper place. Administrative decision making must be reasonable, or satisfy the standard of review of 'reasonableness'.[160] A reasonable decision is a decision that is 'based on an internally coherent and rational chain of analysis that is justified in relation to the facts and law that constrain the decision maker.' [161] Here, in this context, what matters is whether in determining whether a charitable entity advanced a non-collateral purpose, conducted activities contrary to public policy, or lacked a public benefit, the decision was reasonable. Concerns related to abuse shape that decision-making exercise, and their sufficiency, may or may not, inform any discernment of reasonableness. In this, the tenability of allegations matters in terms of the overarching appraisals of decisions with respect to remaining within the purview of charities law rather than their sufficiency in terms of satisfying a particular legal evidential standard.

6.6.2 Links to Known or Unknown Terrorist Entities

Canadian law defines and criminalizes terrorist activity as well involvement with, and support for, terrorist groups.[162] 'Groups' includes generic terrorist entities as well as 'listed entities.' 'Listed entities' are the product of state decisions that the entities are engaged in terrorist activity. Defining the boundaries of abuse in the charitable context are both 'lists' and terrorist activity. Whether through 'listing' mechanism, or other fora, the idea of who or what is a terrorist entity is contested. Political interests can inspire the designation of a group as terrorists and be used to crush political opposition.[163] In an international setting, this means that one state's assertions reflect their own assessments and prerogatives, whether legitimate or not. Despite political dimensions, charities are expected to consult terrorist designations imposed by other jurisdictions to discern possible terrorist abuse.[164]

As a piece of compliance with charities law, Canadian charities clearly ought to avoid any engagements with entities that Canada has anointed as 'terrorists.' Due diligence in the management of operations requires an acquaintance with 'lists' – known terrorists - to protect against abuse. Relationships – whether the solicitation and receipt of donations, the co-hosting of events or collaborative ventures – with entities proscribed by Canadian law clearly ground allegations of terrorist abuse, and, within charities law, readily disclose violations of public policy.

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[160] *Canada (Minister of Immigration of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17 and 25: *Malcolm v Attorney General of Canada,* 2023 DTC 5029 para 16 (in the CRA context).
[161] *Vavilov*, para 85.
[162] *Criminal Code of Canada,* RSC 1985, c C-46, s 83.01, 83.02, 83.03 and 83.05
[163] UN Human Rights Council, A/HRC/40/52, March 2019, Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, para 7: https://docs.un.org/en/A/HRC/40/52
[164] https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/educating-charities-terrorist-abuse/checklist-protect-charity-against-terrorist.html

Some of the CRA allegations of abuse in the context of the MAC audit hinge on associations with a listed entity, the International Relief Fund for the Afflicted and the Needy (IRFAN-Canada). IRFAN was listed in 2014 and, from that point onwards, qualified as a known terrorist group for domestic purposes. Although there is some dispute as to the precise point when MAC completely severed ties to IRFAN, the association ended. More delicate is the assigning of abuse faults to MAC for involvement with IFRAN once IFRAN's charitable status was revoked. Its status was revoked in 2011. Notably, revocation is not 'listing'. Revocation of charitable status can occur for any number of reasons. This invites the matter of, short of listing, at what point ought an organization's own assessment of terrorist abuse risk produce action and the severance of connections.

While listing implicates involvement with known terrorists, another abuse lens focuses on links, financial and otherwise, to unknown terrorist groups: unknown in this sense connote groups not listed as such by Canada. This can include terrorist designations prescribed by other states, notably states with strong traditional alliances to Canada. However, an entity does not to be proscribed to prompt CRA risk concerns.[165]

Portions of the abuse allegations center on connections with organizations and whether such organizations promote, incite or encourage violence. Critical to these portions – considerations involving the Muslim Brotherhood, the Egyptian Canadian Coalition for Democracy, WATAN Syria, the Qatari charity and others – draw on protracted analysis by the administrative actor that urges that these entities promote and encourage terrorism.[166] This analysis extends to what the Muslim Brotherhood is – whether an 'organization' or an ideology - and whether 'it' promotes terrorism or extremism.

These assessments happen on contested terrain, a discord that is evident in the audit trajectory. While the Qatari charity was banned by Israel and sanctioned by a number of middle eastern countries, it has participated in numerous United Nations-lead projects, and is not 'listed' by the United Nations as 'terrorist' nor listed by Canada.[167] Nor have western countries listed the Egypt Muslim Brotherhood and the underlying political content is pronounced.[168]

To a degree, too, the idea of 'foreign' influence centers on 'unknown' terrorists. Although charities are not prohibited from soliciting foreign donations, the administrative actor equates foreign 'funding' with the idea that MAC acts under the influence of 'foreign' parties.[169] Nor are charities prohibited from communicating with foreign actors. The foreign actors – the Qatari charity and

[165] *Myska supra*, para 37.
[166] AFL 2021, 14-21,28-33, 38-40 and 48-58.
[167] Carter Response January 22, 2022, p 87: https://drive.google.com/file/d/1c-ZmTbkRoBn02UiFEj1G3oBqbO-LdUZ2/view
[168] Ibid p 36-38.
[169] AFL 2021, 63 '…common sense and good governance practices suggest the Canadian registered charities should not associate or otherwise accept money from these foreign organizations.'

the republic of Türkiye – and their malign influence relates to concerns that these promote terrorism and extremism.[170] Since Canada maintains relationships with Türkiye, it is reasonable to conclude that communications with Türkiye do not create a risk of terrorist abuse.

Notably, that all relationships to previously 'unknown' terrorist entities concern states and entities – including an 'ideology' - relate to Islam. To any charitable actor seeking to diligently avoid the terrorist abuse risk, this axiomatically sends a clear message: avoid associations with Islamic entities.

Tensions of this nature could be alleviated by the charity's regulator sharing of information about entities that the CRA considers present a risk of terrorist abuse. Information sharing would avoid differences of opinion and debates about risks of abuse. If the state actor is unwilling to go this far, then it is disingenuous to lay this discernment on the shoulders of charities. Clearly, the regulator, given its relationship with the broad national security community, is best poised to know those risks.

A third sphere of abuse connotes less associational links to other 'risky' entities but the promotion of hatred, intolerance or violence by individuals connected in some way to MAC. This is centrally nestled under the tenet of displacing the public benefit, a key ingredient of remaining within the compliance camp.[171] It is expressly tied to the National Strategy to Prevent Radicalization to violence and occurs as part of the trend of shifting from an exclusive focus on terrorist financing to a broader understanding of terrorist abuse.[172]

Any condoning of violence runs contrary to the nature of a charity as understood in Canadian law. The tax-benefits attach because of the presumptive public good afforded by charitable works. Promoting hatred or violence vitiates any benevolence character.

Even if actors associated with a charity clearly condone violence, at what point can their actions be ascribed to the charity? Law draws a distinction between individual private acts and agency, when an agent acts on behalf of an entity. Use of a charity's resources – its email service or its computers to promote bad acts is wrong but such actions cannot always be readily ascribed to that charity. Volunteers, employees and officials have different bonds to the entity and have significantly different authority. The tighter the bonds, and the higher up in the charity hierarchy, the more substantive might be the ascription of responsibility.

Moreover, actions may not 'clearly' condone violence or qualify as support for extremism or terrorism. Part of the 'shrinking of civic space' story involves the misuse of terrorist abuse to

[170] AFL 2021, p 64-68.
[171] AFL 2021, p 59-68.
[172] AFL 2021, p 60-61. The present strategy is found at: https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/ntnl-strtg-cntrng-rdclztn-vlnc/index-en.aspx

shutter dissent or opposing perspectives. There are prominent echoes in the MAC audit with the 2021 study. 'Invited speakers' may hold extremely conservative views rather than express speech that an administrative actor decides evokes 'concerns about promoting violence'.[173] In a criminal context, it proves tough to define the limits between speech acts that attract criminal liability and those that do not.[174] When those limits are applied in an administrative context – whether speech vitiates the public benefit, or violates public policy, they become more fluid. It is not whether they constitute, by a criminal legal standard, criminal activity, but whether an administrative decision-maker determines they are adequate to assign a deviation from charities law.

Recommendations IV

> *To help charities with the diligent exercise of compliance with charities law, that the administrator of charity's law considers regularly releasing warnings about non-listed actors whose activities raise serious concerns about terrorist abuse.*

Conclusion

It is critical to attend to terrorist abuse and equally critical to assure that modern strategies are appropriate, free of bias and, ultimately and importantly, effective. In the tax-centric context of charities, any failure to legitimately and justifiably realize the conjunction of these strategic goals risks hampering benevolence works. The promotion of these benevolence works – the bedrock sphere of 'registered charities' – is the very reason for the conference of tax-privileges; tax benefits are conferred because society deems charitable activity worthy of public support.

In the instance of the MAC audit by the CRA, the actualization of the modern strategy proved seriously wanting. Despite the distinctive ambitions of the administrative agency - the effort to police terrorist abuse - in the case of the MAC audit that effort proved seriously deficient. While MAC has endured the deleterious impacts, hopefully some remediation of CRA compliance analysis in line with the recommendations contained herein, will ensure that the experience of other occupants of the charitable sector differs.

[173] *Under Layering, supra* p 30-35.
[174] See generally, Craig Forcese & Kent Roach (2015) Criminalizing Terrorist Babble: Canada's Dubious New Terrorist Speech Crime, 53 Alberta Law Review 35, https://canlii.ca/t/6vb.

Appendix I

Academic Study: The MAC Audit and Terrorism Financing

Background:

Over the past few years, there has been significant nationwide advocacy and media coverage regarding the matter of the Canada Revenue Agency (CRA) targeting Muslim charities with audits under the guise of investigating terrorism financing. These audits have displayed clear biases and prejudices, as well as Islamophobia.

There has been a lot of media coverage, but little in terms of substantive work on this issue. The CRA has acknowledged its reliance on Canada's National Inherent Risk Assessment (NRA) that has resulted in the targeting of Muslim charities for highest risk of terrorism financing in the charitable sector.

Scope:

MAC's audit, and specifically the CRA's Administrative Fairness Letter (AFL)[175], will serve as the case study for this academic study. The prolonged audit of MAC, the largest Muslim charity in the country, has persisted for over eight years without a resolution. In April 2022, MAC initiated a charter challenge against the CRA, citing numerous infringements on freedom of religion, expression, association, and the right to equality. The hearing took place in April 2023 and a decision will be made later this year.

MAC is seeking an academic study to gain a deeper comprehension of the actual methods employed by the CRA for conducting risk analysis when choosing a charity, performing audits on the charity, and addressing concerns related to terrorism financing. The research should aim to determine whether the CRA has indeed identified any concerns regarding terrorism financing in MAC, and assess the effectiveness of the CRA's endeavors in combating terrorism financing, or if it is merely a deceptive tactic to unfairly prejudice the charity.

Primary Thesis of the Research

The primary thesis of the research is to determine whether the CRA has, in fact, made any direct allegations of terrorism financing involving Hamas or any other entity in its audit of MAC, and whether the CRA has substantiated and evidenced such allegations. Furthermore, the study will assess, based on an understanding of the CRA audit process, whether the CRA in its final sanction cited or penalized MAC for any issues related to terrorism financing or resource abuse.

Additionally, the research seeks to interpret the CRA's final response to the charity. What does it mean when the CRA states that the organization did not alleviate its concerns? Does this statement

[175] After completing the audit, the CRA prepares an administrative fairness letter that summarizes its preliminary findings and evidence. The letter provides the charity with an opportunity to respond to the CRA's findings and provide additional information or clarification. The CRA considers the charity's response before making a final decision on whether the charity is complying with its obligations under the Income Tax Act.

imply substantiation of allegations? Does the CRA provide evidence demonstrating that there remains any ongoing concern of terrorism financing? This analysis will be pivotal in determining the legitimacy, transparency, and effectiveness of the CRA's audit and its conclusions.

Input to the research:

- CRA Findings
- MAC Response
- Charter Challenge Documents
- Expert opinion for the court (Dr. Anver Emon)
- Reports issued by UofT and ICLMG on broader topic
- Access to MAC executives

The academic study should address the following key questions:

Is the methodology and approach employed in the terrorism financing audit effective?

Does the CRA employ a valid methodology, based on evidence and intelligence, to conduct risk analysis and provide a justified assessment of the risk of terrorism financing, thereby justifying the selection of MAC for an audit?

1. Based on the audit findings, what insights can be gained regarding the CRA's approach to substantiating terrorism financing, including its utilization of link analysis as described by UofT Prof. Anver Emon?
2. The CRA expands its findings on terrorism financing to include terrorism abuse and radicalization concerning the concept of public benefit. What evidence does the CRA demonstrate regarding its expertise in these areas, and do these align with the agency's mandate?
3. What can be deduced about the expertise of CRA auditors in auditing and identifying terrorism financing based on the preliminary findings?
4. How does the CRA ensure compliance with privacy laws and protection of personal information while investigating terrorism financing concerns within charities?

Are the sources utilized by the CRA to frame its views and findings credible?

5. From an academic perspective, how credible are the sources used by the CRA to support its findings, including individuals such as Thomas Quiggin, Lorenzo Vidino, and others?
6. What indications of bias and prejudice can be observed in how the CRA presents its findings and selects its sources, and does the CRA disregard alternative perspectives from other sources?
7. What measures does the CRA implement to mitigate potential biases or attempts to divert attention when addressing concerns related to terrorism financing?

Does the CRA's strategy in addressing terrorism financing align with that of the Government of Canada and other allied nations?

8. What definition of extremism and radicalization does the CRA employ, and is it in line with definitions used by other agencies, or does it exhibit outdated or problematic elements?
9. To what extent do the audit findings align with the public safety and foreign policy stance of the Government of Canada, and are there any discernible areas of disagreement or inconsistency?
10. Did the CRA demonstrate effective collaboration with other pertinent government agencies in formulating its findings concerning MAC?
11. What best practices or lessons can be learned from other countries or jurisdictions in effectively addressing terrorism financing concerns within the charitable sector, and how does the CRA compare in this regard?

Were legitimate findings of terrorism financing/abuse identified by the CRA in MAC?

12. Have the preliminary audit findings by the CRA uncovered any indications of terrorism financing, even when meeting a lower threshold of proof required in an administrative system?
13. How effective are the CRA's efforts in detecting terrorism financing in the context of MAC's audit, especially when considering the substantial financial resources invested in the audit?

The Muslim Brotherhood

14. What is the basis of the CRA's apprehension towards the Muslim Brotherhood? Do the concerns raised by the CRA regarding the organization's alleged links to terrorism align with the perspectives of the Government of Canada and other relevant agencies?
15. Is there any indication of foreign influence impacting the audit process, the resulting findings, or an attempt to reach a specific conclusion?

By addressing these questions, the academic study should aim to determine the legitimacy and effectiveness of the CRA's efforts, assess any potential biases or smokescreens, and provide insights into the nature of their findings and collaboration with other government agencies. Additionally, the study seeks to explore the alignment of audit findings with government positions, investigate any foreign influence, and offer academic opinions and recommendations for improvement in this domain.

Deliverable:

- Executive Summary
- Key recommendations
- The Academic study